

Decision 21-03-005 March 4, 2021

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 3 ISSUES

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DECISION ON TRACK 3 ISSUES

Summary

This decision adopts rules and requirements for implementation of Senate Bill 1376, the “TNC Access for All Act.” The Commission addresses issues scoped for Track 3 of this proceeding, including additional offset requirements for Transportation Network Companies and additional requirements for Access Providers seeking funding.

This proceeding remains open.

1. Background

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

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 identified the issues to be addressed in this

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

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

proceeding and established three tracks for the issues in this proceeding (Tracks 1, 2, and 3).

On June 27, 2019, the Commission adopted D.19-06-033 addressing Track 1 issues. D.19-06-033 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 the designation of geographic areas for the Access Fund as each county in California. On March 19, 2020, the Commission adopted D.20-03-007, which addressed Track 2 issues. D.20-03-007 generally adopted requirements for offset eligibility and exemption eligibility, as well as requirements for Access Fund disbursement.

On April 21, 2020, the assigned Commissioner issued an Amended Scoping Memo and Ruling (Amended Scoping Memo) that set forth the Track 3 schedule and scope. Track 3 proposals were submitted on June 30, 2020 by: the Consumer Protection and Enforcement Division (CPED); the Disability Rights Education & Defense Fund, Disability Rights California, and Center for Accessible Technology (collectively, Disability Advocates); 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); San Francisco Taxi Workers Alliance (SFTWA); Uber Technologies, Inc. (Uber); and Via Transportation, Inc. (Via).

A workshop on Track 3 proposals was held on July 24, 2020. Comments on the workshop and proposals were filed on August 14, 2020 by: Disability Advocates, Los Angeles County Metropolitan Transportation Authority (LA Metro), Lyft, San Francisco, SFTWA, Uber, and Via. Reply comments were

filed on August 28, 2020 by Disability Advocates, Lyft, San Francisco, SFTWA, Uber, and Via.

2. Issues Before the Commission

The Amended Scoping Memo identified the following issues for Track 3, summarized below:

1. TNC Offset Requirements.
 - a. Pursuant to § 5440.5(a)(1)(B)(II), should qualifying expenses be limited to the “incremental costs” of providing WAV service? What method should be used to calculate “incremental costs”?
 - b. What other measures, if any, should be adopted to demonstrate “improved level of service” (*e.g.*, an increase in the number of WAV trips offered or an expansion of the “zone of service”)?
2. Access Fund Disbursements.
 - a. Should a minimum or maximum amount of funding be disbursed to an Access Provider in response to an application?
 - b. Should the Commission prescribe what purposes moneys disbursed to Access Providers can be used for?
 - c. Should the Commission directly grant funding to transportation carriers that it does not regulate (*e.g.*, taxicab companies or entities that exclusively provide non-emergency medical transportation)?
 - d. Should Access Providers that receive funding be required to be available for chartering through TNC apps?
 - e. How should applications from Access Providers be granted or denied (*e.g.*, via Commission resolution or by staff action)?

- f. How should “on demand transportation” be defined for purposes of selecting on-demand transportation programs or partnerships?
 - g. Should TNCs also be allowed to apply as “Access Providers” to request additional moneys?
 - h. Should separate qualifying standards for TNCs be adopted based on criteria such as the number of trips provided in geographic area (*e.g.*, a million or more rides per quarter)?
 - i. Should additional application requirements be adopted for Access Providers?
 - j. What is an appropriate method or formula for compensating Access Fund Administrators (AFAs)?
 - k. For administration of the Access Fund by a statewide AFA, what qualifying expenses should be established for Access Providers, if any, not served by a local AFA? Should geographic area differences be considered in the absence of a local AFA?
3. Reporting Requirements.
- a. Pursuant to § 5440.5(a)(1)(J), how should yearly benchmarks be established for TNCs and Access Providers to ensure WAV users receive continuously improved, reliable, and available service?
 - b. Pursuant to § 5440.5(a)(2)(A), what information should be included in the report to the Legislature on compliance with and effectiveness of on-demand programs and partnerships funded by the program?
 - c. What additional reporting requirements, if any, should the Commission adopt for Access Providers and TNCs?
4. Advice Letter. Should General Order 96-B, Rule 7.5.2 be modified for purposes of an Offset or Exemption Request?
5. Intervenor Compensation. Does the phrase “existing funds collected from TNCs pursuant to [Pub. Util. Code] Section 421” require clarification? Does “advocates for

accessible transportation” or “representatives of a group whose membership uses accessible transportation” require clarification?

6. Additional TNC Accessibility Issues.

- a. What additional issues, if any, should be addressed related to the needs of persons with disabilities who do not require WAVs, including but not limited to, persons with hearing and vision impairments, persons who require the assistance of service animals, and/or ambulatory persons with disabilities?
- b. Should changes to TNCs’ applications or platforms be required to improve services for persons with disabilities?
- c. Should TNCs accept transportation subsidies as substitutes for legal tender (*i.e.*, voucher or scrip) for persons with disabilities?
- d. Should a “Symbol of Access” be used by TNCs or Access Providers?
- e. Should WAV inspection and driving training requirements be added to the TNC permit requirements?

All Track 3 proposals and comments were considered but given the number of issues, some proposals or comments may receive little or no discussion in this decision. Issues within the scope of Track 3 that are not addressed here, or partially addressed, may be addressed in a later track. Following the issuance of this decision, an amended Scoping Memo for Track 4 will be issued.

3. TNC Offset Requirements

3.1. Improved Level of Service Requirements

Pub. Util. Code § 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....” In D.20-03-007, an interim WAV Offset Time Standard was adopted for TNCs seeking an offset.³ The Commission considers whether any other requirements should be adopted to demonstrate “improved level of service.”

3.1.1. Proposals on WAV Completion Rates

CPED and some parties recommend requiring an increase in the number or percentage of WAV trip completions to show improved level of service. As part of CPED’s proposal, CPED analyzed retroactive Offset Requests submitted by TNCs for three previous quarters and observed that TNCs reported a low percentage of WAV trip acceptances, despite the TNCs meeting the requisite Offset Time Standard.⁴ CPED states that under the current requirements, a TNC can receive 100 WAV requests in a geographic area and decline 99 of those requests; however, if the one completed request is within the Offset Time Standard, the TNC satisfies the requirement. CPED expresses concern that TNCs may be incentivized to decline a larger portion of WAV requests if doing so results in shorter response times.

CPED proposes that in addition to satisfying the Offset Time Standard, a TNC must increase the total number or percentage of WAV trips accepted and completed over the previous quarter. CPED proposes that a minimum 50% of WAV requests must be completed for a geographic area. CPED also recommends assigning equal weight (50% each) to the Offset Time Standard and

³ The interim Offset Time Standards can be found at D.20-03-007 at 18-20, available at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M329/K472/329472459.PDF>.

⁴ CPED Proposal at 5-6.

the new completion standard, such that if a TNC fails to satisfy one of those standards, 50% of the TNC's total offset reimbursement may be deducted.⁵

Uber, San Francisco, and SFTWA also recommend that a TNC increase the number or percentage of WAV trips completed or accepted.⁶ Disability Advocates recommend minimum benchmarks by which a TNC's percentage of completed WAV trips must increase, beginning with 60% in the first year and increasing 10% each year until 2023.⁷

CPED also proposes modifying the current Offset Time Standard requirement, which provides that a TNC must exceed the percentage of completed rides within the Offset Time Standard as compared to the previous quarter. CPED proposes allowing a TNC to also improve the number of trips completed, as well as the percentage, within the response time benchmarks to provide TNCs an additional avenue to satisfy the Offset Time Standard.⁸

3.1.1.1. Comments

Most parties agree that "improved level of service" should require an increase of the number or percentage of completed WAV trips each quarter, although parties diverge on how to measure the increase. Lyft proposes measuring the increase against static benchmarks, where a TNC must increase its completion percentage in the next quarter against a set incremental number but not against the TNC's actual prior quarter performance.⁹ Uber contends that the measure should be the total number of completed WAV trips in order to

⁵ *Id.*

⁶ Uber Proposal at 2, San Francisco Proposal at 3, SFTWA Proposal at 3.

⁷ Disability Advocates Proposal at 12.

⁸ CPED Proposal at 6.

⁹ Lyft Comments at 11.

incentivize broader availability.¹⁰ Uber adds that a TNC should be credited for maintaining the same percentage of completed trips to account for response time adjustments.

Uber and Lyft seek clarification on the meaning of “request” since a TNC can receive trip requests outside of its WAV operating hours when services are not offered.¹¹ Uber comments that because it offers the WAV option on its app 24-hours-a-day and across all California service areas, that is likely to lead to higher rates of non-completion.¹² Disability Advocates state that a TNC should report its operating hours, as this would be an important metric for the “presence and availability” factor.¹³

Regarding CPED’s 50% minimum completion, Lyft supports this as it would allow for seasonal and other fluctuations.¹⁴ Disability Advocates, San Francisco, and SFTWA object to 50% as inadequate and seek a higher percentage.¹⁵ San Francisco supports Disability Advocates’ proposal for a higher, increasing minimum because it sets a clear threshold that incentivizes improvement.

Nearly all parties object to CPED’s proposal to give equal weight to the Offset Time Standard and trip completion requirement, albeit for different reasons. Uber disagrees with assigning equal weight, stating that the primary

¹⁰ Uber Comments at 2.

¹¹ Uber Comments at 6, Lyft Comments at 8.

¹² Uber Comments at 6.

¹³ Disability Advocates Reply Comments at 4.

¹⁴ Lyft Comments at 9.

¹⁵ Disability Advocates Comments at 4, SFTWA Comments at 4, San Francisco Comments at 5.

metric should be completed trips because it relates to response times.¹⁶ Uber objects to disallowing half of the amount requested as too harsh. Lyft objects to CPED's proposal because if a TNC cannot recoup its total investments, that may render a TNC's WAV program unsustainable.¹⁷ On the other end, San Francisco, Disability Advocates, and SFTWA disagree with rewarding TNCs with 50% of their requested amount for failing to achieve one standard.¹⁸ San Francisco is concerned that this approach will allow a TNC to alternate between reliable, long wait times and unreliable, shorter wait times.

3.1.2. Proposals on Multi-Factor Metrics

Some parties, including Uber, Lyft, and Via, recommend considering multiple factors to demonstrate improved level of service. Uber proposes factors such as reduced complaint rates, increased number of WAV availability hours, or proportionate response times during periods of increased WAV availability or expansion of service area.¹⁹ Lyft proposes a multi-metric approach where a TNC must demonstrate improvement in just one of the collected metrics each quarter (*i.e.* number of WAVs in operation, completed WAV trips).²⁰ Via supports various metrics for improved level of service, including increasing WAV requests, expanding service to new areas, or increasing WAV trainings.²¹ San Francisco, Disability Advocates, and SFTWA object to Lyft's approach as

¹⁶ Uber Comments at 4.

¹⁷ Lyft Comments at 9.

¹⁸ San Francisco Comments at 5, SFTWA Comments at 4, Disability Advocates Reply Comments at 3.

¹⁹ Uber Proposal at 2.

²⁰ Lyft Comments at 10, Lyft Proposal at 6.

²¹ Via Proposal at 4.

inadequate in that a TNC can cherry-pick among metrics or a TNC can make minimal improvement in only one metric.²²

Disability Advocates recommend more granularity for the “presence and availability” requirement adopted in D.20-03-007, such as reporting the number of WAV drivers and requested WAV trips by a given day and time.²³ Disability Advocates also recommend modifying the “publicize and promote available WAV services” requirement by denying offsets for TNCs that do not demonstrate that outreach efforts resulted in improved WAV accessibility. Disability Advocates also recommend that for each offset requirement, a TNC must increase the benchmark on an annual basis.²⁴

3.1.3. Discussion

The Commission finds consensus among parties that to demonstrate “improved level of service,” a TNC should increase the number or percentage of completed WAV trips each quarter. Based on CPED’s analysis of submitted Offset Requests, it is important to incentivize TNCs to increase the number or percentage of completed WAV trips so that TNCs do not complete a minimal number of WAV requests in order to maximize response time benchmarks.

We acknowledge parties’ interest in setting a minimum completion percentage (such as 50%) or gradually increasing benchmarks, as a means to incentivize TNCs to accept and complete a higher number of trip requests. It is necessary, however, to balance the need to incentivize WAV service development and expansion, particularly in counties with limited or no existing

²² San Francisco Reply Comments at 2, Disability Advocates Comments at 7, SFTWA Reply Comments at 7.

²³ Disability Advocates Proposal at 12.

²⁴ Disability Advocates Comments at 5.

WAV service, without setting an unrealistic requirement that discourages WAV development. At this time, there is insufficient record for the Commission to determine the appropriate minimum percentage or appropriate increasing benchmarks. The Commission believes that before adopting a minimum standard, it is prudent to first evaluate actual WAV trip completion rates by geographic area and over a longer time period than currently available data allow to better understand an appropriate minimum requirement.

Without adopting a minimum benchmark at this time, the Commission finds it reasonable that to demonstrate “improved level of service” for an Offset Request, a TNC must demonstrate either: (a) an increase in the total number of completed WAV trips compared to the previous quarter in that geographic area, or (b) an increase in the percentage of completed WAV trips compared to the previous quarter in that geographic area. This requirement will be referred to as the Trip Completion Standard and shall be effective for Offset Requests and Exemption Requests submitted starting with the second quarter of 2021. The Trip Completion Standard requirement is in addition to the Offset Time Standard required to demonstrate improved level of service, as adopted in D.20-03-007.

The percentage of completed WAV trip requests shall be calculated as the total number of completed WAV trips divided by the total number of WAV requests for a given geographic area and quarter, as follows:

$$\% \text{ Completed WAV Trip Requests} = \text{Total Completed Trips} / \text{Total Trip Requests}$$

We agree with Disability Advocates that for purposes of public transparency regarding the availability of WAV service and to ensure consistency, the transportation carrier shall submit its WAV operating hours for

that geographic area with its submission of the percentage of completed WAV trip requests. Accordingly, we adopt this requirement.

In order to evaluate what minimum benchmark(s) may be appropriate, CPED Staff is directed to analyze the Trip Completion Standard by geographic area based on data submitted by TNCs in Offset Requests. CPED Staff is directed to submit a report to the Commission on the Trip Completion Standard and any other relevant information in December 2021.

In D.20-03-007, the Commission established that information required in an Offset Request would form the basis for information required in an Exemption Request, a Quarterly Report, and the Access Provider application.²⁵ As such, we find it consistent with D.20-03-007 that the Trip Completion Standard should be added to the requirements for an Exemption Request, a Quarterly Report, and the Access Provider application. For an Exemption Request, a TNC shall demonstrate that it achieved the Trip Completion Standard for the four consecutive qualifying quarters for which it seeks an exemption. For the Access Provider application, as discussed with the Offset Time Standard adopted in D.20-03-007,²⁶ an applicant should provide data required for the Trip Completion Standard, to the extent available; however, the applicant will not be deemed ineligible to be an Access Provider for failing to meet the Trip Completion Standard.

CPED's proposal to give equal weight to the Offset Time Standard and Trip Completion Standard lacked support from parties and thus, we decline to adopt it. As such, to demonstrate improved level of service for an Offset Request

²⁵ See D.20-03-007 at 30, 48, 69.

²⁶ *Id.* at 69.

or an Exemption Request, a TNC must satisfy both: (1) the Offset Time Standard or Exemption Time Standard (depending on the request), and (2) the Trip Completion Standard.

Lastly, we decline to adopt additional metrics to demonstrate improved level of service at this time. Some parties' proposals were raised and rejected in Track 2, and other proposals lack sufficient specificity for consideration. The Commission, however, sees merit in considering increased WAV availability or service area expansion as a potential metric to demonstrate improved level of service, if such a proposal can be developed with specificity. Parties are encouraged to put forth such a proposal in Track 4 for consideration.

3.2. Incremental Costs

In Track 2, some parties proposed that allowable WAV offset expenses should only include costs that directly apply to providing WAV services, and that are an "incremental cost" to the TNC above the cost of providing a non-WAV trip. In D.20-03-007, the Commission stated that:

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 to adopt at this time.²⁷

We encouraged proposals for "a viable method for calculating incremental costs" in Track 3.

In Track 3 proposals, Lyft, Via, and Uber object to an incremental cost requirement. Lyft maintains that SB 1376 provides no intent to have TNCs

²⁷ D.20-03-007 at 22-24.

deduct from the amounts spent prior to reimbursement and it is unclear how a TNC can calculate incremental cost because WAV service is fundamentally different from standard TNC service.²⁸ Lyft states that, for example, it incurs costs to third-party WAV partners and regulatory expenses that it does not incur for non-WAV rides. Via similarly states that its WAV expenses are difficult to distinguish from non-WAV expenses, such as costs to ensure vehicle safety and driver training.²⁹ Via adds that incremental costs will depend on how a TNC defines expenses and such a requirement will lead to inconsistent interpretations among TNCs. Uber argues that its WAV expense accounting already represents incremental costs associated with WAV service and further calculation is unnecessary.³⁰

CPED proposes defining incremental costs as the “portion of costs directly attributable to providing WAV service” and outlines four incremental cost categories (vehicle, partnership, marketplace, and operational costs).³¹ For example, incremental “vehicle costs” include costs to modify, obtain, or operate WAVs, rental and fuel costs, repairs, etc. Disability Advocates state that some of the proposed costs may not reflect incremental costs if they are not above the cost of providing standard rides.³² Disability Advocates state that if a TNC is permitted to offset the entire cost of WAV service (not just incremental costs), it should deduct income received from those rides before seeking an offset.

²⁸ Lyft Proposal at 2.

²⁹ Via Proposal at 3.

³⁰ Uber Proposal at 1.

³¹ CPED Proposal at 2-3.

³² Disability Advocates Comments at 2.

Several parties argue that TNCs should bear the burden to show that an expense is an incremental cost of WAV service and if it cannot do so, the expense should be rejected.³³ Disability Advocates recommend a formula similar to that used in ratemaking analyses for other industries, such as consideration of fares paid by WAV passengers and amortization of costs of WAV vehicles over time. Disability Advocates, San Francisco and LA Metro recommend retaining a consultant to assist with the analysis.

3.2.1. Discussion

Parties' proposals highlight the challenges of appropriately identifying incremental WAV costs. A TNC bears the burden to demonstrate that it meets the requirements of an Offset Request. The Commission, however, must provide clear guidance to TNCs and other entities as to how the requirements are met. If the Commission cannot clearly define an incremental cost or identify an incremental cost calculation, we agree with Via that this will lead to inconsistent interpretations by TNCs, as well as by Commission staff that review and approve the Offset Requests.

The Track 3 proposals raise the same issue identified in D.20-03-007 – there is no proposed implementable method for calculating incremental WAV costs. CPED's proposed definition of a "portion of costs directly attributable to providing WAV service" offers no greater insight as to what an incremental cost is than the definition of WAV expenses adopted in D.20-03-007. CPED's cost descriptions offer some clarity for covered WAV expenses but is limited in scope and raises more questions as to other costs that are not listed.

³³ Disability Advocates Proposal at 9, Marin Transit Proposal at 3, SFTWA Proposal at 2, LA Metro Comments at 3, San Francisco Proposal at 2.

The Commission concludes that there is insufficient record to adopt an incremental cost requirement. The definition of a qualifying offset expense adopted in D.20-03-007 remains applicable: (1) a reasonable, legitimate cost that improves a TNC's WAV service, (2) a cost incurred in the quarter for which a TNC requests an offset, and (3) the cost is on the list of eligible expenses attached as Appendix A.³⁴ In response to some parties' proposals, we clarify that fares paid by passengers are not included on the list of eligible offset expenses, attached as Appendix A to D.20-03-007.

The Commission will continue to monitor TNCs' WAV expenses submitted through the Offset Requests and may modify this definition in the future. To that end, CPED Staff is directed to include in the December 2021 report to the Commission an evaluation of WAV expenses requested in Offset Requests, including the amount of approved WAV offset expenses by category, TNCs' approved WAV expenses as a percentage of TNCs' Access Fund fee remittances, and other relevant information.

3.3. Advice Letter Rule Modification

In D.20-03-007, we noted the concern regarding Rule 7.5.2 of General Order (GO) 96-B, which provides a 120-day suspension of an Advice Letter (AL) if the Industry Division does not reach a disposition on the AL in the initial 30-day review period.³⁵ The Commission stated that:

We note that Rule 7.5.2 was intended in part to incentivize the Industry Division to review ALs within a 30-day review period. Removing the suspension period does not necessarily resolve concerns of increased delay, as it may remove an

³⁴ D.20-03-007 at 24.

³⁵ D.20-03-007 at 37-38.

incentive for the Industry Division to quickly dispose of the AL in 30 days.³⁶

The Commission deferred this issue to Track 3. In Track 3, Disability Advocates, San Francisco, and Marin Transit recommend not modifying Rule 7.5.2 because the 120-day period is necessary to afford CPED sufficient time and flexibility to evaluate the Advice Letters.³⁷ San Francisco asserts that based on the Offset Requests filed by TNCs in April 2020, and TNCs' confidentiality claims to the Advice Letters that led to protests, it cannot be assumed that CPED can resolve the Advice Letters within the 120-day period.

Uber recommends modifying the 120 days to 60 days so that the submitting entity can recoup funds to invest into the program.³⁸ Lyft claims Rule 7.5.2 should be modified to require CPED to issue a disposition on the merits in 30 days, with an exception only if there is a dispute on the merits that requires further factual development by CPED.³⁹ San Francisco disagrees with Lyft and states that objections are intertwined with the merits, and TNCs' redactions make it impossible to assess the merits of an AL.⁴⁰

The Commission is not persuaded by Uber's and Lyft's proposals that an Advice Letter should be resolved expeditiously when TNCs simultaneously redact a significant amount of information that prevents parties from reasonably assessing the merits of an Advice Letter. We agree with parties that support

³⁶ *Id.*

³⁷ Disability Advocates Proposal at 25, Marin Transit Proposal at 8, San Francisco Proposal, at 15.

³⁸ Uber Proposal at 10.

³⁹ Lyft Comments at 11.

⁴⁰ San Francisco Reply Comments at 5.

leaving Rule 7.5.2 as is to allow the Industry Division sufficient time to evaluate the Advice Letters and decline to modify Rule 7.5.2.

4. Access Fund Disbursements

4.1. On-Demand Transportation

Pub. Util. Code § 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.” The Access for All Act, however, does not define “on-demand transportation.” In D.20-03-007, the Commission stated that:

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.⁴¹

The Commission deferred the issue to Track 3. In Track 3, some parties support a broad definition for on-demand transportation to provide sufficient flexibility for potential Access Providers. San Francisco, Disability Advocates, LA Metro, and Marin Transit observe that the needs of the disability community will vary by county and depend on the amount of funding available in each area. San Francisco and Marin Transit propose that “on demand” services should be defined as “services that do not follow a fixed route and/or schedule.”⁴² Disability Advocates recommend that the definition should include “entities that

⁴¹ D.20-03-007 at 67.

⁴² San Francisco Comments at 8, Marin Transit Proposal at 5.

can provide immediate responses to customers who need WAV vehicles.”⁴³

LA Metro agrees with San Francisco but suggests that the Access Fund Administrator (AFA) should consider the needs of the local community.⁴⁴

CPED’s proposed definition is “WAV transportation that can be requested and fulfilled within 24 hours” to distinguish from service that requires a minimum 24-hour notice.⁴⁵ Lyft disagrees with this definition, stating that WAV service that takes up to 24 hours cannot be “on-demand” service.⁴⁶

On the other hand, Uber argues that true on-demand transportation can only be offered by TNCs and that an Access Provider should obtain a TNC permit.⁴⁷ San Francisco disagrees with Uber and states that other shared transportation modes, such as paratransit and taxis, are referred to as providing “on-demand” service.⁴⁸ SFTWA objects to Uber’s definition and notes that taxicabs offer app services similar to TNCs.⁴⁹ Lyft claims that on-demand transportation is “commonly understood to refer to transportation that an individual can summon as and when needed and which will be promptly dispatched in response to a specific request, and routed to the requestor’s location.”⁵⁰

⁴³ Disability Advocates Proposal at 19.

⁴⁴ LA Metro Comments at 5.

⁴⁵ CPED Proposal at 7.

⁴⁶ Lyft Comments at 12.

⁴⁷ Uber Proposal at 6.

⁴⁸ San Francisco Comments at 8.

⁴⁹ SFTWA Comments at 7-8.

⁵⁰ Lyft Proposal at 9.

4.1.1. Discussion

The Commission first observes that no party offered a citation or source for a generally accepted definition for “on-demand transportation,” suggesting that there is no commonly accepted definition.

The intent of SB 1376 is to encourage the adoption of WAV services throughout the State.⁵¹ We agree that WAV transportation options may look different in certain counties, particularly those areas that have no or limited existing WAV service. Further, as this is the implementation of California’s first statewide WAV Access Provider program, the Commission finds it reasonable and prudent to adopt a broad, flexible definition of “on-demand transportation.”

We reject Uber’s proposal that on-demand transportation can only refer to TNCs. As stated in D.20-03-007, “[h]ad the Legislature intended for all access providers to be TNCs, there would no need for separate definitions” of on-demand Access Providers and TNCs.⁵² We also reject Lyft’s definition that services can be “summon[ed] as and when needed” and “promptly dispatched” as ambiguous and lacking sufficient guidance to potential Access Providers.

The Commission concludes that San Francisco and Marin Transit’s proposed definition of “on-demand transportation” is reasonable and flexible to encourage development of services in counties with little or no existing WAV service. Accordingly, “on-demand transportation” shall be defined as any transportation service that does not follow a fixed route and/or schedule. The Commission, however, also seeks to encourage WAV services with faster response times. As such, an AFA should prioritize the selection of Access

⁵¹ Pub. Util. Code § 5440, *et al.*

⁵² D.20-03-007 at 66.

Provider applicants that can offer WAV transportation that can be requested and fulfilled within 24 hours.

The Commission will monitor the pool of Access Providers that qualify and/or are selected under the adopted definition and may modify the definition in the future. CPED Staff is directed to submit a report in December 2022 evaluating the Access Provider applicant pool, including the type of Access Providers that apply for funding, how many applicants applied and/or were approved, and other relevant information.

We note that throughout this decision, the term AFA is used to generally refer to both the local AFA (LAFA) and a statewide AFA (SAFA), as applicable. To the extent that distinctions between a LAFA and SAFA are necessary, the distinction is noted.

4.2. Disbursement to Non-Regulated Entities

A related issue to the definition of “on-demand transportation” is whether Access Fund moneys should be granted to transportation carriers that the Commission does not regulate (*e.g.*, taxicab companies or entities that exclusively provide non-emergency medical transportation).

Uber and Lyft assert that funding should not be granted to carriers the Commission does not regulate. Lyft states that the Commission would lack the ability to ensure funds are spent to increase access to WAVs or ensure Access Providers comply with training, inspection, data reporting, etc.⁵³ Lyft states that an entity that seeks funds should be required to apply for a charter-party carrier (TCP) license, as TNCs are required to do. Uber argues that allowing

⁵³ Lyft Proposal at 7.

non-regulated entities to qualify for funds would allow non-regulated carriers to be subsidized at the expense of TNC riders, including TNC WAV riders.⁵⁴

CPED observes that for other WAV subsidy programs funded by TNC trips, such as in Seattle, Portland, and Chicago, the local government processes claims from its regulated carriers, including taxicabs and for-hire vehicles. CPED proposes that for counties administered by the SAFA, funding should be limited to Commission-jurisdictional carriers. For programs administered by LAFAs, funding should be distributed to locally-regulated carriers deemed eligible by the LAFA.⁵⁵ San Francisco, Disability Advocates, and SFTWA object to this proposal and state that it suggests Access Providers are defined by an administrator's ability to regulate the provider.⁵⁶

San Francisco, Disability Advocates, SFTWA, and Marin Transit propose that non-regulated carriers should be eligible if they can function as Access Providers. Disability Advocates state that the Commission can condition acceptance of funding on regulatory compliance, including accepting Commission authority.⁵⁷ San Francisco notes that the Commission issues funds to non-regulated entities in other programs, such as the LifeLine Subsidy program.⁵⁸ SFTWA contends that compliance can be ensured through the application and notes that taxicabs have more stringent requirements than TNCs, such as fingerprint background checks, drug and alcohol testing, etc.⁵⁹

⁵⁴ Uber Reply Comments at 3.

⁵⁵ CPED Proposal at 11-12.

⁵⁶ SFTWA Comments at 6, San Francisco Comments at 7, Disability Advocates Comments at 10.

⁵⁷ Disability Advocates Comments at 9.

⁵⁸ San Francisco Comments at 6-7.

⁵⁹ SFTWA Comments at 5.

It is true that there are Commission programs in which funds are issued to non-Commission regulated entities, such as the California Advanced Services Fund and the LifeLine program. However, issuing funds to wireless or broadband service users is arguably a more straightforward endeavor than issuing funds to transportation carriers providing ongoing WAV services to persons with disabilities, potentially including new carriers that may be establishing services for the first time. While some carriers are regulated by a local government or other regulatory body, others may not be subject to any regulatory oversight or safety protocols. The Commission is concerned about ensuring compliance with safety protocols for entities it does not regulate, such as insurance requirements or background checks. We recognize that requiring an Access Provider to obtain a TCP permit is a greater undertaking that may reduce the number of potential Access Providers.

The Commission would like to consider the disbursement of Access Fund moneys to non-regulated entities without requiring a TCP permit, if the Commission can ensure compliance with safety protocols and other requirements. Under the current TCP permit requirements, permit holders are subject to general liability insurance minimums depending on the number of passengers, worker's compensation insurance, a 19-point vehicle inspection, drug testing, etc.⁶⁰ For example, the liability insurance minimum coverage amounts are consistently higher for TCPs than for locally regulated taxicabs. In Track 4, parties are encouraged to offer proposals as to how the Commission can

⁶⁰ See https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Proceedings/General%20Order%20157-E.Final3.pdf

ensure that non-jurisdictional transportation carriers can demonstrate compliance with safety requirements akin to the requirements for a TCP permit. Parties should consider that an Access Provider may be a new provider developing WAV services for the first time or an established provider bolstering existing services.

In the interim, an Access Provider shall be limited to a transportation carrier that holds a Commission-issued permit prior to applying to become an Access Provider. Accordingly, we adopt this requirement.

4.3. Use of Access Provider Funds

Lyft, Disability Advocates, and San Francisco recommend that eligible expenses for Access Providers should be the same as the eligible expenses for TNCs.⁶¹ Marin Transit and LA Metro recommend that the AFA determine the eligible expenses so long as moneys are used for reasonable, legitimate costs for improving the delivery of WAV service.⁶² The Commission finds it reasonable and consistent with D.20-03-007 that a qualifying expense for an Access Provider is the same as a qualifying expense for a TNC's offset reimbursements.

A related issue is whether there should be different qualifying expenses for Access Providers served by the SAFA, rather than a LAFA. CPED believes it is premature to determine such expenses because it is unclear whether a SAFA will be necessary.⁶³ Uber argues that because it is unclear how long it will take to

⁶¹ Disability Advocates Proposal at 17, San Francisco Proposal at 5, Lyft Proposal at 7.

⁶² Marin Transit Proposal at 4, LA Metro Comments at 6.

⁶³ CPED Proposal at 10.

establish a SAFA, qualifying expenses should be addressed and Uber proposes that qualifying expenses under a SAFA should be the same as for TNCs.⁶⁴

We agree with Uber that for Access Providers served by a SAFA, qualifying expenses should be the same as for Access Providers served by a LAFA or TNCs seeking an offset. Accordingly, a qualifying expense for an Access Provider is a reasonable, legitimate cost that improves WAV service, and appears on the list of eligible expenses attached as Appendix A to D.20-03-007.

Lastly, we consider whether a maximum or minimum amount of funding should be disbursed to an Access Provider. Disability Advocates, Uber, and Lyft object to a minimum or maximum and note that SB 1376 does not include such limitations.⁶⁵ LA Metro, Marin Transit, and San Francisco assert that a minimum or maximum should be set by the AFA and informed by the total funds available in each county.⁶⁶ The Commission agrees with parties that state that SB 1376 does not contemplate limitations on the amounts distributed to Access Providers, and we decline to adopt any limitations.

4.4. Approval Process for Access Provider Application

CPED, Lyft, and Uber recommend that the approval process for Access Provider applications should be the same as the Advice Letter process for Offset Requests.⁶⁷ Marin Transit and San Francisco propose that the AFA should review applications and offer recommendations to the Commission, with

⁶⁴ Uber Comments at 4.

⁶⁵ Disability Advocates Proposal at 17, Uber Proposal at 3, Lyft Proposal at 6.

⁶⁶ LA Metro Comments at 5, Marin Transit Proposal at 4, San Francisco Proposal at 5.

⁶⁷ Uber Proposal at 5, Lyft Proposal at 9, CPED Proposal at 11-12.

recommendations approved by Commission resolution.⁶⁸ Disability Advocates recommend that the AFA should make the ultimate determination with the Commission setting general parameters.⁶⁹

With the implementation of the State's first WAV Access Provider program, there are uncertainties as to how many Access Providers will apply for funding and how much funding will be available in various counties. As directed in D.20-03-007, CPED Staff is responsible for reviewing and approving Offset Requests from TNCs on a quarterly basis. We find that additionally reviewing and approving Access Provider applications for counties statewide will be unduly burdensome on Commission staff and resources, potentially resulting in delayed approval of Access Providers and fund disbursement.

The Commission is persuaded by Disability Advocates' proposal that the AFA should review and approve the Access Provider applications in its respective geographic area. This proposal is also consistent with the purpose of adopting the AFA process, which is that the Commission lacks "sufficient resources to effectively and efficiently administer the disbursement of Access Fund payments for the entire State."⁷⁰ Accordingly, each AFA shall review and approve applications for Access Providers in its geographic area. To foster public transparency of the selection process, once the AFA approves the Access Providers in its geographic area, the AFA shall notify CPED Staff and submit the list of Access Providers who applied for and were approved by the AFA by

⁶⁸ San Francisco Proposal at 6, Marin Transit Proposal at 5.

⁶⁹ Disability Advocates Proposal at 18.

⁷⁰ D.20-03-007 at 53.

September 30. The approved list of Access Providers shall be linked to and/or posted on the Commission's website.

4.5. TNC Eligibility as Access Provider

In D.20-03-007, the Commission left unresolved whether TNCs may be considered an Access Provider in certain geographic areas. The Commission stated:

[W]e 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 opportunities for access providers.⁷¹

The Commission solicited proposals on this issue in Track 3. CPED, LA Metro, San Francisco, and Disability Advocates recommend the proposal discussed in D.20-03-007 that a TNC may qualify as an Access Provider if a TNC: (1) qualifies for an exemption in that geographic area, and (2) certifies that the TNC's collected fees during the Exemption Year were exhausted to provide WAV services.⁷²

Lyft proposes that if a TNC qualifies for an offset or an exemption and incurs more expenses than the fees collected per quarter, the TNC should be eligible to apply.⁷³ Lyft adds that if a TNC does not have a WAV program in a

⁷¹ *Id.* at 67.

⁷² CPED Proposal at 7-8, LA Metro Comments at 6, Disability Advocates Proposal at 20, San Francisco Proposal at 7.

⁷³ Lyft Proposal at 10.

geographic area, the TNC should be able to apply as an Access Provider, as this would encourage expansion of WAV programs in other areas. Uber takes a broader view that the only limitation on TNCs receiving Access Provider funding should be whether their WAV expenses exceeded their collected quarterly fees.⁷⁴

The Commission reiterates the concern stated in D.20-03-007, which is that a TNC should not be eligible to receive additional funding if it does not meet the higher requirements for an exemption or an offset. Otherwise, a TNC may opt not to satisfy the requirements of an exemption or offset, which are specifically set forth for TNCs, and instead compete for Access Fund moneys specifically set aside for Access Providers, which may be new or emerging services.

The Commission concludes that it is reasonable that a TNC may apply as an 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 decline to adopt this requirement for a TNC that merely meets an offset requirement because a TNC can meet an offset requirement for one quarter and fail to meet the offset requirements for subsequent quarters. We agree with Lyft's proposal that in those geographic areas where a TNC does not offer WAV service, a TNC may apply as an Access Provider.

Accordingly, a TNC may apply as an Access Provider in a geographic area where it currently offers WAV service if: (a) the TNC qualifies for an exemption in that geographic area, and (b) certifies that the TNC's collected fees during the Exemption Year were exhausted to provide WAV services. A TNC may also

⁷⁴ Uber Proposal at 6.

apply as an Access Provider in a geographic area where it does not offer any WAV services. The AFA that receives a TNC's application shall consult with CPED Staff to verify whether the TNC has met these eligibility requirements.

Lastly, we consider whether to adopt separate qualifying standards for smaller TNCs, such as based on the number of trips provided in a geographic area. Nearly all parties, including Disability Advocates, SFTWA, San Francisco, Uber, Marin Transit, and Lyft, object to establishing different qualifying standards for TNCs based on the size of the TNC or other criteria. Via states that if separate qualifying standards are adopted, they should be based on quality of service and not size of the operation.⁷⁵

As discussed in D.20-03-007, the Commission does not interpret SB 1376 to require unique criteria for smaller TNCs, noting that "in the Commission's history of rulemaking 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."⁷⁶ A smaller TNC, however, may apply for funding as an Access Provider in geographic areas where it does not operate WAV services, as adopted above.

In geographic areas where smaller TNCs operate WAVs but do not qualify for an offset or exemption, the TNC is currently ineligible for Access Fund moneys as an Access Provider. The Commission would consider whether a smaller TNC may apply as an Access Provider in a geographic area where it operates WAV services and does not meet the offset or exemption requirements. For example, a smaller TNC's application to an AFA may include a description

⁷⁵ Via Proposal at 6.

⁷⁶ D.20-03-007 at 16-17.

of the efforts undertaken to provide WAV services in that geographic area and the necessity for funds to expand or improve those WAV services. Parties in Track 4 should submit proposals on whether an Access Provider exception should be made for smaller TNCs and how a “smaller TNC” should be defined.

4.6. Additional Requirements for Access Providers

Nearly all parties and CPED disagree that Access Providers that receive Access Fund funding must be available for chartering through TNC applications. Parties generally state that it would be inconsistent with SB 1376 to require Access Providers to provide services through TNC applications.⁷⁷ Lyft and Uber assert that TNCs should decide which partners offer services on their apps.⁷⁸ We find insufficient support for a chartering requirement and decline to adopt such a requirement. Access Providers, however, may be available for chartering through a TNC application if such agreement is reached between the involved parties.

In addition, Uber, Via, and Lyft state that Access Providers should not be subject to additional requirements other than the requirements in Ordering Paragraph 33 of D.20-03-007.⁷⁹ While San Francisco and LA Metro do not recommend further requirements for Access Providers, they state that the AFA should be permitted to request additional information from applicants as necessary.⁸⁰ Marin Transit states that an Access Provider should indicate on its

⁷⁷ Disability Advocates Proposal at 17, San Francisco Proposal at 5, CPED Proposal at 8, SFTWA Proposal at 4, Marin Transit Proposal at 5.

⁷⁸ Lyft Proposal at 8, Uber Proposal at 5.

⁷⁹ Uber Proposal at 7, Via Proposal at 6, Lyft Proposal at 10.

⁸⁰ San Francisco Proposal at 8, LA Metro Comments at 6.

application whether it is a service provider for a TNC and describe how it relates to the application for funds.⁸¹

The Commission agrees that an AFA should be permitted to request additional information from applicants as necessary, particularly because there may be uniquely local issues relevant for certain geographic areas. We agree with Marin Transit that an Access Provider applicant should disclose whether it is a current or former service provider for a TNC. For those Access Providers that provide services to a TNC in a geographic area, it is reasonable that the Access Provider should not use Access Fund monies for services compensated by a TNC in that geographic area because otherwise, the Access Provider will be double-compensated for its TNC services.

Accordingly, an AFA is permitted to request additional information from Access Provider applicants as necessary to sufficiently review the application. An Access Provider applicant shall disclose whether it is a current or former service provider for a TNC. The Access Provider applicant must demonstrate to the AFA that any Access Fund monies will not be used for services that are compensated by a TNC.

4.7. Compensation of Access Fund Administrators

To compensate AFAs, CPED recommends a formula consistent with other Commission funding programs, such as the California Advanced Services Fund.⁸² This formula limits administrative costs to 15 percent of the total amount awarded by the Commission each year. “Administrative costs” are defined as the “indirect overhead costs attributable to a project, per generally accepted

⁸¹ Marin Transit Proposal at 6.

⁸² CPED Proposal at 9.

accounting principles (GAAP), and the direct cost of complying with Commission administrative and regulatory requirements related to the grant itself.” Disability Advocates recommend that AFAs bill the actual cost of administration at up to a 10 percent cap, unless the AFA can demonstrate a reasonable basis for a greater amount.⁸³ Marin Transit supports compensating a percentage of total funds but does not offer a percentage.⁸⁴ Lyft proposes a fixed annual amount for compensation but does not offer a fixed amount.⁸⁵

The Commission agrees with CPED’s proposal as reasonable and consistent with the compensation structure of other Commission programs. Accordingly, an AFA shall be compensated for administrative costs up to 15 percent of the total amount awarded to a geographic area by the Commission in each funding cycle. “Administrative costs” are defined as the indirect overhead costs attributable to a project, per GAAP, and the direct cost of complying with Commission administrative and regulatory requirements related to the Access Fund monies itself.

We recognize that “administrative costs” as applied to a statewide AFA may differ from the costs for a LAFA overseeing a single geographic area. As such, the Commission may consider whether to modify the definition of “administrative costs” for the SAFA in Track 4.

5. Reporting Requirements

5.1. Yearly Benchmarks

Pub. Util. Code § 5440.5(a)(1)(J) provides that:

⁸³ Disability Advocates Proposal at 21.

⁸⁴ Marin Transit Proposal at 6-7.

⁸⁵ Lyft Proposal at 11.

The commission shall establish yearly benchmarks for TNCs and access providers to meet to ensure WAV users receive continuously improved, reliable, and available service. These benchmarks shall include, but are not limited to, response times, percentage of trips fulfilled versus trips requested, and number of users requesting rides versus community WAV demand for each geographic area.

We next consider what yearly benchmarks should be used to ensure WAV service improvement. Lyft states that the benchmarks should be those adopted for the Quarterly Reports and Offset and Exemption Requests in D.20-03-007.⁸⁶ Lyft recommends that additional benchmarks should wait until the Commission has one year's worth of data from WAV programs.

Marin Transit recommends metrics for WAV and non-WAV service, including percent of trips fulfilled versus requested, number of requests, location data, response times of fulfilled requests, and number of denied requests.⁸⁷ San Francisco recommends requiring four detailed reports for the yearly benchmarks.⁸⁸ The "trip report," for example, includes trip-level data about all TNC trips requested and accepted (WAV and non-WAV trips), including time stamp for three periods of a ride, VIN number, fare paid, and census tract location. The "vehicle report" includes VIN number, time stamp for vehicle availability and service, and census tract location. Uber objects to San Francisco's proposal because the new reports are unnecessary to implement SB 1736 and contain individual trip data that is confidential, including personally identifying

⁸⁶ *Id.* at 13.

⁸⁷ Marin Transit Proposal at 7.

⁸⁸ San Francisco Proposal at 10-13.

information.⁸⁹ Lyft objects because the reports include non-WAV data and the stated purpose of the yearly benchmarks is to measure WAV improvement.⁹⁰

The Commission views the yearly benchmarks as a means to monitor and evaluate the progress of the WAV program and individual carrier's performance, and not to penalize any individual carrier for failing to meet the yearly benchmarks. Regarding proposals for detailed TNC trip-level data, including non-WAV data, the Commission previously considered and declined to require comprehensive trip-level data and non-WAV data in D.20-03-007.⁹¹ We find the proposals for trip-level data, including time stamps, vehicle location, VIN numbers, fare, etc., to be overly broad and burdensome for purposes of evaluating WAV service improvement and reliability. As noted in D.20-03-007, the issue of reporting TNC trip-level data is also being considered in another Commission proceeding, R.12-12-011.

In D.20-03-007, the Commission adopted various reporting requirements of both TNCs and Access Providers for Offset Requests, Exemption Requests, and Quarterly Reports. We agree with Lyft that that the information provided in these reports and requests are appropriate to serve as a baseline for the yearly benchmarks. Accordingly, the information provided in Offset Requests, Exemption Requests, and Quarterly Reports shall form the baseline for the yearly benchmarks. CPED Staff shall submit a report with the yearly benchmarks to the Commission with the first report submitted in the first quarter of 2022. This report is referred to as the Annual Benchmark Report.

⁸⁹ Uber Comments at 8.

⁹⁰ Lyft Reply Comments at 12.

⁹¹ D.20-03-007 at 30-31.

Further, as provided in § 5440.5(a)(1)(J), the yearly benchmarks shall also include the “number of users requesting rides versus community WAV demand for each geographic area.” As such, in Track 4, “community WAV demand” will be considered in proposals and workshops.

We are, however, persuaded by parties that state that the yearly benchmarks should evaluate WAV response times against non-WAV response times to assess whether WAV users receive continuously improved, reliable, and available service. To that end, CPED Staff is directed to provide an analysis of WAV response times submitted by Access Providers and TNCs, with a comparison of those response times against non-WAV response times, as submitted by TNCs through the Annual TNC Reports. This analysis shall be provided in CPED’s Annual Benchmark Report.

Lastly, in D.20-03-007, the Commission authorized CPED Staff to utilize an independent entity with expertise in accessible transportation to assist with completing the Legislative Report due in January 2024.⁹² It would also be beneficial for CPED Staff to utilize this independent entity to assist in evaluating the yearly benchmarks. Accordingly, CPED Staff is authorized to use the same independent entity to assist with evaluating the yearly benchmarks.

5.2. Legislative Report

Pub. Util. Code § 5440.5(a)(2)(A) provides that the Commission shall:

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 the section.

⁹² D.20-03-007 at 63.

The report is to include, but not be limited to, all of the following:

- (i) A study on the demand of WAVs, including demand according to time of day and geographic area.
- (ii) An analysis of the reports required to be submitted by access providers receiving funding pursuant to paragraph (1).
- (iii) The availability of unallocated funds in the Access Fund, including the need to reassess Access Fund allocations.
- (iv) An analysis of current program capabilities and deficiencies, and recommendations to overcome any identified deficiencies.

We next consider what information should be included in the 2024 report.

Uber recommends that, in addition to the information required by § 5440.5(a)(2)(A), the report should include: (1) number of completed WAV trips over the program's life, (2) number of unique riders that used a WAV ride over the program's life, and (3) service territory covered.⁹³ Disability Advocates and San Francisco propose that the report include an analysis of all collected metrics over time, and San Francisco suggests a comparison of WAV versus non-WAV performance.⁹⁴ Disability Advocates recommend the report include a survey of WAV riders, including ability to obtain rides and factors related to WAV service. Marin Transit states that the report should show stakeholder engagement and investments have meaningfully impacted WAV riders.⁹⁵

⁹³ Uber Proposal at 9.

⁹⁴ San Francisco Proposal at 14.

⁹⁵ Marin Transit Proposal at 8.

Lyft suggests that prior to submitting the report to the Legislature, parties have an opportunity to comment and propose modifications.⁹⁶ Disability Advocates object to Lyft's proposal, stating that the process risks "unduly politicizing what should be a neutral report from staff regarding their findings."⁹⁷

We agree that the 2024 Legislative Report should include an analysis of the various metrics collected over the life of the program, including metrics from the Quarterly Reports, Offset Requests, and Exemption Requests. This information is in addition to the information required in § 5440.5(a)(2)(A) above. The metrics collected from TNCs and Access Providers over a four-year period from the inception of the WAV program, as well as the § 5440.5(a)(2)(A) requirements, will serve as an abundant volume of data to demonstrate the effectiveness of the WAV program and partnerships funded through the Access for All Act.

Accordingly, the 2024 Legislative Report shall include the following information:

- (1) A study on the demand of WAVs, including demand according to time of day and geographic area.
- (2) An analysis of the Quarterly Reports required to be submitted by access providers receiving Access Fund moneys and TNCs that receive an Offset or Exemption.
- (3) The availability of unallocated funds in the Access Fund, including the need to reassess Access Fund allocations, as submitted by AFAs.

⁹⁶ Lyft Proposal at 14.

⁹⁷ Disability Advocates Comments at 8.

- (4) An analysis of current program capabilities and deficiencies, and recommendations to overcome any identified deficiencies.
- (5) An analysis of metrics collected through the Offset Requests and Exemption Requests.

Further, the independent entity authorized in D.20-03-007 to assist with the 2024 report may determine whether additional information is necessary to perform the analyses required in Pub. Util. Code § 5440.5(a)(2)(A), including surveys of WAV riders or other relevant information.

6. Additional Accessibility Issues

6.1. Symbol of Accessibility Use

The International Symbol of Accessibility (ISA) is a widely used symbol identifying accessible spaces.⁹⁸ San Francisco, Disability Advocates, Marin Transit, and SFTWA recommend that the ISA be used by TNCs and Access Providers on their vehicles. San Francisco points out that the ADA Standards for Transportation Vehicles, implemented by the Department of Transportation (DOT), requires the ISA to be used to designate accessible vehicles.⁹⁹ Uber believes that ISA use may be unnecessary and redundant since WAV services are selected through an application and may lead to confusion with Commission-regulated trade dress.¹⁰⁰ Lyft states that it uses a universal symbol of access through its application and asserts that TNCs should not be required to use the symbol as a rider can identify a vehicle through make, model, and license plate number.¹⁰¹

⁹⁸ See U.S. Access Board, Guide to the ADA Accessibility Standards, available at: <https://www.access-board.gov/ada/guides/guidance-on-the-isa/>

⁹⁹ San Francisco Proposal at 17.

¹⁰⁰ Uber Proposal at 12.

¹⁰¹ Lyft Proposal at 17.

The Commission is persuaded that the use of the ISA on WAVs provided by TNCs or Access Providers will serve as an important visual identifier for WAV passengers. While WAVs are not hailed from the street, the use of the ISA can assist in identification of a WAV for persons with disabilities and imposes a minimal burden on TNCs and Access Providers to include. Accordingly, a TNC or Access Provider providing service with a WAV shall place the ISA on the following locations on a vehicle: passenger side door (below door handle) and rear of vehicle (right side above bumper).

6.2. WAV Inspection and Driver Training for TNC Permit

In D.20-03-007, the Commission adopted a WAV training and inspection requirements for TNCs that seek an Offset Request and Access Providers that seek funding, as follows:

- (1) Certification that all 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 of WAV driver training programs used in that geographic area, and the number of WAV drivers that completed WAV training in that quarter; and
- (3) Certification that all WAVs operating have been inspected and approved to conform with the ADA Accessibility Specifications for Transportation Vehicles within the past year.¹⁰²

¹⁰² D.20-03-007 at Ordering Paragraph (OP) 13, OP 33.

We next consider whether WAV inspection and driver training requirements should be added to the TNC permit requirements, which apply to all TNCs and not just TNCs seeking an offset.

Multiple parties support requiring WAV inspection and driver training to obtain a TNC permit.¹⁰³ CPED recommends the following to be added to the TNC permit requirements:¹⁰⁴

- (1) Certify that WAV drivers operating on a TNC's online-enabled application or platform completed WAV driver training within the past 3 years, including sensitivity training, passenger assistance techniques, accessibility equipment use, door-to-door service, and safety procedures;
- (2) WAV drivers operating on a TNC's application or platform receive training on transporting people with disabilities at least every three years;
- (3) Certify that all WAVs operating on their platforms have been inspected and approved to conform with the ADA Accessibility Specifications for Transportation Vehicles within the past year;
- (4) Add inspection of a WAV's adaptive equipment to the annual "19-point" vehicle safety inspection for a WAV operating on a TNC's platform; and
- (5) Retain and produce evidence of WAV driver training and vehicle safety inspections to support certifications for any WAV drivers or WAVs operating on a TNC's platform.

Uber supports the categories proposed by CPED except to the extent they conflict with industry-accepted training and safety processes. Uber notes that

¹⁰³ Disability Advocates Proposal at 30, San Francisco Proposal at 17, Marin Transit Proposal at 10, SFTWA Proposal at 6.

¹⁰⁴ CPED Proposal 13-14.

the second category appears to be duplicative of the first.¹⁰⁵ SFTWA supports CPED's proposal but adds that all TNC drivers should be trained on providing service to persons with disabilities, whether or not they drive a WAV.¹⁰⁶ Lyft agrees that a TNC with a WAV program should provide training certification upon applying for a permit but that a TNC need not provide certification where it does not operate a WAV program.¹⁰⁷ Disability Advocates state that driver training every three years is inadequate and recommends annual training.¹⁰⁸

For CPED's third proposal, Uber suggests that because WAV configurations are generally not modified (*e.g.*, door height is required by the ADA), ADA inspection at the time of outfitting is meaningful but inspections in subsequent years are not.¹⁰⁹ Uber notes that the Commission requires WAVs to be inspected annually, including inspection of safety belts. SFTWA disagrees with Uber, stating that while configurations may not be modified, they can wear out and become compromised.¹¹⁰ San Francisco recommends that inspections specifically include inspection of lifts, ramps, and securement devices, including checks for proper seats and shoulder belts.¹¹¹

¹⁰⁵ Uber Comments at 7.

¹⁰⁶ SFTWA Comments at 9.

¹⁰⁷ Lyft Comments at 11.

¹⁰⁸ Disability Advocates Comments at 11.

¹⁰⁹ Uber Comments at 7.

¹¹⁰ SFTWA Comments at 10.

¹¹¹ San Francisco Proposal at 17.

Uber recommends that TNCs be required to retain records for one year.¹¹² Disability Advocates note that DOT regulations require maintenance of records for three years and SFTWA states that records should be kept for 10 years.¹¹³

6.2.1. Discussion

We find consensus among parties in support of CPED's broader proposal, with modifications. With respect to CPED's first and second requirements, we concur with Uber that these can be combined into one requirement by adding "transporting peoples with disabilities." This requirement is also consistent with the requirement adopted in D.20-03-007 for TNCs requesting offsets and Access Providers seeking funding. Accordingly, the following shall be added to the TNC permit requirements:

Certification that all WAV drivers operating on a TNC's application or platform have completed driver training on transporting peoples with disabilities within the past three years, including sensitivity training, passenger assistance techniques, accessibility equipment use, door-to-door service, and safety procedures.

Regarding CPED's third requirement, we agree with SFTWA that even if WAV equipment passed initial inspection based on ADA specifications, it is important to continuously inspect the equipment for wear and defects. CPED's third requirement is thus reasonable and consistent with the inspection requirement adopted in D.20-03-007 for TNCs seeking an offset and Access Providers seeking funding. Accordingly, the following shall be added to the TNC permit requirements:

¹¹² Uber Comments at 8.

¹¹³ Disability Advocates Reply Comments at 9, SFTWA Reply Comments at 10.

Certification that all WAVs operating on a TNC's application or platform have been inspected and approved to conform with the ADA Accessibility Specifications for Transportation Vehicles within the past year.

The Commission agrees that CPED's fourth requirement is an important addition to the 19-point vehicle safety inspection. Accordingly, inspection of a WAV's adaptive equipment by a facility qualified to inspect such equipment shall be added to the annual "19-point" vehicle safety inspection for a TNC permit.

CPED's fifth requirement that documentation of WAV driver training and inspections should be maintained by TNCs is reasonable. We agree with Disability Advocates' proposal for a three-year retention period consistent with DOT requirements. Accordingly, the following shall be added to the TNC permit requirements:

Retention of WAV driver training and vehicle safety inspections to support certifications for any WAV drivers or WAV operating on a TNC's platform for a period of three years.

Lastly, the adopted additions to the TNC permit requirements shall only apply to the extent a TNC is operating WAVs, using a contractor to operate WAVs, or using WAV drivers.

6.3. Additional Accessibility Needs

We next consider what additional issues should be addressed related to the accessibility needs of persons with disabilities who do not require WAVs, including persons with hearing and vision impairments, persons who require the assistance of service animals, and/or ambulatory persons with disabilities.

Disability Advocates raise various topics that should be addressed in this proceeding, such as: accessibility of website/smartphone applications (*i.e.* large text, screenreader, voice to text services); accessibility of vehicles for customers with mobility disabilities that do not require WAVs, including manual wheelchair users; and acknowledgement of the obligation to allow service animals to accompany disabled customers.¹¹⁴ Marin Transit proposes that those traveling with a personal care attendant should not be required to pay an additional fare for the attendant.¹¹⁵ Uber and Lyft state that this proceeding should be focused on WAV-related issues and implementation of SB 1376.¹¹⁶ Lyft advocates for a new rulemaking to address further accessibility issues. Uber and Lyft oppose requiring TNCs to make changes to their online apps, which should be determined by individual companies.

The Commission believes that considering the accessibility needs of persons with disabilities that do not require a WAV is an important step towards ensuring that TNCs are accessible and safe for persons with disabilities. The intent of SB 1376 is not limited to a program solely for passengers that require a WAV but the intent is to “ensure that transportation network company services do not discriminate against persons with disabilities, including those who use nonfolding mobility devices.”¹¹⁷

The proposals submitted thus far, however, lack sufficient detail as to what should be considered or required by the Commission. In Track 4, parties are

¹¹⁴ Disability Advocates Proposal at 27.

¹¹⁵ Marin Transit Proposal at 9.

¹¹⁶ Uber Proposal at 11, Lyft Proposal at 17.

¹¹⁷ § 5440(c).

encouraged to submit proposals on which and how additional accessibility issues should be considered with specificity, and TNCs should provide comments on the submitted proposals. Once proposals are submitted, the Commission may determine whether such issues are appropriately considered within this proceeding or in a separate rulemaking.

7. Comments on Proposed Decision

The proposed decision of Commissioner Genevieve Shiroma in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on February 18, 2021, by Disability Advocates, LA Metro, Lyft, San Francisco, Via, and Uber. Reply comments were filed on February 23, 2021, by Disability Advocates, Lyft, San Francisco, SFTWA and Uber.

All comments have been thoroughly considered. Significant aspects of the proposed decision that have been revised in response to 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.

As an initial matter, some parties' comments attempt to relitigate or elaborate upon arguments raised during Track 3, or relitigate arguments that were considered and resolved in D.20-03-007. We note that under Rule 14.3(c), comments on a proposed decision must focus on factual, legal, or technical errors in the proposed decision. Comments focusing on legal error must make specific reference to the applicable law. Comments that fail to meet the requirements of Rule 14.3(c) will be accorded no weight.

San Francisco and Disability Advocates comment that any benchmarks for the WAV program must be established with comparison to non-WAV service.¹¹⁸ Disability Advocates state that the benchmarks may initially be set “at less than full comparability in acknowledgment of the sheer lack of WAV service” but that the benchmarks need to increase toward providing equal level of service.¹¹⁹ These arguments were raised in Track 2 and considered by the Commission in D.20-03-007. For example, in adopting the WAV response time standards and Offset Time Standard in D.20-03-007, we stated:

...[W]e 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.¹²⁰

Thus, the Commission stated that “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” and directed CPED to prepare a report of WAV response time data.¹²¹ The Commission declines to revisit parties’ arguments here.

¹¹⁸ San Francisco Comments on Proposed Decision at 3, Disability Advocates Comments on Proposed Decision at 2.

¹¹⁹ Disability Advocates Comments on Proposed Decision at 2.

¹²⁰ D.20-03-007 at 16-17.

¹²¹ *Id.* at 18.

Lyft and Uber relitigate arguments raised in Track 2 regarding the improved level of service requirements adopted in D.20-03-007.¹²² Lyft and Uber argue that under the Offset Time Standard, if a TNC achieves 100% ride completion, it would be unable to qualify for an Offset Request in a later quarter. Uber states that in some counties, it is approaching or has reached 100% of WAV trips that meet the Level 1 or Level 2 benchmark.¹²³ We decline to revisit the requirements adopted in D.20-03-007. However, if a TNC approaches or has reached 100% trip completion in a county, this issue should be addressed. We encourage parties to raise proposals on this issue in Track 4.

Lyft comments that the Trip Completion Standard should be deferred to Track 4, stating that there are unintended consequences in adopting only part of CPED's proposal.¹²⁴ Lyft and Uber comment that the decision did not intend to require TNCs to satisfy both the Offset Time Standard and the Trip Completion Standard. The Commission clarifies that it did intend to adopt both requirements for TNCs to satisfy for the improved level of service metrics, not an option between the Offset Time Standard or the Trip Completion Standard. We further clarify that the Offset Time Standard, adopted in Ordering Paragraphs 2, 3, and 4 of D.20-03-007, and the Exemption Time Standard, adopted in Ordering Paragraphs 5 and 24 of D.20-03-007, remain applicable. The decision is modified with this clarification.

Lyft and Uber request that for the Trip Completion Standard, accepted WAV trips should be the applicable metric, rather than completed WAV trips,

¹²² Lyft Comments on Proposed Decision at 2-3, Uber Comments on Proposed Decision at 3, 9.

¹²³ Uber Comments on Proposed Decision at 3.

¹²⁴ Lyft Comments on Proposed Decision at 2.

because completed trips introduce factors that are outside of a TNC's control, such as passenger cancellations or no-shows.¹²⁵ While we decline to modify this requirement, TNCs may submit data in Track 4 to support their concern that the difference between an accepted trip and completed trip metric warrants further consideration.

San Francisco objects to the Trip Completion Standard allowing an increase in the number of completed WAV trips, in addition to an increase in the percentage of completed WAV trips. Citing Pub. Util. Code § 5440.5(a)(1)(J), San Francisco states that the Act directs the use of percentages of completed rides but does not allow absolute numbers.¹²⁶ However, the Trip Completion Standard was not adopted for the yearly benchmarks, but as an additional metric for a TNC to demonstrate "improved level of service" under § 5440.5(a)(1)(B)(ii). The latter provision is silent as to the use of numbers or percentages to demonstrate completed trips. However, we recognize San Francisco's comments as applied to the yearly benchmarks and may consider modifications to the yearly benchmarks in Track 4.

LA Metro, San Francisco, and Disability Advocates object to deferring the minimum benchmarks for the Trip Completion Standard to Track 4.¹²⁷ As discussed in the decision, the Commission seeks further record development on the appropriate minimum percentage and/or increasing benchmarks in Track 4,

¹²⁵ Lyft Comments on Proposed Decision at 7, Uber Comments on Proposed Decision at 6.

¹²⁶ San Francisco Comments on Proposed Decision at 3.

¹²⁷ LA Metro Comments on Proposed Decision at 4, San Francisco Comments on Proposed Decision at 4, Disability Advocates Comments on Proposed Decision at 3.

including evaluating actual WAV trip completion rates by geographic area and over a longer time period.

Several parties object to allowing a TNC to limit the calculation of its completed trip requests to its WAV operating hours, including LA Metro, San Francisco, Disability Advocates, and Uber. San Francisco states that the issue of how to calculate operating hours was not scoped in Track 3 and there was inadequate opportunity for comment.¹²⁸ Uber states that the proposed decision misstates its comments, which was that because Uber offers service 24 hours a day and across all service areas, its non-completion rates may be higher. Uber, however, does not support limiting the calculation of the Trip Completion Standard as that could incentivize a TNC to restrict operating hours and service areas to increase the completion rate.¹²⁹ Lyft disagrees with Uber's comments that TNC WAV programs should be required to operate 24/7.¹³⁰

We first disagree that the issue was not scoped in Track 3. Calculating the number of completed trips was raised in Track 3 proposals and comments as a potential metric for improved level of service, which is a scoped issue, and parties had opportunities to comment. That said, the Commission misread Uber's comments as supporting an hourly limitation on calculating completed trips. We agree with parties that allowing a TNC to limit its WAV operating hours for the Trip Completion Standard could create perverse incentives to limit WAV service to hours and areas to manipulate a TNC's completion rate. The Commission thus agrees to remove the limitation on WAV operating hours for

¹²⁸ San Francisco Comments on Proposed Decision at 5.

¹²⁹ Uber Comments on Proposed Decision at 6.

¹³⁰ Lyft Reply Comments on Proposed Decision at 3.

the purposes of the Trip Completion Standard calculation and the decision has been modified as such. However, we decline to dictate the number of hours of WAV service or the areas that WAV service must be offered by a TNC seeking an offset or exemption. A TNC must still submit its WAV operating hours with its Trip Completion Standard data.

San Francisco, Disability Advocates, and SFTWA object to deferring to Track 4 the issue of whether non-regulated entities can be Access Providers.¹³¹ San Francisco comments include reasons why non-regulated entities should be included, such as information on insurance requirements for paratransit rides and background check requirements of taxicabs. Disability Advocates and SFTWA state that the Act includes no such limitation to only carriers that obtain Commission permits. As discussed in the decision, the Commission would like to consider disbursement of Access Fund moneys to non-regulated entities without requiring a TCP permit, if compliance with safety protocols and other requirements can be ensured. San Francisco's and SFTWA's comments on the proposed decision include the type of information the Commission would like to consider in Track 4. We note, however, that including both "transportation carriers that are regulated by the Commission" and "transportation carriers that hold a Commission-issued permit" is unnecessarily redundant and the decision has been modified to include only the latter category.

San Francisco objects to allowing TNCs to apply as Access Providers in counties where they do not provide WAV service, stating that it is inconsistent with the Act and bad policy to reward a TNC with funding when it did not

¹³¹ SFTWA Reply Comments on Proposed Decision at 2, Disability Advocates Comments on Proposed Decision at 8, San Francisco Comments on Proposed Decision at 8.

attempt to provide WAV service.¹³² We disagree that a TNC is rewarded with Access Fund funding in this manner. A TNC that does not offer WAV service in a county but attempts to do so as an Access Provider would have to wait until the AFA's next Access Provider application process, compete with other Access Provider applicants for funding, and may or may not be selected for funding. Rather, a TNC that does not offer WAV service but offers non-WAV TNC service in a geographic area can much more readily apply for an offset in that area based on the per-trip Access Fund fees that it otherwise must remit to the Commission. While we decline to modify this requirement, we note a concern that a TNC that otherwise may have provided WAV service in an area could stop providing WAV service in order to apply as an Access Provider. This concern may be considered in Track 4 and this requirement may be modified as needed.

San Francisco and Disability Advocates appear to state that the adopted yearly benchmarks are not appropriate. Both parties generally argue that § 5440.5(a)(1)(J) requires that the yearly benchmarks be set for TNCs and Access Providers "*to meet to ensure* WAV users receive continuously improved, reliable and available service..."¹³³ (emphasis added). We find that by requiring TNCs and Access Providers to submit the data underlying the Offset Requests, Exemption Requests, and Quarterly Reports, we are imposing a standard "*to meet to ensure*" continuously improved, reliable and available service, consistent with § 5440.5(a)(1)(J). We directed CPED to submit a yearly benchmark report,

¹³² San Francisco Comments on Proposed Decision at 10.

¹³³ San Francisco Comments on Proposed Decision at 10, Disability Advocates Comments on Proposed Decision at 10.

which the Commission will evaluate to determine whether any adjustments to the program are warranted. We decline to modify the decision.

San Francisco further states that the yearly benchmarks must be required of all TNCs, for all counties, and for each quarter.¹³⁴ We note that under San Francisco's interpretation of § 5440.5(a)(1)(J), all Access Providers would also be required to submit the yearly benchmark data for each county and quarter, regardless of operation, although San Francisco does not recommend this. We do not interpret § 5440.5(a)(1)(J) as requiring all TNCs and all Access Providers to report yearly benchmarks for all counties and all quarters, regardless of whether they have WAV operations. Such a requirement would be unduly burdensome on TNCs and Access Providers that do not offer WAV services or do not elect to participate in the Access for All program.

San Francisco comments that § 5440.5(a)(1)(J) requires the yearly benchmarks to include the "number of users requesting rides versus community WAV demand for each geographic area" and that community WAV demand should be explored in workshops per § 5440.5(a)(1)(A).¹³⁵ We agree that "community WAV demand" should be considered in workshops for the yearly benchmarks. The decision has been modified to reflect this.

San Francisco objects to the metrics for the 2024 Legislative Report as insufficient because some TNCs, like Lyft, only provide data for two counties.¹³⁶ As discussed in the decision, the data currently collected from TNCs and Access Providers is not the entire universe of information that will be relied upon for the

¹³⁴ San Francisco Comments on Proposed Decision at 12.

¹³⁵ *Id.*

¹³⁶ San Francisco Comments on Proposed Decision at 12.

Legislative Report. An independent entity will assist in determining whether additional information is necessary for the analyses required in § 5440.5(a)(2)(A).

LA Metro, Disability Advocates, and San Francisco seek clarification that TNCs must first subtract fares collected from WAV customers from their Offset Requests.¹³⁷ Disability Advocates state that the WAV fare reimburses a TNC a portion of the trip's cost, and that fare should be subtracted from the total offset costs; otherwise, a TNC is being compensated twice for the fare and the offset costs. Uber disagrees and states that its fares go towards covering general business expenses, not additional WAV-specific costs.¹³⁸ Uber adds that if it is required to deduct the fares from requested offsets, the offset reimbursements would be insufficient.

As stated in the decision, passenger fares are not included on the list of eligible offset expenses adopted in D.20-03-007. If TNCs are using the "other" category for submitting offset expenses, D.20-03-007 also requires that the TNC describe (1) how such expense is a reasonable, legitimate cost that improve WAV service, and (2) represents a reasonable proportion of the total eligible expenses.¹³⁹ First, it appears from Uber's comments that it has been seeking offset reimbursement for passenger fares. Second, Uber's comments that its fares cover "general business expenses," not "additional WAV-specific costs," is more confounding since the first requirement of an offset expense is that the cost is "a reasonable, legitimate cost that improves a TNC's WAV service." Parties'

¹³⁷ LA Metro Comments on Proposed Decision at 3, Disability Advocates Comments on Proposed Decision at 7.

¹³⁸ Uber Reply Comments on Proposed Decision at 3.

¹³⁹ See D.20-03-007 at 24.

comments indicate that additional information is required to ensure that requested offset expenses are and have been appropriate. While we decline to modify the decision at this time, Commission Staff may submit a data request to TNCs to obtain information as to whether fares have been included in their Offset Requests and other relevant information. Further record may be developed in Track 4 to ensure that TNCs are not being double-compensated through passenger fares and offset reimbursements.

On the definition of "on-demand transportation," Uber relitigates arguments that were raised and resolved in D.20-03-007. Lyft objects to the definition and comments that the definition must incorporate some temporal aspect. We disagree that a temporal definition must be adopted and decline to modify the definition.

8. Assignment of Proceeding

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

Findings of Fact

1. There is a consensus among parties that to demonstrate "improved level of service," a TNC should increase the number or percentage of completed WAV trips each quarter.
2. To demonstrate "improved level of service" for an Offset Request or Exemption Request, it is reasonable to require a TNC to show either: (a) an increase in the total number of completed WAV trips compared to the previous quarter, or (b) an increase in the percentage of completed WAV trips compared to the previous quarter.

3. It is reasonable for a transportation carrier to submit its WAV operating hours for a specific geographic area.

4. Because the requirements for a Quarterly Report and Access Provider application mirror the requirements of an Offset Request, it is consistent and appropriate to add the Trip Completion Standard to the Quarterly Report and Access Provider application.

5. To encourage development of WAV services statewide, it is prudent and appropriate to adopt a broad, flexible definition of “on-demand transportation.”

6. It is consistent with D.20-03-007 that the definition of a qualifying expense for an Access Provider be the same definition as adopted for TNCs for offset reimbursements.

7. It is consistent with D.20-03-007 and appropriate for the AFA to review and approve the Access Provider applications in its respective geographic area.

8. It is reasonable that a TNC may apply as an 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. It is reasonable that a TNC may apply as an Access Provider in a geographic area where it does not offer any WAV services.

9. To sufficiently review and approve Access Provider applications, it is reasonable for an AFA to request additional information from Access Provider applicants as necessary.

10. It is reasonable for an Access Provider applicant that provides services to a TNC to disclose the existence of this agreement. It is also reasonable that Access Fund moneys granted to the Access Provider should not be used for services that are compensated by a TNC.

11. CPED's proposed compensation structure for AFAs is appropriate and consistent with the compensation structure of other Commission programs.

12. It is appropriate that the information submitted in the Quarterly Reports, Offset Requests and Exemption Requests serve as the baseline for the program's yearly benchmarks.

13. It is reasonable that the 2024 Legislative Report include an analysis of the collected metrics from the Quarterly Reports, Offset Requests, and Exemption Requests, in addition to the reporting requirements in § 5440.5(a)(2)(A).

14. The use of the ISA on WAVs provided by TNCs and Access Providers will serve as an important visual identifier for WAV passengers.

15. There is a consensus among parties in support of CPED's broader proposal for WAV driver training and inspection requirements be added to the TNC permit requirements, with modifications.

Conclusions of Law

1. To demonstrate "improved level of service" for an Offset Request or Exemption Request, a TNC should demonstrate either: (a) an increase in the total number of completed WAV trips compared to the previous quarter, or (b) an increase in the percentage of completed WAV trips compared to the previous quarter. This requirement should be in addition to the Offset Time Standard requirement.

2. Data required for the Trip Completion Standard should be added to the information required for the Access Provider application and Quarterly Report.

3. "On-demand transportation" should be defined as any transportation service that does not follow a fixed route and/or schedule.

4. To encourage development of WAV services with faster response times, an AFA should prioritize the selection of Access Provider applicants that offer services that can be requested and fulfilled within 24 hours.

5. The definition of a qualifying expense adopted for TNCs in D.20-03-007 should apply to Access Providers using Access Fund moneys.

6. The AFA should review and approve the Access Provider applications in its respective geographic area and submit the approved list to CPED.

7. A TNC should be permitted to apply as an 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. A TNC should be permitted to apply as an Access Provider in a geographic area in which it does not offer any WAV services.

8. An Access Provider applicant should disclose to the AFA if it is a current or former service provider to a TNC. The applicant should demonstrate to the AFA that any disbursed funds will not be used for services that are compensated by a TNC.

9. An AFA should be compensated for administrative costs up to 15 percent of the total amount awarded in a geographic area by the Commission in each funding cycle.

10. Information submitted in the Quarterly Reports, Offset Requests and Exemption Requests should serve as the baseline for the program's yearly benchmarks.

11. The 2024 Legislative Report should include an analysis of the collected metrics from the Quarterly Reports, Offset Requests, and Exemption Requests, in addition to the reporting requirements in § 5440.5(a)(2)(A).

12. A TNC or Access Provider offering WAV services should place the International Symbol of Accessibility on the passenger side door handle and above the right-side rear bumper.

13. CPED's proposal to add WAV driver training and inspection requirements to the TNC permit requirements should be adopted, with modifications.

O R D E R

IT IS ORDERED that:

1. To show "improved level of service" for an Offset Request or an Exemption Request, a Transportation Network Company (TNC) must demonstrate either:

- (a) an increase in the total number of completed wheelchair accessible vehicle (WAV) trips compared to the previous quarter in that geographic area, or
- (b) an increase in the percentage of completed WAV trips compared to the previous quarter in that geographic area.

This requirement is referred to as the Trip Completion Standard. For exemption eligibility, a TNC shall demonstrate that it achieved the Trip Completion Standard for the four consecutive qualifying quarters for which it seeks an exemption. The requirement shall be effective for Offset Requests and Exemption Requests submitted starting with the second quarter of 2021 and thereafter.

2. To demonstrate improved level of service for an Offset Request or an Exemption Request, a Transportation Network Company must satisfy both:

- (a) the Offset Time Standard, as adopted in Ordering Paragraphs 2, 3, and 4 of Decision (D.) 20-03-007, or the Exemption Time Standard, as adopted in Ordering Paragraphs 5 and 24 of D.20-03-007 (depending on the type of request), and
- (b) the Trip Completion Standard adopted in Ordering Paragraph 1.

3. The percentage of completed wheelchair accessible vehicle (WAV) trip requests in a geographic area shall be calculated as the total number of completed WAV trips divided by the total number of WAV requests for a given geographic area and quarter, as follows:

$$\% \text{ Completed WAV Trip Requests} = \text{Total Completed Trips} / \text{Total Trip Requests}$$

The transportation carrier shall also report its WAV operating hours for each geographic area with the submission of the percentage of completed WAV trip requests.

4. Data required for the Trip Completion Standard shall be added to the information required for the Quarterly Report and the Access Provider application. An Access Provider applicant shall provide data required of the Trip Completion Standard, to the extent available, but shall not be deemed ineligible to qualify as an Access Provider for failing to meet the Trip Completion Standard.

5. The Consumer Protection and Enforcement Division is directed to submit a report to the Commission in December 2021 analyzing and evaluating various metrics, including:

- (a) the Trip Completion Standard; and
- (b) Wheelchair accessible vehicle expenses requested and/or approved through Offset Requests.

6. “On-demand transportation” shall be defined for the purposes of the Access for All Act as any transportation service that does not follow a fixed route and/or schedule. Access Fund Administrators should prioritize the selection of Access Provider applicants that offer wheelchair accessible vehicle transportation that can be requested and fulfilled within 24 hours.

7. The Consumer Protection and Enforcement Division is directed to submit a report to the Commission in December 2022 that includes an evaluation of the Access Provider applicant pool, including the type of Access Providers that apply for funding, how many applicants applied and/or were approved, and other relevant information.

8. On an interim basis, a qualifying Access Provider shall be limited to a transportation carrier that holds a Commission-issued permit prior to applying to be an Access Provider.

9. A qualifying expense for an Access Provider is defined as: (1) a reasonable, legitimate cost that improves wheelchair accessible vehicle service, and (2) the cost is on the list of eligible expenses attached as Appendix A to Decision 20-03-007.

10. The Access Fund Administrator (AFA) shall review and approve Access Provider applications in its respective geographic area. The AFA shall notify the Consumer Protection and Enforcement Division once it approves Access Providers and shall submit a list of Access Providers who applied for and who were approved by the AFA by September 30. The list of approved Access Providers shall be linked to and/or posted on the Commission’s website.

11. A Transportation Network Company (TNC) may be eligible as an Access Provider in a geographic area where it currently offers wheelchair accessible vehicle (WAV) service if:

- (a) the TNC qualifies for an exemption in that geographic area, and
- (b) the TNC certifies that the TNC's collected fees during the Exemption Year were exhausted to provide WAV services.

12. A Transportation Network Company may apply as an Access Provider in a geographic area where it does not offer any wheelchair accessible vehicle services.

13. The Access Fund Administrator that receives a Transportation Network Company's (TNC) Access Provider application shall consult with the Consumer Protection and Enforcement Division to verify whether the TNC has met the eligibility requirements.

14. An Access Fund Administrator is permitted to request additional information from Access Provider applicants as necessary to sufficiently review an application.

15. An Access Provider applicant shall disclose whether it is a current or former service provider for a Transportation Network Company (TNC). The Access Provider applicant must demonstrate to the Access Fund Administrator that any Access Fund moneys received will not be used for services that were compensated by a TNC.

16. An Access Fund Administrator shall be compensated for administrative costs up to 15 percent of the total amount awarded in the respective geographic area by the Commission in each funding cycle. "Administrative costs" are defined as the indirect overhead costs attributable to a project, per generally

accepted accounting principles, and the direct cost of complying with Commission administrative and regulatory requirements related to the Access Fund monies itself.

17. Information provided in the Quarterly Reports, Offset Requests, and Exemption Requests shall form the baseline for the yearly benchmarks. The Consumer Protection and Enforcement Division is directed to submit an Annual Benchmark Report on the yearly benchmarks to the Commission with the first report submitted in the first quarter of 2022.

18. The Consumer Protection and Enforcement Division is directed to provide an analysis of wheelchair accessible vehicle (WAV) response times submitted by Access Providers and Transportation Network Companies (TNC), and compare those response times to non-WAV response times, as submitted by TNCs in the Annual TNC Reports. The analysis shall be provided in the Annual Benchmark Report.

19. The Consumer Protection and Enforcement Division is authorized to utilize the independent entity with expertise in accessible transportation, as authorized in Decision 20-03-007, to assist with evaluating the yearly benchmarks.

20. The 2024 Legislative Report, shall include, but not be limited to, the following information:

- (a) A study on the demand of wheelchair accessible vehicles (WAV), including demand according to time of day and geographic area.
- (b) An analysis of the Quarterly Reports required to be submitted by Access Providers receiving Access Fund moneys and Transportation Network Companies that receive an Offset or Exemption.

- (c) The availability of unallocated funds in the Access Fund, including the need to reassess Access Fund allocations, as submitted by Access Fund Administrators.
- (d) An analysis of current program capabilities and deficiencies, and recommendations to overcome any identified deficiencies.
- (e) An analysis of the metrics and data collected through the Offset Requests and Exemption Requests.

21. The independent entity, authorized in Decision 20-03-007 to assist with the 2024 Legislative Report, may determine whether additional information is necessary to perform the analyses required in Public Utilities Code § 5440.5(a)(2)(A).

22. A Transportation Network Company or an Access Provider offering wheelchair accessible vehicle (WAV) services shall place the International Symbol of Accessibility on vehicles providing WAV service in the following locations: passenger side door (below door handle) and rear of vehicle (right side above bumper).

23. The following are added to the requirements to hold a Transportation Network Company (TNC) permit:

- (a) Certification that all wheelchair accessible vehicle (WAV) drivers operating on a TNC's application or platform have completed driver training on transporting people with disabilities within the past three years, including sensitivity training, passenger assistance techniques, accessibility equipment use, door-to-door service, and safety procedures.
- (b) Certification that all WAVs operating on a TNC's application or platform have been inspected and approved to conform with the Americans with Disabilities Act Accessibility Specifications for Transportation Vehicles within the past year.

- (c) Inspection of a WAV's adaptive equipment by a facility qualified to inspect such equipment as part of the annual "19-point" vehicle safety inspection.
- (d) Retention of WAV driver training and vehicle safety inspections to support certifications for any WAV drivers or WAV operating on a TNC's platform for a period of three years.

These requirements shall apply to the extent that a TNC is operating WAVs, using a contractor to operate WAVs, or using WAV drivers.

24. Rulemaking 19-02-012 remains open.

This order is effective today.

Dated March 4, 2021, at San Francisco, California.

MARYBEL BATJER

President

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

DARCIE HOUCK

Commissioners