

Decision 21-11-004 November 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 4 ISSUES

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Summary

This decision adopts and modifies rules for the implementation of Senate Bill 1376, the “TNC Access for All Act.” The Commission addresses issues scoped as Track 4 of this proceeding, including modifications to the Offset Time Standard, Exemption Time Standard, and Trip Completion Standard.

This proceeding remains open.

1. Background

The California State Legislature enacted Senate Bill (SB) 1376,¹ the “TNC Access for All Act” (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, D.20-03-007, and D.21-03-005.

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 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

¹ SB 1376, Public Utilities (Pub. Util.) Code § 5440.5.

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

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 March 8, 2021, the Commission adopted D.21-03-005, which addressed Track 3 issues, including additional offset requirements for TNCs and requirements for Access Providers seeking funding.

On March 19, 2021, the assigned Commissioner issued the Track 4 Amended Scoping Memo and Ruling (Amended Scoping Memo) that set forth the Track 4 schedule and scope. On March 30, 2021, the Commission's Consumer Protection and Enforcement Division (CPED) issued a report on WAV Response Times, as directed in D.20-03-007.

Track 4 proposals were submitted on April 23, 2021 by: Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology (collectively, Disability Advocates); Lyft Inc. (Lyft); Riverside County Transportation Commission (RCTC); San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco's Mayor's Office of Disability (collectively, San Francisco); San Francisco Taxi Workers Alliance (SFTWA); Uber Technologies, Inc. (Uber); and Via Transportation, Inc. (Via). CPED Staff's Track 4 proposal was filed via an Administrative Law Judge's (ALJ) ruling.

A workshop on Track 4 proposals was held on May 11, 2021. Revised Track 4 proposals were submitted on May 27, 2021 by Lyft, San Francisco, SFTWA, and Uber.

Comments on the workshop and proposals were filed on June 10, 2021 by: Disability Advocates, Los Angeles County Metropolitan Transportation Authority (LACMTA), Lyft, San Francisco, SFTWA, Uber, and Via. Reply comments were filed on June 21, 2021 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 4, summarized below:

1. TNC Offset Requirements.
 - a. Modifications to the Offset Time Standard. D.20-03-007 adopted interim WAV response times and an Offset Time Standard, and stated that the Commission would evaluate WAV response times in one year. In consideration of CPED's report on WAV response times, what modifications should be made?
 - b. What additional metrics should be adopted to demonstrate "improved level of service," if any?
 - c. Modifications to the Trip Completion Standard. Should the Trip Completion Standard be modified to include a minimum baseline percentage or increased benchmarks? Should the standard account for Response Time Standards, and if so, how?
 - d. Some standards require TNCs to demonstrate quarter-over-quarter improvement, including the Trip Completion Standard and Offset Time Standard. How should the standard be evaluated if a TNC approaches a 100% trip completion rate?
 - e. In D.21-03-005, the Commission stated that passenger fares are not on the list of eligible offset expenses. What clarifications, if any, should be made to the exclusion of passenger fares?

2. Access Fund Disbursement.
 - a. Non-Regulated Carriers. D.21-03-005 adopted an interim rule that Access Provider disbursement is limited to a transportation carrier that holds a Commission-issued permit prior to applying to be an Access Provider. How can non-jurisdictional carriers demonstrate compliance with safety requirements akin to the requirements for a charter-party carrier permit?
 - b. In D.21-03-005, the Commission stated it may consider an Access Provider “exception” for smaller TNCs. Should an exception be made for smaller TNCs that provide WAV service but do not meet the requirements for an offset or exemption? If so, how should “smaller TNC” be defined and eligibility be determined?
 - c. D.21-03-005 authorized a TNC to apply as an Access Provider in a geographic area where it does not offer WAV service. Should this be modified so that a TNC that provided WAV service cannot stop providing service to apply as an Access Provider?
3. Additional Accessibility Issues. What issues, if any, should be addressed related to accessibility needs of persons with disabilities who do not require WAVs, including persons with hearing or vision impairments, persons who require assistance of service animals, or ambulatory persons with disabilities?
4. Yearly Benchmarks. Pub. Util. Code § 5440.5(a)(1)(J) provides that yearly benchmarks include “number of users requesting rides versus community WAV demand for each geographic area.” How should “community WAV demand” be determined?
5. Any other time-sensitive proposals raised by the Consumer Protection and Enforcement Division Staff or parties.

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

3. Discussion

3.1. TNC Offset Requirements

3.1.1. Offset Time Standard

For a TNC to qualify for an offset in a geographic area, SB 1376 set forth several minimum requirements. One requirement is “improved level of service, including reasonable response times, due to those investments for WAV service compared to the previous quarter....”³ In D.20-03-007, the Commission highlighted the challenges in determining what “reasonable response times” should be:

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.⁴

Given these obstacles, the Commission concluded that “it is appropriate and prudent to defer adoption of WAV response times on a longer-term basis for offsets, until actual WAV response times can be considered.”⁵ We stated that WAV response times would be evaluated in one year’s time, after at least three quarters of WAV response time data had been submitted by TNCs. We

³ Pub. Util. Code § 5440.5(a)(1)(B)(ii).

⁴ D.20-03-007 at 18.

⁵ *Id.*

authorized CPED to prepare a report for the Commission in February 2021 that evaluated at least three quarters of WAV response time and percentage standard data.

Until such time, in D.20-03-007, the Commission adopted an Offset Time Standard (OTS) and Offset Response Time Benchmarks (ORTB) on an interim basis, as follows:⁶

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

Interim Offset Time Standard (OTS)	Offset Service	Offset Service
April 2020 until subsequent Commission decision	50%	75%

We consider what modifications, if any, should be made to the interim ORTB and OTS. The various proposals are summarized below. Note that some parties submitted broad proposals to modify the OTS, Exemption Standard, and

⁶ *Id.* at Ordering Paragraph (OP) 2, 3.

Trip Completion Standard; in this decision, we separate the component parts of these proposals for discussion purposes.

3.1.1.1. CPED's Proposal

In March 2021, CPED submitted its "TNC Access for All Program Response Time Report" (CPED Report) in which CPED analyzed the first five quarters of WAV response time data submitted by TNCs (3rd Quarter 2019 to 3rd Quarter 2020).⁷ CPED reported that:

Three of five quarters' worth of data in this report represent travel periods impacted by COVID-19. The impacts of COVID-19 significantly impacted travel statewide, particularly among vulnerable populations. While travel demand and transportation supply are inherently linked, it is unknown how response times on actual completed trips were affected by the impacts of COVID-19.⁸

Based on its report, CPED recommends that neither the ORTB nor the OTS should be modified at this time and more data should be obtained and analyzed before doing so.⁹

To support further analysis of the response time benchmarks and to inform the 2024 Legislative Report, CPED proposes that TNCs report certain data for all counties, regardless of whether a TNC seeks an offset in that county. Specifically, CPED recommends collection of the following from TNCs:

- (1) Data on where within each county (by zip code) WAV service was available for that quarter, whether or not an offset was requested for that county.

⁷ CPED Report, March 2021, available at: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M374/K635/374635889.PDF>.

⁸ *Id.* at 2.

⁹ CPED Track 4 Proposal at 3.

- (2) The 75th percentile WAV response time (in minutes) in Quarterly Offset Request filings (in addition to the current data provided in deciles).

Via also recommends maintaining the current OTS while TNCs aim to meet that standard.¹⁰ Uber and Lyft agree with CPED that the ORTB should not be modified at this time and note that their response time data was materially impacted by the pandemic.¹¹ San Francisco opposes delaying revisions to the response time benchmarks because all parties recognize the interim standards are flawed.¹²

San Francisco and Disability Advocates support CPED's proposal for additional data reporting.¹³ Uber opposes collecting data for counties in which a TNC is not seeking an offset and states that SB 1376 does not authorize collection of such data.¹⁴

3.1.1.2. Uber's Proposal

Uber proposes a framework that requires a TNC to demonstrate a minimum percentage of completed trips that meet both the relevant Level 1 and Level 2 ORTB and increase over time.¹⁵ The minimum percentages begin when a TNC first submits an Offset Request in a county after the issuance of this decision (not on a fixed calendar) in order to encourage TNCs to begin WAV service in new counties. The percentages increase for eight quarters before reaching a higher floor that remains static for the duration of the program thereafter. Uber's

¹⁰ Via Track 4 Proposal at 4.

¹¹ Uber Comments at 2, Lyft Track 4 Proposal at 1.

¹² San Francisco Comments at 6.

¹³ San Francisco Comments at 7, Disability Advocates Reply Comments at 4.

¹⁴ Uber Comments at 2.

¹⁵ Uber Track 4 Revised Proposal at 2.

proposed minimum percentages are as follows (where Tiers 1, 2, and 3 represent county groups consistent with the Response Time county groupings adopted in D.20-03-007):

	Tier 1	Tier 2	Tier 3
% of Completed Trips Under Level 1 Response Times			
1st Quarter Submission	50%	50%	50%
2nd Quarter	54%	54%	54%
3rd Quarter	57%	57%	57%
4th Quarter	61%	61%	61%
5th Quarter	64%	64%	64%
6th Quarter	68%	68%	68%
7th Quarter	71%	71%	71%
8th (and subsequent) Quarters	75%	75%	75%

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

Uber asserts that its proposal addresses parties’ concerns by requiring escalating minimum floors for response times and completion rates, and further addresses the issue of a TNC’s quarter-over-quarter improvement approaching a 100% completion rate. Uber states that the interim ORTB should not be modified based on CPED’s Report because it relied on data impacted by the pandemic, and that response time data from the pandemic should not be relied upon to determine WAV trends.¹⁶

¹⁶ Uber Comments at 9.

Lyft, San Francisco, and Disability Advocates support Uber's proposed framework, although San Francisco and Disability Advocates do so with modifications.¹⁷ Disability Advocates oppose the proposed percentages because they do not result in comparability of non-WAV and WAV response times. San Francisco supports the proposal so long as San Francisco's exemption proposal is adopted, and also supports Uber's proposed schedule for applying the percentages to TNCs. While Lyft believes some of the milestones are overly optimistic, Lyft acknowledges that without reliable data to date, no framework will be perfect.

3.1.1.3. Lyft's Proposal

Lyft proposes a framework with new response time percentages, completion rate percentages, and acceptance rate percentages, referred to as the Continuous Improvement Standard.¹⁸ Lyft proposes using a WAV "acceptance rate," rather than "completion rate" to determine offset eligibility, as it believes that completion rates include factors beyond the control of a TNC. Lyft proposes that a TNC must meet both the response time and acceptance rate milestone. To illustrate, Lyft's proposed milestones for Los Angeles County and Group 3 counties are provided below¹⁹:

¹⁷ Disability Advocates Reply Comments at 2, San Francisco Reply Comments at A-1, Lyft Comments at 4.

¹⁸ Lyft Track 4 Proposal at 5, Lyft Track 4 Revised Proposal at 1.

¹⁹ Lyft's county groupings differ from the county groupings adopted in D.20-03-007. See Lyft Revised Track 4 Proposal at 2-5.

Group 1 (Los Angeles)					
Counties	Los Angeles				
SLA Metric	Level 1 (< 25 min)	Level 2 (< 50 min)	Completion Rate	Acceptance Rate	
Q/Q Improvement	1.50%	1.00%	1.00%	0.50%	
Quarterly Baselines					
2021 Q3 (Start)	54.50%	82.00%	63.00%	76.50%	
2021 Q4	56.00%	83.00%	64.00%	77.00%	
2022 Q1	57.50%	84.00%	65.00%	77.50%	
2022 Q2	59.00%	85.00%	66.00%	78.00%	
2022 Q3	60.50%	86.00%	67.00%	78.50%	
2022 Q4	62.00%	87.00%	68.00%	79.00%	
2023 Q1	63.50%	88.00%	69.00%	79.50%	
2023 Q2	65.00%	89.00%	70.00%	80.00%	
2023 Q3	66.50%	90.00%	71.00%	80.50%	
2023 Q4	68.00%	91.00%	72.00%	81.00%	
2024 Q1	69.50%	92.00%	73.00%	81.50%	
2024 Q2	71.00%	93.00%	74.00%	82.00%	
2024 Q3	72.50%	94.00%	75.00%	82.50%	
2024 Q4	74.00%	95.00%	76.00%	83.00%	
2025 Q1	75.50%	96.00%	77.00%	83.50%	
2025 Q2	77.00%	97.00%	78.00%	84.00%	
2025 Q3	78.50%	98.00%	79.00%	84.50%	
2025 Q4 (End)	80.00%	99.00%	80.00%	85.00%	

Group 3					
Counties	San Diego, Santa Clara, Alameda, Sacramento, Contra Costa, Ventura, San Joaquin, Stanislaus, Santa Barbara, Solano, San Luis Obispo, Santa Cruz, Shasta, Imperial, Madera, Orange County, San Mateo				
SLA Metric	Level 1 (< 25 min)	Level 2 (< 50 min)	Completion Rate	Acceptance Rate	
Q/Q Improvement	1.00%	1.00%	1.00%	0.50%	
Quarterly Baselines					
2021 Q3 (Start)	43.00%	48.00%	48.00%	66.50%	
2021 Q4	44.00%	49.00%	49.00%	67.00%	
2022 Q1	45.00%	50.00%	50.00%	67.50%	
2022 Q2	46.00%	51.00%	51.00%	68.00%	
2022 Q3	47.00%	52.00%	52.00%	68.50%	
2022 Q4	48.00%	53.00%	53.00%	69.00%	
2023 Q1	49.00%	54.00%	54.00%	69.50%	
2023 Q2	50.00%	55.00%	55.00%	70.00%	
2023 Q3	51.00%	56.00%	56.00%	70.50%	
2023 Q4	52.00%	57.00%	57.00%	71.00%	
2024 Q1	53.00%	58.00%	58.00%	71.50%	
2024 Q2	54.00%	59.00%	59.00%	72.00%	
2024 Q3	55.00%	60.00%	60.00%	72.50%	
2024 Q4	56.00%	61.00%	61.00%	73.00%	
2025 Q1	57.00%	62.00%	62.00%	73.50%	
2025 Q2	58.00%	63.00%	63.00%	74.00%	
2025 Q3	59.00%	64.00%	64.00%	74.50%	
2025 Q4 (End)	60.00%	65.00%	65.00%	75.00%	

San Francisco and Disability Advocates oppose Lyft's proposal, stating generally that there is insufficient data to justify the milestones, and that acceptance rates do not reflect improvements in service because there can be a high number of cancellations due to long wait times and other service issues.²⁰ Uber contends that the proposal fails to include a requirement to show expanded WAV service, in addition to improved service.²¹ Via supports further exploring Lyft's framework to understand how the proposed targets were calculated.²²

3.1.1.4. San Francisco / Disability Advocates' Proposal

Disability Advocates recommend replacing the interim ORTB with CPED's response time proposal from Track 2 of this proceeding, which accounted for non-WAV response times.²³ Disability Advocates believe the OTS must either achieve comparability to non-WAV service by the eighth quarter or be revisited in future years. San Francisco supports this proposal.²⁴

San Francisco proposes modifying the OTS to eliminate the Level 2 benchmark.²⁵ San Francisco states that based on CPED's Report, the Level 2 benchmark is arbitrarily high and the either/or nature of the Level 1 and Level 2 standard sets too low a bar. San Francisco recommends modifying the OTS calculation to account for a TNC's trip completion rate because it believes that under the interim OTS, uncompleted trip requests are not discounted.

San Francisco proposes the following calculation:

²⁰ San Francisco Comments at 6, Disability Advocates Comments at 6.

²¹ Uber Comments at 11.

²² Via Comments at 5.

²³ Disability Advocates Track 4 Proposal at 5, Disability Advocates Reply Comments at 2.

²⁴ San Francisco Reply Comments at 2.

²⁵ San Francisco Track 4 Revised Proposal at 3.

Adjusted 50th percentile WAV Response Time = 50th percentile response time / % of trips completed (excluding those cancelled by passenger)

Lyft and Uber oppose San Francisco's proposal and state that the interim OTS already accounts for uncompleted rides because it requires reporting of both response times and completion rates (by percentage and number of completed rides), in addition to the Trip Completion Standard.²⁶ Lyft states that San Francisco's proposal effectively double-counts uncompleted rides. Disability Advocates, SFTWA, and LA Metro support San Francisco's proposal.²⁷

3.1.1.5. Discussion

The Commission first recognizes and appreciates the thoughtful discussion and substantial effort put forth by parties to collaborate and compromise on various proposals submitted in this proceeding.

In D.20-03-007, the Commission emphasized several challenges to setting the appropriate offset requirements, including "adopting appropriate WAV response times when there is very little existing WAV response time data."²⁸ The Commission thus directed CPED to prepare a report analyzing at least three quarters of response time data, which the Commission would consider before adopting longer-term response time benchmarks.

As stated in CPED's March 2021 Report, three of the five quarters of WAV response time data relied upon in the report represented travel periods impacted by the COVID-19 pandemic. We agree with CPED's assessment that the pandemic significantly impacted travel throughout California and particularly

²⁶ Lyft Comments at 5, Uber Comments at 5.

²⁷ SFTWA Track 4 Revised Proposal at 3, LA Metro Comments at 4, Disability Advocates Comments at 1.

²⁸ D.20-03-007 at 18.

among the most vulnerable populations and communities. We also concur that it is unclear how WAV response times for those quarters were impacted by the pandemic. For these reasons, the Commission agrees with CPED and parties that at this time, there is insufficient WAV response time data to accurately modify the ORTB and that additional WAV response time data should be analyzed before considering modifications. As such, the Commission declines to modify ORTB at this point.

In order to properly consider modifications to the ORTB, the Commission authorizes CPED to provide the Commission with a report in February 2023 that evaluates additional quarters of WAV response time and percentage standard data, in addition to the quarters of data relied upon in the March 2021 Report. The Commission will then consider whether modifications to the ORTB are warranted, which may include consideration of CPED's Track 2 response time proposal. CPED's Track 2 proposal was based on an analysis of non-WAV trip data from September 2017 to August 2018, submitted by TNCs in Annual Reports.²⁹ The Commission authorizes CPED to update its Track 2 response time analysis using TNCs' updated non-WAV trip data and other relevant information. CPED is authorized to submit its updated response time analysis as part of the February 2023 Commission report. The February 2023 report may be submitted in combination with the Annual Benchmark Report to be submitted in the first quarter of 2023.³⁰

With respect to the OTS framework, we observe that several parties support Uber's OTS proposal, although some parties advocate for more

²⁹ See CPED Track 2 Staff Proposal, September 27, 2019, at 8, submitted via ALJ Ruling, available at: <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=316460264>.

³⁰ D.21-03-007 at OP 17.

ambitious minimum percentages. As compared to the current OTS, however, Uber’s OTS proposal does offer a more ambitious standard because it requires a TNC to meet both the Level 1 and Level 2 benchmarks, as opposed to the current option of either a Level 1 or Level 2 benchmark. Uber’s proposal also elevates the Level 2 benchmark from the current 75% requirement to an 80% requirement for completed rides.

By requiring a TNC to meet both the Level 1 and Level 2 benchmarks, Uber’s proposal accounts for San Francisco’s proposal to eliminate the Level 2 benchmark because it is too low. By requiring incremental increases each quarter until the eighth quarter, Uber’s proposal also resolves the issue of not penalizing TNCs for reaching higher benchmarks earlier and the issue of how to address a TNC approaching a 100% OTS percentage. In addition, starting the proposed OTS schedule only after a TNC submits its first Offset Request in a county may encourage TNCs to expand WAV service in new counties without setting an initially unattainable bar.

The Commission finds that Uber’s proposed OTS framework is a developed proposal that appropriately addresses the challenges with the interim OTS framework, while introducing more ambitious requirements for TNCs to obtain quarterly offsets. For these reasons, the Commission adopts Uber’s OTS framework to replace the interim OTS framework adopted in D.20-03-007. The adopted framework is as follows:

Offset Time Standard (OTS)	
Percentage of Completed Trips under Level 1 Response Times	
1 st Quarter Submission	50%
2 nd Quarter	54%
3 rd Quarter	57%

4 th Quarter	61%
5 th Quarter	64%
6 th Quarter	68%
7 th Quarter	71%
8 th (and subsequent) Quarter	75%

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

Note that because Uber’s proposal applies the same percentages to all counties, Uber’s columns have been collapsed into one column here. The existing ORTB shall continue to apply:

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

To demonstrate improved level of service for offset eligibility, a TNC must demonstrate that it met or exceeded both the relevant Level 1 and Level 2 Offset Response Time Benchmarks for a given quarter in a given geographic area. The 1st Quarter percentages shall apply to the first quarter that a TNC submits an Offset Request in a given county. Once the schedule begins for a TNC in a given county, the schedule will advance each quarter, regardless of whether a TNC submits an Offset Request for that quarter. The adopted OTS framework is effective beginning the 2nd Quarter of 2022. For the 1st Quarter of 2022 and prior quarters, the interim OTS shall continue to apply for offset eligibility.

To verify compliance with the OTS, under D.20-03-007, a TNC must submit completed WAV trip response times in deciles, as well as Periods A and B in deciles, by quarter and geographic area.³¹ For the new OTS framework, a TNC that submits an Offset Request must also submit WAV response times for the corresponding percentiles that fall outside of the deciles. For example, if the applicable OTS is a 54% Level 1 benchmark and 81% Level 2 benchmark, the TNC must submit the applicable response times for those percentiles, as well as all deciles.

Lastly, CPED proposes that TNCs report on WAV service availability for all counties by zip code, regardless of whether a TNC seeks an offset. At this time, it is unnecessary to require reporting by zip code for TNCs that do not seek an offset. We, however, believe it would be informative for each TNC to provide a list of counties in which it operates WAV service in a given quarter, regardless of whether it seeks an offset in that county. This will also assist in evaluating the

³¹ D.20-03-007 at OP 6. Period A is defined as the time elapsed from when a trip is requested until the trip is accepted. Period B is defined as the time elapsed from when a trip is accepted until the vehicle arrives.

status of on-demand WAV services for the 2024 Legislative Report. Accordingly, each TNC shall provide a list of counties in which it operated WAV service for a given quarter, whether or not it seeks an offset in that county. This shall be submitted as part of each TNC's Quarterly Fee Statement submission, effective beginning the 2nd Quarter of 2022.

As adopted further below, a TNC is deemed to "operate WAV service" in a geographic area if the TNC completes at least one WAV trip that originates in that geographic area.

Although we do not adopt additional data reporting requirements at this time (beyond the list of counties), the Commission recognizes that the TNC Access For All Program is approaching its third year since implementation. We also recognize that more comprehensive data analysis will be necessary to inform the 2024 Legislative Report, as well as potential modifications to response time benchmarks, as discussed in this decision. For these reasons, following the issuance of this decision, the Commission intends to seek comments from parties on a proposal for more comprehensive data collection from TNCs related to the TNC Access for All Program.

3.1.2. Trip Completion Standard

In D.21-03-005, the Commission adopted a Trip Completion Standard as an additional metric to demonstrate "improved level of service."³² The Trip Completion Standard (TCS) requires a TNC to demonstrate either:

- (a) An increase in the total number of completed WAV trips compared to the previous quarter in that geographic area,
or

³² D.21-03-005 at OP 1.

- (b) An increase in the percentage of completed WAV trips compared to the previous quarter in that geographic area.

In D.21-03-005, the Commission deemed that there was insufficient record to adopt a minimum percentage or increasing benchmarks for the TCS and stated that “it is prudent to first evaluate actual WAV trip completion rates by geographic area over a longer time period than currently available data allow to better understand an appropriate minimum benchmark.”³³

We consider whether the TCS should be modified to include a minimum baseline percentage or increased benchmarks, or whether the standard should account for the response time benchmarks.

3.1.2.1. Uber’s Proposal

Uber proposes that the TCS be modified so that a TNC must demonstrate: (a) the applicable minimum percentage of trip requests completed, and (b) a greater number of completed trips than in the immediately prior quarter, or a greater number of completed trips than in the immediately prior year’s same quarter (to account for seasonable fluctuations), if there is sufficient data.³⁴ Uber proposes varying minimum completion rates for three county groups (“Tiers” 1, 2, and 3), which match the county breakdowns adopted in D.20-03-007.³⁵

Lyft supports Uber’s proposal, and San Francisco and Disability Advocates support the proposal with modifications.³⁶ San Francisco and Disability Advocates argue that there is insufficient record to support minimum

³³ *Id.* at 11.

³⁴ Uber Track 4 Revised Proposal at 4.

³⁵ Under Uber’s framework, **Tier 1** refers to San Francisco County. **Tier 2** refers to the counties of: San Diego, Santa Clara, Alameda, Sacramento, Contra Costa, Ventura, San Joaquin, Stanislaus, Santa Barbara, Solano, San Luis Obispo, Santa Cruz, Shasta, Imperial, Madera Los Angeles, Orange County, San Mateo.

³⁶ San Francisco Comments at 2, Disability Advocates Comments at 2, Lyft Comments at 4.

completion rates that vary by county tier. San Francisco supports a 50% initial minimum completion rate but contends that all counties should be subject to Uber’s Tier 1 rates. Disability Advocates believe the percentages should be higher to achieve comparability to non-WAV service or the standard must be revisited in future years. Lyft disagrees with San Francisco, arguing that there is no record to support requiring the same completion rates for all counties.³⁷

In response to comments, Uber revised its proposal to apply an initial 50% completion rate for all county tiers.³⁸ Uber also provides an analysis of its non-WAV completion rates that indicates that counties with lower population density are highly correlated with lower completion rates.³⁹ Based on this analysis, Uber recommends a more gradual quarterly increase for Tier 2 and Tier 3 counties, as compared to Tier 1. Uber’s revised proposal is as follows:

Offset Requirements			
	Tier 1	Tier 2	Tier 3
Minimum Completion Rate %			
1st Quarter Submission	50%	50%	50%
2nd Quarter	54%	53%	51%
3rd Quarter	57%	56%	53%
4th Quarter	61%	59%	54%
5th Quarter	64%	61%	56%
6th Quarter	68%	64%	57%
7th Quarter	71%	67%	59%
8th (and subsequent) Quarters	75%	70%	60%

³⁷ Lyft Reply Comments at 2.

³⁸ Uber Reply Comments, Exhibit 1.

³⁹ *Id.* at 4.

3.1.2.2. Other Proposals

Lyft recommends replacing the TCS with its Continuous Improvement Standard proposal, discussed above.⁴⁰ In the alternative, Lyft recommends replacing “completed WAV trips” with “accepted WAV trips” because it believes trip completions are impacted by factors outside of the TNC’s control, such as rides cancelled by passengers. Lyft also proposes a 50% minimum completion rate, which it states is not a target for improved level of service but a minimum standard to prevent TNCs from intentionally not accepting rides that might negatively impact response times. Lyft also proposes that a TNC should be subject to either the Trip Acceptance Standard or the OTS, but not both.

Disability Advocates and SFTWA oppose Lyft’s proposal as it relies on acceptance rates, rather than completion rates, which disregards driver cancellations and no-shows.⁴¹

San Francisco and LA Metro recommend that the TCS align with the language in SB 1376, which states that the yearly benchmarks “shall include, but are not limited to, response times, percentage of trips fulfilled versus trips requested.”⁴² San Francisco states that the TCS allows a TNC to report either the percentage or the number of trips completed, not both, which conflicts with the Act. Lyft disagrees with San Francisco because the cited provision is a requirement for yearly benchmarks, not a requirement to qualify for an offset.⁴³

⁴⁰ Lyft Track 4 Proposal at 7.

⁴¹ Disability Advocates Comments at 6, SFTWA Comments at 4.

⁴² San Francisco Track 4 Revised Proposal at 6 (citing § 5440.5(a)(1)(J)), LA Metro Comments at 5.

⁴³ Lyft Comments at 10.

San Francisco recommends that the minimum benchmark should be based on trip completion rates for non-WAV service.⁴⁴ San Francisco recommends that TNCs should report the total trips requested by day of week and hour of day, as well as total number of trips completed for non-WAV service.

Disability Advocates recommend setting the minimum completion benchmark as: 70% for October 2021-September 2022; 80% for October 2022-September 2023; and 90% for October 2023-September 2024.⁴⁵ Disability Advocates state that a TNC need not demonstrate quarter-over-quarter improvement so long as it is within the benchmark. Uber opposes Disability Advocates' proposed schedule as unattainable and states it lacks a means to ensure WAV service is expanding, while improving.⁴⁶

3.1.2.3. Discussion

The Commission notes that several parties support Uber's revised TCS framework, with modifications. As compared to the existing TCS, Uber's revised TCS proposal offers a more rigorous standard in that it applies an initial 50% completion rate for all counties and because it requires TNCs to meet both the minimum completion rate and increase over the previous quarter (or previous year's quarter). The proposal increases benchmarks in subsequent quarters depending on the county tier, with counties of lower population density having more gradual increases. The proposal also accounts for other party proposals that recommend an initial 50% minimum completion rate.

In addition, by requiring incremental increases each quarter until the eighth quarter, the proposal resolves the current issue of quarter-over-quarter

⁴⁴ San Francisco Track 4 Revised Proposal at 6.

⁴⁵ Disability Advocates Track 4 Proposal at 7.

⁴⁶ Uber Comments at 10.

increases approaching 100% completion rate and the issue of penalizing TNCs for reaching higher benchmarks earlier.

The Commission finds that Uber’s TCS framework is a developed proposal that appropriately addresses the issues with the existing TCS framework while offering a more rigorous trip completion standard. As such, the Commission adopts Uber’s TCS framework to replace the existing TCS framework adopted in D.21-03-005. For clarity’s sake, Uber’s proposed “tiers” shall be referred to hereafter as “County Groups” A, B, and C. The adopted framework is as follows:

Trip Completion Standard (TCS)			
Minimum Completion Rate Percentage	County Group A	County Group B	County Group C
1 st Quarter Submission	50%	50%	50%
2 nd Quarter	54%	53%	51%
3 rd Quarter	57%	56%	53%
4 th Quarter	61%	59%	54%
5 th Quarter	64%	61%	56%
6 th Quarter	68%	64%	57%
7 th Quarter	71%	67%	59%
8 th (and subsequent) Quarter	75%	70%	60%

The adopted breakdown by county group is as follows:

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

To demonstrate improved level of service for offset eligibility, a TNC must demonstrate that it met or exceeded:

- (1) The applicable minimum percentage of trip requests completed, and
- (2) Either: (a) a greater number of completed trips than in the immediately prior quarter, or (b) a greater number of completed trips than in the immediately prior year’s same quarter, if sufficient data is available (*e.g.*, Q2 2022 vs. Q2 2021).

A TNC may elect to be compared to the prior quarter or prior year’s same quarter, if applicable.

The 1st Quarter percentages shall apply to the first quarter that a TNC submits an Offset Request in a given county. Once the schedule begins for a TNC in a given county, the schedule shall advance each quarter, regardless of whether a TNC submits an Offset Request in that quarter/county. The adopted TCS framework is effective beginning in the 2nd Quarter of 2022. For the 1st Quarter of 2022 and prior quarters, the previously adopted TCS shall continue to apply for offset eligibility.

The Commission will continue to monitor the use of the new TCS standard. In D.21-03-005, the Commission directed CPED to submit a report in December 2021 evaluating the TCS and other relevant information. In light of the new TCS adopted here, the Commission modifies the direction in D.21-03-005 to instead authorize CPED to submit a report to the Commission in February 2024 that evaluates the TCS standard and any other relevant information. This report may be submitted in combination with the Annual Benchmark Report to be submitted in the first quarter of 2024.

Lastly, the Track 4 Amended Scoping Memo presented the issue that “[s]ome requirements adopted in D.20-03-007 and D.21-03-005 require TNCs to demonstrate quarter-over-quarter improvement of the percentage of trips completed, including the Trip Completion Standard and the Offset Time Standard. How should the Commission evaluate these requirements if a TNC approaches or reaches a 100% trip completion rate?”⁴⁷ By adopting the new OTS and TCS framework in this decision, the percentage benchmark for the eighth quarter of submission and beyond remains static for the duration of the WAV program. As such, the issue of a TNC approaching a 100% completion rate is resolved.

3.1.3. Qualifying Offset Expenses

In D.20-03-007, the Commission adopted the definition of a qualifying offset expense as: (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.⁴⁸ In

⁴⁷ Amended Scoping Memo at 4.

⁴⁸ D.20-03-007 at OP 10.

D.21-03-005, the Commission clarified that fares paid by passengers are not included on the list of eligible offset expenses (Appendix A).⁴⁹ We consider whether additional clarification is necessary.

CPED recommends that fares continue to be excluded as eligible offset expenses but that elements of the fare to be excluded are specifically defined.⁵⁰ Uber contends that no clarification is needed because eligible expenses already represent net incremental costs associated with WAV service and are not offset by passenger fares.⁵¹ Lyft asserts that it would never be appropriate to seek reimbursement for funds received, rather than funds expended.⁵²

San Francisco states that TNCs may believe they can recover gross WAV service costs, rather than net WAV service costs, and proposes clarifying that TNCs cannot recover expenses for fares that cover certain TNC expenses.⁵³ San Francisco recommends clarifying that “total qualifying offset expenses shall be net of fare revenues collected from WAV service delivery in the quarter for which a TNC requests an offset.” San Francisco also proposes that Appendix A of D.20-03-007 be amended to require TNCs to report fare revenues received in connection with service in a quarter that is subject to an Offset Request. LA Metro states that TNCs should only offset net costs of providing service that subtract fares paid by passengers.⁵⁴

⁴⁹ D.21-03-005 at 17.

⁵⁰ CPED Track 4 Proposal at 9.

⁵¹ Uber Track 4 Revised Proposal at 9.

⁵² Lyft Track 4 Proposal at 11.

⁵³ San Francisco Track 4 Revised Proposal at 9.

⁵⁴ LA Metro Comments at 5.

The Commission finds that San Francisco’s proposal to clarify total qualifying offset expenses is a reasonable clarification. As such, we adopt the clarification that total qualifying offset expenses shall be net of fare revenues collected from WAV service delivery in the quarter for which a TNC requests an offset.

3.2. TNC Exemption Requirements

In D.20-03-007, the Commission adopted an Exemption Time Standard (ETS) for a TNC to qualify for an exemption. The ETS requires a TNC to demonstrate that:

- (a) 80 percent of its completed WAV trip response times achieve the corresponding Level 2 WAV response times, for a quarter in a geographic area, and
- (b) the TNC achieved the requisite response times for four consecutive quarters.⁵⁵

The ETS is based on Exemption Response Time Benchmarks (ERTB), which differ from the ORTB, as follows:

Exemption Response Time Benchmarks (ERTB)		
Geographic Area/County	Level 1 Response Time (mins)	Level 2 WAV Response Time (mins)
San Francisco	8	16
Alameda, Los Angeles, San Diego, San Mateo, Santa Clara	10	20
Napa, Orange, Sacramento, San Luis Obispo, Santa Barbara, Yolo	12	24
Butte, Fresno, Kern, Monterey, San Bernardino, Santa Cruz, Solano	15	30
Contra Costa, El Dorado, Marin, Placer, Riverside, San Joaquin, Shasta, Sonoma, Stanislaus, Ventura	20	40

⁵⁵ D.20-03-007 at OP 24.

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

In D.21-03-005, the Commission added to the exemption eligibility requirements that a TNC must also satisfy the TCS for four consecutive quarters.⁵⁶ In Track 4, parties propose modifications to the exemption requirements.

3.2.1. Proposals

Uber proposes modifying the exemption requirements so that a TNC qualifies for an exemption after four straight quarters of qualifying for offsets.⁵⁷ Because Uber’s OTS framework, adopted in this decision, requires the Level 2 schedule to begin at 80%, Uber states that the SB 1376 mandate for exemption requirements has been satisfied.⁵⁸ Uber believes its proposal addresses concerns with the current ETS by ensuring that WAV service is improving through response times and completion rates, and that by requiring an increasing number of completed trips, the proposal ensures WAV service expansion as well.

Lyft supports Uber’s proposal.⁵⁹ San Francisco also supports Uber’s proposal with the modification that a TNC should fulfill a minimum of 80% of trip requests within a response time, not 80% of trip completions.⁶⁰ Disability Advocates oppose Uber’s proposal and argue that to obtain an exemption, a

⁵⁶ D.21-03-005 at OP 2.

⁵⁷ Uber Track 4 Revised Proposal at 5.

⁵⁸ *Id.* (citing § 5440.5(a)(1)(G)).

⁵⁹ Lyft Reply Comments at 1.

⁶⁰ San Francisco Comments at 4.

TNC's service must be "accessible" to persons with disabilities and a service cannot be accessible unless it is comparable to non-WAV service.⁶¹

San Francisco proposes modifying the exemption requirements to require that 80% of all WAV trip requests must be within the Level 1 response time benchmark for four consecutive quarters.⁶² For simplicity's sake, San Francisco recommends applying the Level 1 ORTB to the exemption requirements and cease using the separate ERTB framework. San Francisco and Disability Advocates argue that the exemption requirement should refer to 80% of all WAV trips requests "fulfilled" within reasonable response times, rather than WAV trips completed.⁶³ They cite § 5440.5(a)(1)(G), which provides that as part of the "designated level of WAV service" to qualify for an exemption, "the commission shall require a TNC, at a minimum, to have response times for 80 percent of WAV trips requested via the TNC's online-enabled application or platform within a time established by the commission for that geographic area."

LA Metro supports San Francisco's proposal.⁶⁴ Uber and Lyft disagree with San Francisco's interpretation of § 5440.5(a)(1)(G) and state that it would not make sense to require trip requests to be included in calculating response times because a trip request cannot have a response time.⁶⁵

3.2.2. Discussion

As a preliminary issue, San Francisco and Disability Advocates appear to argue that D.20-03-007 adopted the incorrect standard for exemptions because

⁶¹ Disability Advocates Comments at 3.

⁶² San Francisco Comments, Exhibit A.

⁶³ Disability Advocates Comments at 3, San Francisco Comments at 4.

⁶⁴ LA Metro Comments at 4.

⁶⁵ Uber Reply Comments at 7, Lyft Reply Comments at 3.

the adopted requirement refers to response times for 80% of WAV trips *completed*, rather than WAV trips *requested*. Section 5440.5(a)(1)(G) provides that to qualify for an exemption, “the commission shall require a TNC, at a minimum, to have response times for 80 percent of WAV trips requested via the TNC’s online-enabled application or platform within a time established by the commission for that geographic area.”

In evaluating the exemption eligibility requirements under § 5440.5(a)(1)(G), the Commission first considered the definition of “response time.” In D.20-03-007, the Commission set forth that “Section 5440.5(a)(1)(I)(iii) defines response time as ‘between when a WAV ride was requested and when the vehicle arrived.’ We believe that is the appropriate definition of response time, for purposes of this decision.”⁶⁶ Thus, the following definition for “response time” was adopted: “the time elapsed between when a WAV ride was requested and when the vehicle arrived.”⁶⁷

Applying the response time definition to § 5440.5(a)(1)(G), for a WAV ride to have an accompanying “response time,” a TNC vehicle must have arrived at a waiting passenger. The Commission interpreted the cited provision of § 5440.5(a)(1)(G) as establishing minimum response time requirements for the “designated level of service,” or exemption eligibility. As such, the Commission further interpreted the cited provision and the 80 percent minimum threshold to be meant to apply to completed WAV trips, not merely any requested WAV trip, because in order to have a “response time” under the adopted definition, the WAV trip must be completed. Thus, the Commission adopted the exemption

⁶⁶ D.20-03-007 at 20.

⁶⁷ D.20-03-007 at OP 2.

eligibility requirement that a TNC must demonstrate that “80 percent of its completed WAV trip response times achieve the corresponding Level 2 WAV response times” for four consecutive quarters.⁶⁸ The cited provision of § 5440.5(a)(1)(G) was correctly applied to completed WAV trips in D.20-03-007.

Next, San Francisco recommends that the 80% benchmark should apply to the Level 1 ORTB for four consecutive quarters and that the exemption requirements use the ORTB, rather than ERTB, for simplicity. The Commission agrees with San Francisco that aligning the exemption and offset response time benchmarks to be based off one set of response time benchmarks would streamline the requirements. Moreover, the ORTB and ERTB apply different county groupings (3 groups for the ORTB and 7 groups for the ERTB), which may result in inconsistent and unintended outcomes. Therefore, we find it reasonable to apply the ORTB framework to the exemption requirements and cease use of the ERTB framework.

Some parties argue that the exemption requirements are not sufficiently rigorous for exemption eligibility. A TNC that qualifies for an exemption need not remit Access Fund fees for a one-year forward period. We concur with parties that the current ETS and TCS requirements are not sufficiently demanding for exemption eligibility. Further, because the requirements for offset eligibility and exemption eligibility differ, this has resulted in circumstances where a TNC may qualify for an exemption but fail to qualify for an offset for a quarter within that same period.

The Commission notes that Uber’s exemption proposal offers more exacting requirements than the current exemption standard. For the reasons

⁶⁸ D.20-03-007 at OP 24.

discussed above, the newly adopted OTS and TCS frameworks are more stringent overall than the previous standards and Uber proposes that a TNC qualify for offsets for four consecutive quarters. Uber's proposal also resolves the scenario where a TNC may qualify for an exemption but fail to qualify for an offset in that same period. For these reasons, we deem Uber's proposal to be appropriate to replace the current ETS and TCS for exemption eligibility.

That said, the Commission believes that the exemption standard should be more stringent than simply applying the offset requirements, because qualifying for an exemption allows a TNC to retain all Access Fund fees for a one-year period. We observe that a modified version of San Francisco's proposal should be an appropriate additional requirement for exemption eligibility. That is, that 80% of a TNC's completed WAV trips meet or exceed the Level 1 ORTB for four consecutive quarters. We find that with Uber's exemption proposal, requiring that 80% of a TNC's completed WAV trips to meet or exceed the Level 1 ORTB is a reasonably rigorous additional requirement for exemption eligibility.

Accordingly, we adopt the following requirements to replace the current ETS and TCS requirement:

To qualify for an exemption, a TNC must demonstrate that:

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

The new requirements are referred to as the Exemption Standard. The adopted Exemption Standard requirements are effective beginning in the 2nd Quarter of 2022. For exemption eligibility for the 1st Quarter 2022, the previous

ETS and TCS shall apply. For Exemption Requests that are based on four quarters that straddle the previous standard and the newly adopted standard, each quarter will be evaluated based on the applicable standard. For example, for an Exemption Request covering performance from Q4 2021 to Q3 2022, the previous ETS and TCS shall apply to Q4 2021 and Q1 2022 and the newly adopted Exemption Standard shall apply to Q2 2022 and Q3 2022.

In D.20-03-007, the Commission authorized CPED to prepare a report by June 2022 that evaluated the Exemption Time Standard, including the number of TNCs that have qualified for an exemption. CPED shall still issue this report evaluating the Exemption Standard, as directed in D.20-03-007. CPED is also authorized to submit a report evaluating data on the new Exemption Standard by February 2024. This report may be submitted in combination with the Annual Benchmark Report to be submitted in the 1st Quarter of 2024. The Commission will continue to monitor the Exemption Standard and may modify this requirement in the future as warranted.

3.3. Access Fund Disbursement

3.3.1. Non-Regulated Carriers

Pub. Util. Code § 5431.5(a) defines an “access provider” as “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.” In D.21-03-005, the Commission adopted a definition for “on-demand” transportation as: “any transportation service that does not follow a fixed route and/or schedule.”⁶⁹

⁶⁹ D.21-03-005 at OP 6.

In D.21-03-005, the Commission deferred consideration of 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). The Commission recognized that there are Commission programs in which funds are issued to non-regulated entities, such as the California Advanced Services Fund and the LifeLine program. The Commission stated:

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.⁷⁰

The Commission stated that it “would like to consider the disbursement of Access Fund moneys to non-regulated entities without a TCP [charter-party carrier] permit, if the Commission can ensure compliance with safety protocols and other requirements.”⁷¹ The Commission encouraged parties to submit proposals on how non-regulated carriers could demonstrate compliance with safety requirements akin to the requirements for a TCP permit, including requirements for new carriers developing WAV services for the first time. On an interim basis, in D.20-03-005, the Commission determined that “an Access

⁷⁰ *Id.* at 23-24.

⁷¹ *Id.*

Provider shall be limited to a transportation carrier that holds a Commission-issued permit prior to applying to become an Access Provider.”⁷²

CPED proposes that carriers that do not hold a Commission-issued permit should be eligible as an Access Provider if comparable safety protocols to the Commission-issued permitting requirements are demonstrated.⁷³ CPED proposes that a non-permitted carrier provide documentation to its Local Access Fund Administrator (LAFA) that demonstrates the following requirements:

- (1) Background checks: carriers must perform background checks that meet or exceed what is required of TNCs under the TNC Application Form.
- (2) Insurance: carriers must have levels of insurance equivalent or higher to what is required of charter-party carriers under General Order 115.
- (3) Driver training: carriers must certify that a driver completed WAV driver training on transporting persons with disabilities within the past 3 years.
- (4) Controlled substance and alcohol testing: carriers must be enrolled in a controlled substance and alcohol testing program.
- (5) Secretary of State registration: carriers must have articles of incorporation filed with the Secretary of State.
- (6) Motor Carrier Profile with California Highway Patrol (CHP): carriers must complete the CHP 362 Motor Carrier Profile and obtain a CA Number from CHP.
- (7) Inspection: carriers must have certification that all WAVs have been inspected and approved to conform with the Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles within the past year, including the “19 point” vehicle safety inspection.

⁷² D.20-03-005 at OP 8.

⁷³ CPED Track 4 Proposal at 10.

CPED recommends that the respective Access Fund Administrator (AFA) affirm that each item is in effect during the time the carrier operates as an Access Provider.

Multiple parties support CPED's proposal, including Disability Advocates, LA Metro, San Francisco, and SFTWA.⁷⁴ SFTWA recommends that Access Providers adhere to Commission standards through contracts with AFAs and that AFAs should be authorized to conduct audits if necessary to verify compliance. Lyft agrees with CPED's proposal but states that CPED does not explain how a AFA can affirm compliance after they receive funding as there is no means to audit an Access Provider or enforce Commission requirements.⁷⁵

Lyft recommends that non-regulated carriers should apply for a TCP permit to obtain Access Funds.⁷⁶ Lyft notes that General Order 157-E allows the Commission to consider exceptional circumstances if an entity is precluded from applying for a TCP permit. Lyft states that a carrier could be required to sign a contract to comply with Commission requirements and submit to Commission jurisdiction for purpose of audits and expenses. Uber supports Lyft's proposal.⁷⁷

Uber recommends that non-regulated carriers are not eligible to be Access Providers and believes it would be inequitable to allow Access Funds to subsidize riders of transportation carriers at the expense of riders that use

⁷⁴ San Francisco Track 4 Revised Proposal at 12, Disability Advocates Comments at 6, SFTWA Track 4 Revised Proposal at 4, LA Metro Comments at 5.

⁷⁵ Lyft Comments at 8.

⁷⁶ Lyft Track 4 Proposal at 12.

⁷⁷ Uber Reply Comments at 9.

TNCs.⁷⁸ Uber expresses concern that the Commission may not have meaningful oversight over non-regulated carriers.

3.3.1.1. Discussion

The Commission notes that multiple parties support CPED's proposal to allow non-regulated carriers to be eligible as Access Providers. We find that CPED's proposal best addresses the Commission's concerns about ensuring compliance with safety requirements akin to the requirements for a TCP permit, while also allowing disbursement of Access Fund moneys to non-regulated carries without a TCP permit. As each AFA is responsible for monitoring the Access Providers in its respective geographic area, it is also appropriate to allow an AFA to conduct audits of any Access Providers to verify compliance with the Commission's requirements, as necessary.

Therefore, the Commission finds CPED's proposal to be appropriate in addressing the Commission's concerns. Accordingly, a non-permitted transportation carrier may be eligible to apply as an Access Provider if the carrier provides documentation that demonstrates the following:

- (1) Background checks: Carriers must perform background checks that meet or exceed what is required of TNCs under the TNC Application Form.⁷⁹
- (2) Insurance: Carriers must have levels of insurance equivalent to or higher than to what is required of charter-party carriers under General Order 115.⁸⁰

⁷⁸ Uber Track 4 Revised Proposal at 10.

⁷⁹ [Basic Information for Transportation Network Companies and Applicants](#) at 4.

⁸⁰ General Orders are available at: <https://www.cpuc.ca.gov/proceedings-and-rulemaking/cpuc-general-orders>.

- (3) Controlled substance and alcohol testing: Carriers must be enrolled in a controlled substance and alcohol testing program.
- (4) Secretary of State registration: Carriers must have their articles of incorporation filed with the Secretary of State.
- (5) Motor Carrier Profile with California Highway Patrol (CHP): Carriers must complete the CHP 362 Motor Carrier Profile and obtain a CA Number from the CHP.⁸¹

A non-permitted carrier applying to be an Access Provider must also satisfy the existing requirements for all Access Provider applicants, as adopted in D.20-03-007.⁸² The approved non-permitted carrier shall submit a declaration to its respective AFA affirming compliance with each of the requirements and that each requirement is in effect during the term the carrier operates as an Access Provider.

In D.20-03-007, the Commission required that all AFAs submit an annual certification that Access Fund moneys will be distributed in accordance with the Commission's requirements.⁸³ As part of the annual certification, each AFA shall affirm that each approved Access Provider has demonstrated compliance with each of the requirements and the requirements are in effect during the term that the carrier operates as an Access Provider. Each AFA has the discretion to audit an Access Provider prior to and during the term that the carrier operates as an Access Provider.

In D.20-03-007, the Commission authorized the solicitation and selection of one or more independent entities to monitor and audit the collection and

⁸¹ CHP Motor Carrier Profile, available at: <https://www.chp.ca.gov/CommercialVehicleSectionSite/Documents/H%20chp362.pdf>.

⁸² D.20-03-007 at OP 33.

⁸³ *Id.* at OP 31.

expenditure of Access Fund moneys.⁸⁴ As part of the duties of the independent entity, any AFA may also be audited to ensure compliance with the program's requirements.

In addition to the above requirements, we note that all AFAs and Access Providers are subject to the Commission's compliance requirements under Pub. Util. Code §§ 2108 and 2111.

3.3.2. Smaller TNC Exception

In D.21-03-005, the Commission adopted a requirement that a TNC may apply as an Access Provider in a geographic area where it currently offers WAV service if: (1) the TNC 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.⁸⁵ In addition, a TNC may apply as an Access Provider in a geographic area where it does not offer any WAV services.⁸⁶

The Commission, however, recognized that in geographic areas where a smaller TNC operates WAVs but does not qualify for an offset or exemption, the TNC cannot be eligible for Access Fund moneys as an Access Provider. The Commission stated:

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 of the efforts undertaken to provide WAV services in that geographic area

⁸⁴ *Id.* at OP 30.

⁸⁵ D.21-03-005 at OP 11.

⁸⁶ *Id.* at OP 12.

and the necessity for funds to expand or improve those WAV services.⁸⁷

Nearly all parties and CPED oppose an exception for smaller TNCs, including LA Metro, Lyft, San Francisco, and Uber.⁸⁸ SFTWA opposes an exception for smaller TNCs but supports an exception for TNCs that perform specialized functions.⁸⁹ Lyft states that the Act does not authorize an exception for smaller TNCs that do not meet the prescribed requirements, such as reasonable response times. Uber asserts that the Act was adopted knowing that there are TNCs of different sizes and reach. Via states that if an exception is adopted, “smaller TNC” may be defined as a TNC completing less than 200,000 trips in a quarter; however, Via believes size should not be the only distinguishing feature of TNCs.⁹⁰

The Commission recognizes that a broad range of parties oppose a smaller TNC exception and agrees that SB 1376 does not explicitly contemplate such an exception. For these reasons, we decline to adopt a smaller TNC exception.

3.3.3. Geographic Areas Without TNC Service

In D.21-03-005, the Commission determined that “a Transportation Network Company may apply as an Access Provider in a geographic area where it does not offer any wheelchair accessible vehicle services.”⁹¹ The Commission considers whether to modify this requirement so that a TNC that was providing

⁸⁷ *Id.* at 30.

⁸⁸ CPED Track 4 Proposal at 12, Lyft Track 4 Proposal at 13, Uber Track 4 Revised Proposal at 11, San Francisco Track 4 Revised Proposal at 14, LA Metro Comments at 6.

⁸⁹ SFTWA Track 4 Proposal at 6.

⁹⁰ Via Track 4 Proposal at 5.

⁹¹ D.21-03-005 at OP 12.

WAV service in a geographic area cannot stop providing WAV service in order to apply as an Access Provider.

CPED, Lyft, and Uber recommend no modification to this requirement.⁹² Lyft contends that a TNC may conclude operating WAV service if it is deemed unsustainable and choose to operate WAV services if it receives Access Fund funding. Uber states that if the concern is that a TNC may game the rules to intentionally exit a geographic area to obtain Access Funds, Uber alternatively proposes that a certain number of quarters (*e.g.*, two quarters) could be required before a TNC is treated as no longer offering WAV service in an area.⁹³ Uber recommends clarifying that “providing WAV service” in a geographic area means completing at least one WAV trip that originated in that geographic area.

Disability Advocates, SFTWA, and San Francisco recommend that the authorization adopted in D.21-03-005 be rescinded so that a TNC cannot apply as an Access Provider in a county where it does not provide WAV service.⁹⁴ These parties generally state that allowing this exception rewards TNCs that stop offering WAV service in a geographic area. Uber and Lyft disagree and argue that the Act provides offsets and exemptions to TNCs as a way to recoup WAV investments but that a TNC may choose to cease WAV service if it deems it is unsustainable.⁹⁵ Uber and Lyft note that if a TNC applies as an Access Provider, it is still required to meet the necessary criteria and compete with other Access Providers for funds.

⁹² CPED Track 4 Proposal at 13, Lyft Track 4 Proposal at 14, Uber Track 4 Revised Proposal at 12.

⁹³ Uber Track 4 Revised Proposal at 12.

⁹⁴ San Francisco Track 4 Revised Proposal at 15, SFTWA Track 4 Proposal at 7, Disability Advocates Comments at 7.

⁹⁵ Lyft Reply Comments at 5, Uber Reply Comments at 10.

The requirements for a carrier to qualify as an Access Provider are less onerous than the requirements for a TNC to qualify for an offset. For example, an Offset Request mandates that a TNC strictly meet the OTS and TCS requirements, whereas an Access Provider may be eligible for Access Funds even if it fails to meet those standards.⁹⁶ Thus, the Commission recognizes the concern that a TNC may initially provide WAV operations in a county and then cease WAV operations to apply as an Access Provider with less demanding requirements. On the other hand, the Commission also acknowledges that a TNC may choose to stop offering WAV services in a county if it deems such services as unsustainable, and later may choose to resume operations if it receives sufficient funding.

In weighing parties' proposals, the Commission perceives a middle ground between the proposals, which is that a TNC may be treated as no longer providing WAV services in a geographic area if it has not offered WAV service in that geographic area since the inception of the WAV program (July 2019). In applying the start of the WAV program as a trigger date, this option addresses the concern of TNCs intentionally ceasing operations to apply as an Access Provider, while also giving TNCs a path to Access Fund moneys. The Commission believes this option strikes a reasonable balance between proposals, and accordingly, adopts it here.

The Commission also agrees with Uber's clarification that to "operate WAV service" in a geographic area means that a TNC completes at least one WAV trip that originated in that geographic area. This definition is adopted here.

⁹⁶ See D.21-03-005 at OP 4, D.20-03-007 at 69.

Accordingly, a TNC is eligible to serve as an Access Provider in a given geographic area so long as it has not operated WAV service in that geographic area since July 1, 2019. This requirement shall be referred to as the New Service Exception. "Operating WAV service" is defined as completing at least one WAV trip that originated in that geographic area. For a TNC that has operated WAV service since July 1, 2019 in a given geographic area, the TNC may still be eligible as an Access Provider if it qualifies under the exemption exception adopted in D.21-03-005.⁹⁷

To demonstrate compliance with the New Service Exception, it is reasonable to require a TNC to submit an attestation with its Access Provider application attesting to compliance with the requirement under penalty of perjury.

3.4. Yearly Benchmarks

Pub. Util. Code § 5440.5(a)(1)(J) provides that the Commission shall establish yearly benchmarks for TNCs and Access Providers to meet to ensure continuously improved, reliable, and available service. Such 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."⁹⁸

In D.21-03-005, the Commission concluded that the information provided in Offset Requests, Exemption Requests, and Quarterly Reports shall form the baseline for the yearly benchmarks.⁹⁹ However, the Commission did not

⁹⁷ D.21-03-005 at OP 11.

⁹⁸ § 5440.5(a)(1)(J).

⁹⁹ D.21-03-005 at OP 17.

specifically address “community WAV demand” as applied the yearly benchmarks and stated that this issue would be addressed in Track 4.

Lyft and Uber recommend relying on disability rights organizations that may be best positioned to define this metric.¹⁰⁰ Uber recommends that because there is limited data on where the greatest community WAV demand exists, the Commission should gather data, including from Access Providers that offer WAV service in certain communities.

San Francisco recommends that community WAV demand be defined as “the number of people who may be eligible to use and benefit from a program relating to accessibility for persons with disabilities, including wheelchair users who need a WAV.”¹⁰¹ San Francisco states that there are several ways to determine community WAV demand, including the American Community Survey collected by the U.S. Census Bureau on people with different disabilities, including ambulatory disabilities. Disability Advocates support developing an understanding of the number and percentage of people eligible for WAV service, as well as factors such as travel needs of this population and influence of service design parameters.¹⁰² SFTWA recommends consulting with the disability community and surveying WAV users about transportation needs.¹⁰³

The Commission finds agreement among parties that further study must be undertaken to ascertain how community WAV demand can be measured. We also find that San Francisco’s proposed definition of community WAV demand is a reasonable definition to serve as a starting point for further study.

¹⁰⁰ Lyft Track 4 Proposal at 15, Uber Track 4 Revised Proposal at 14.

¹⁰¹ San Francisco Track 4 Revised Proposal at 18.

¹⁰² Disability Advocates Track 4 Proposal at 18.

¹⁰³ SFTWA Track 4 Proposal at 8.

Accordingly, for purposes of the WAV program, “community WAV demand” shall be defined as: the number of people who may be eligible to use and benefit from a transportation program relating to accessibility for persons with disabilities, including wheelchair users who need a WAV.

To determine “community WAV demand” for purposes of the yearly benchmarks, the Commission agrees with parties that further study is needed. In D.21-03-005, the Commission authorized an independent entity to assist CPED in evaluating the yearly benchmarks and completing the 2024 Legislative Report.¹⁰⁴ As such, it is reasonable to authorize CPED to conduct an analysis of the appropriate measure of community WAV demand, with support from the independent entity authorized in D.21-03-005. The analysis of community WAV demand may include, but is not limited to, consideration of the American Community Survey, a survey of WAV users, and/or consultation with disability rights organizations. The resulting analysis shall also be included in the 2024 Legislative Report.

3.5. Additional Accessibility Issues

In D.21-03-005, the Commission stated:

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.”¹⁰⁵

¹⁰⁴ D.21-03-005 at OP 19.

¹⁰⁵ *Id.* at 45.

However, the Commission concluded that submitted proposals lacked sufficient detail and encouraged parties to submit proposals on which additional specific accessibility issues should be considered. The Commission stated that it may determine whether such issues are appropriately considered within this proceeding or in a separate rulemaking.¹⁰⁶

CPED and Lyft recommend that broader accessibility issues should be addressed in a separate proceeding.¹⁰⁷ CPED states that accessibility topics intersect with all types of transportation regulated by the Commission and should be considered in a separate proceeding for full context. Uber recommends keeping this proceeding focused on WAV-related issues.¹⁰⁸

Disability Advocates, San Francisco, and SFTWA believe additional accessibility issues should be addressed in this proceeding.¹⁰⁹ Disability Advocates and San Francisco highlight that intervenor compensation is not offered in Rulemaking (R.) 12-12-011, the general TNC proceeding, or other transportation proceedings. Lyft opposes expanding the scope of the proceeding to simply allow entities to seek intervenor compensation and believes that this conflicts with SB 1376's intent.¹¹⁰

Disability Advocates identify three broad categories of accessibility issues to address: (1) accessibility of TNC apps, (2) availability and reliability of TNC service for people who use service animals, and (3) respective and supportive

¹⁰⁶ *Id.* at 44.

¹⁰⁷ CPED Track 4 Proposal at 13, Lyft Track 4 Proposal at 15.

¹⁰⁸ Uber Track 4 Proposal at 12.

¹⁰⁹ San Francisco Track 4 Revised Proposal at 17, SFTWA Track 4 Revised Proposal at 4.

¹¹⁰ Lyft Reply Comments at 5.

treatment of customers with a variety of disabilities.¹¹¹ San Francisco supports addressing these issues.¹¹² SFTWA also recommends addressing the issue of service animal complaints.¹¹³

San Francisco recommends that the Commission establish an ADA Coordination Office to oversee accessibility for a broad range of transportation issues, which may include engaging with the disability community, offering TNC training, and ensuring programmatic accessibility of WAV and non-WAVs.¹¹⁴ Disability Advocates and LA Metro supports this proposal.¹¹⁵

In considering parties' and CPED's proposals, the Commission must consider that numerous accessibility issues may impact all TNC rides and other types of transportation regulated by the Commission. While it may be expeditious to address certain accessibility issues in the current rulemaking, it is also critical to consider the context of whether and how certain accessibility issues impact a range of Commission-regulated transportation carriers. For instance, the issues of accessibility of TNC applications and treatment of customers with a variety of disabilities are issues that impact all TNC rides, and potentially other transportation carriers. As such, these accessibility issues may be considered for a separate rulemaking.

That said, we recognize parties' concern throughout this proceeding about the level and quality of TNCs' engagement with the disability community. Indeed, SB 1376 highlights the need for effective engagement with the disability

¹¹¹ Disability Advocates Track 4 Proposal at 10.

¹¹² San Francisco Comments at 10.

¹¹³ SFTWA Track 4 Revised Proposal at 4.

¹¹⁴ San Francisco Track 4 Revised Proposal at 17.

¹¹⁵ LA Metro Comments at 6, Disability Advocates Comments at 11.

community in multiple provisions. For example, to demonstrate “improved level of service” for offset eligibility, a requirement is that a TNC demonstrate “efforts undertaken to publicize and promote available WAV services to disability communities.”¹¹⁶ Further, SB 1376 states that:

The Legislature finds that adoption of services in communities that were previously underserved may take time, and requires robust dialogue, educational outreach, and partnerships to build trust in the new services.¹¹⁷

The Commission concurs that effective engagement with the disability community by TNCs is a critical component to furthering the acceptance and expansion of on-demand WAV service. As such, we deem that this proceeding should address the issue of the quality and effectiveness of TNCs’ engagement with the disability community. This issue will be addressed in a future phase of this proceeding, with a ruling forthcoming after the issuance of this decision.

4. Comments on Proposed Decision

The proposed decision of Commissioner Genevieve Shiroma in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed on October 21, 2021 by: Disability Advocates, San Francisco, SFTWA, and Uber. Reply comments were filed on October 26, 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

¹¹⁶ § 5440.5(A)(1)(B)(ii).

¹¹⁷ § 5440(i).

proposed decision in response to comments that may not be discussed here. We do not summarize every comment but rather, focus on major arguments made in which the Commission did or did not make revisions.

We remind parties that under Rule 14.3(c), comments on a proposed decision must focus on factual, legal, or technical errors in the proposed decision, and in citing such errors, must make reference to the record or applicable law. Comments that fail to meet these requirements will be accorded no weight.

Uber objects to the new exemption requirement that 80 percent of WAV trips must meet the Level 1 ORTB, commenting that it is too strict and there is no compelling purpose. Lyft argues that the new standard is too strict, does not rely on existing data, and that no TNC has qualified for an exemption under the previous standard. Lyft also comments that D.20-03-007 directed CPED to issue a report in June 2022 evaluating the exemption response time benchmarks.

The Commission first notes that while no Exemption Request by a TNC has yet been granted, Uber has submitted Exemption Requests for three counties that cover operations in Q4 2019 - Q3 2020 and those requests are currently pending. As discussed in the decision, while the Commission recognizes that Uber's exemption proposal offers more exacting requirements than the previous standard, the Commission believes the exemption standard should be more stringent than simply applying the offset requirements for four quarters. This is because qualifying for an exemption allows a TNC to retain all Access Fund fees for a one-year period. The Commission finds that San Francisco's proposal (with modifications) to require that 80 percent of completed WAV trips meet the Level 1 ORTB is a reasonably rigorous additional requirement. We decline to modify the requirement.

We, however, acknowledge Lyft's comment that CPED was directed to issue a report on the exemption response time benchmarks in June 2022.

Although the exemption standard is modified in this decision, CPED should still issue an exemption response time report by June 2022 in an effort to increase transparency in the WAV program. The Commission will continue to monitor the exemption eligibility requirements and may modify the requirements in the future as warranted. The decision has been modified to reflect this.

San Francisco and Disability Advocates reiterate comments that the exemption standard should apply to requested WAV trips, not completed WAV trips. Lyft disagrees and states that a response time requires a completed trip and that the ORTB used to determine exemption eligibility was developed using completed rides, not requested rides. Uber also disagrees and comments that the word "requested" in § 5440.5(a)(1)(G) is intended to describe how the WAV trip originated (i.e., through the app), not intended to describe the WAV trip status.

As discussed in the decision, the exemption standard was first adopted in D.20-03-007. Following that decision, no party raised concerns about the application of the 80 percent threshold to "completed WAV trip response times" and thus, the exemption standard has been in effect since March 2020 (when D.20-03-007 was issued). Further, in D.20-03-007, the Commission noted that "Section 5440.5(a)(1)(I)(iii) defines response time as 'between when a WAV ride was requested and when the vehicle arrived.'"¹¹⁸ We adopted the definition of "response time" as being consistent with the Access for All Act.¹¹⁹ Applying the definition of "response time" to § 5440.5(a)(1)(G) in Track 2, the Commission

¹¹⁸ D.20-03-007 at 20.

¹¹⁹ D.20-03-007 at 74.

determined that in order for a WAV trip to have a response time, a WAV trip must be a completed trip. Therefore, we concluded that the 80 percent threshold for exemption eligibility should apply to “completed WAV trip response times.” The Commission rejects parties’ belated objections to the application of § 5440.5(a)(1)(G). We, however, modify the decision to clarify the rationale from D.20-03-007.

Uber comments that the decision is unclear as to whether a TNC must report fare revenues and subtract those revenues from an offset request, and Uber opposes both requirements. Uber states that it collects service fee revenue that offsets “non-WAV-specific expenses,” such as general technology costs and corporate overhead not directly related to enabling WAV service. Uber seems to acknowledge that these costs cannot be claimed as reimbursable; however, Uber proposes that TNCs should instead attest that claimed expenses are not offset by any revenue. Disability Advocates and San Francisco oppose Uber’s argument because it allows a TNC to retain revenues for non-WAV purposes and allows for double-counting of offset claims.

The Commission clarifies that the decision requires a TNC to subtract revenues it collects from WAV rides from its WAV offset expenses, but does not require a TNC to report revenue received. The adopted definition was intended to clarify the statement in D.21-03-005 that “passenger fares are not included on the list of eligible offset expenses adopted in D.20-03-007.”¹²⁰ Based on Uber’s comments recognizing that non-WAV-specific expenses are not reimbursable, it is unclear why the adopted definition is problematic. The Commission is unpersuaded by Uber’s comments and declines to modify the decision.

¹²⁰ D.21-03-005 at 17.

Uber objects to the requirement that a TNC cannot apply as an Access Provider if it ceased WAV operations after July 2019. Uber believes the trigger date should be March 2021 because it was not until the Track 3 decision that the Commission indicated it would allow non-operational TNCs to apply as Access Providers. The Commission selected July 2019, the start date of the WAV program, as a middle ground between parties that believed TNCs should not be eligible at all to apply as an Access Provider, and TNCs that sought more flexible requirements for Access Provider eligibility. The Commission maintains that the July 2019 date is the appropriate middle ground between parties' positions and declines to modify the decision.

Disability Advocates, San Francisco, and SFTWA reiterate comments that additional accessibility issues should be addressed in this proceeding because intervenor compensation is provided. As discussed in the decision, the Commission believes "it is also critical to consider the context of whether and how certain accessibility issues impact a range of Commission-regulated transportation carriers," such as how the accessibility of TNC apps and treatment of customers with a variety of disabilities impact all TNC rides and potentially other transportation carriers. As discussed, the Commission believes that effective engagement with the disability community by TNCs is a critical component to furthering the acceptance and expansion of WAV service and will address that issue in a future phase of this proceeding. The Commission declines to modify the decision.

5. Assignment of Proceeding

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

Findings of Fact

1. Uber's proposed OTS framework is a developed proposal that appropriately addresses the challenges with the existing OTS framework, while introducing more ambitious requirements for TNCs to obtain offsets.
2. There is insufficient WAV response time data to accurately modify the ORTB at this time and additional WAV response time data should be analyzed before considering modifications.
3. It would be informative for each TNC to submit a list of counties in which a TNC operates WAV service, regardless of whether it seeks an offset in that county. This will assist in evaluating the status of on-demand WAV services statewide for the 2024 Legislative Report.
4. Uber's proposed TCS framework is a developed proposal that appropriately addresses the issues with the existing TCS framework while offering a more rigorous trip completion standard.
5. San Francisco's clarification to the definition of the total qualifying offset expenses is reasonable.
6. Uber's exemption proposal offers more exacting standards for exemptions and addresses the scenario where a TNC may qualify for an exemption but fail to qualify for an offset.
7. San Francisco's exemption proposal, with modifications, is an additional requirement that establishes a rigorous standard for exemption eligibility.
8. CPED's proposal on non-regulated carriers as Access Providers best addresses the concerns about ensuring compliance with safety requirements akin to the requirements for a TCP permit, allows disbursement of Access Fund moneys to non-regulated carries without a TCP permit, and is supported by multiple parties.

9. To verify compliance for non-regulated carriers, it is reasonable to require a potential Access Provider to provide documentation demonstrating compliance to its respective AFA prior to approval as an Access Provider. It is appropriate to allow an AFA to conduct audits of any Access Providers to verify compliance with the Commission's requirements, as necessary.

10. A reasonable balance between party proposals is that a TNC may be treated as no longer operating WAV services in a geographic area so long as it has not offered WAV service in that geographic area since the inception of the WAV program.

11. San Francisco's proposed definition of "community WAV demand" is reasonable and an appropriate starting point for further study.

12. It is reasonable for CPED to conduct an analysis of the appropriate measure of community WAV demand, with support from an independent entity authorized in D.21-03-005.

Conclusions of Law

1. Uber's proposed OTS framework should be adopted to replace the interim OTS framework.

2. The ORTB framework should not be modified at this time.

3. Each TNC should submit a list of counties in which it operates WAV service, regardless of whether it seeks an offset in that county.

4. CPED should provide the Commission with a report that evaluates additional quarters of WAV response time and percentage data before considering modifications to the ORTB.

5. Uber's proposed TCS framework should be adopted to replace the TCS framework adopted in D.21-03-007.

6. San Francisco’s proposal to clarify the definition of total qualifying offset expenses should be adopted.

7. Uber’s exemption proposal, as well as a modified version of San Francisco’s proposal, should be adopted to replace the existing ETS and TCS for exemption eligibility.

8. CPED’s proposal on non-regulated carriers as Access Providers should be adopted.

9. A TNC should be deemed as not operating WAV services in a geographic area if it has not operated WAV service in a geographic area since July 2019.

10. San Francisco’s proposed definition of “community WAV demand” should be adopted.

11. CPED and an independent entity should be authorized to conduct an analysis of the appropriate measure of community WAV demand.

O R D E R

IT IS ORDERED that:

1. For a Transportation Network Company (TNC) seeking an offset, the following Offset Time Standard (OTS) framework is adopted to replace the interim OTS framework adopted in Decision 20-03-007.

Offset Time Standard (OTS)	
Percentage of Completed Trips under Level 1 Response Times	
1 st Quarter Submission	50%
2 nd Quarter	54%
3 rd Quarter	57%
4 th Quarter	61%
5 th Quarter	64%
6 th Quarter	68%
7 th Quarter	71%
8 th (and subsequent) Quarter	75%

Percentage of Completed Trips under Level 2 Response Times

1 st Quarter Submission	80%
2 nd Quarter	81%
3 rd Quarter	83%
4 th Quarter	84%
5 th Quarter	86%
6 th Quarter	87%
7 th Quarter	89%
8 th (and subsequent) Quarter	90%

To demonstrate improved level of service for offset eligibility, a TNC must demonstrate that it met or exceeded both the relevant Level 1 and Level 2 Response Time Benchmarks for a given quarter in a given geographic area. The 1st Quarter percentages shall apply to the first quarter that a TNC submits an Offset Request in a given county. Once the schedule begins for a TNC in a given county, the schedule shall advance each quarter, regardless of whether a TNC submits an Offset Request in that quarter.

The adopted OTS framework is effective beginning the 2nd Quarter of 2022. For the 1st Quarter of 2022 and prior quarters, the interim OTS shall continue to apply for offset eligibility.

2. The interim Offset Response Time Benchmarks (ORTB) adopted in Decision 20-03-007 remain applicable to the OTS framework adopted in Ordering Paragraph 1. The existing ORTB is provided below for reference:

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

3. To verify compliance with the Offset Time Standard framework adopted in Ordering Paragraph 1, a Transportation Network Company shall submit wheelchair accessible vehicle (WAV) response times for the relevant percentiles that fall outside of the deciles. This is in addition to submission of the required WAV response times in deciles, as well as Periods A and B in deciles, by quarter and geographic area, as adopted in Decision 20-03-007.

4. Each Transportation Network Company (TNC) shall provide a list of counties in which it operated wheelchair accessible vehicle (WAV) service for a given quarter, whether or not it seeks an offset in that geographic area. This information shall be submitted as part of a TNC’s Quarterly Fee Statement submission. This is effective beginning with the Fee Statement for the 2nd Quarter of 2022.

A TNC is deemed to “operate WAV service” in a given geographic area if the TNC completes at least one WAV trip that originates in that geographic area.

5. Consumer Protection and Enforcement Division (CPED) is authorized to provide a report to the Commission in February 2023 that evaluates additional quarters of wheelchair accessible vehicle (WAV) data collected through the Offset Time Standard framework (response times and percentages). CPED is authorized to update its Track 2 response time analysis using updated Transportation Network Companies’ non-WAV trip data and other relevant information for submission in the February 2023 report. This report may be submitted in combination with the Annual Benchmark Report to be submitted in the 1st Quarter of 2023.

6. For a Transportation Network Company (TNC) seeking an offset, the following Trip Completion Standard (TCS) framework and county breakdown is adopted to replace the TCS framework adopted in Decision 21-03-005.

Trip Completion Standard (TCS)			
Minimum Completion Rate Percentage	County Group A	County Group B	County Group C
1 st Quarter Submission	50%	50%	50%
2 nd Quarter	54%	53%	51%
3 rd Quarter	57%	56%	53%
4 th Quarter	61%	59%	54%
5 th Quarter	64%	61%	56%
6 th Quarter	68%	64%	57%
7 th Quarter	71%	67%	59%
8 th (and subsequent) Quarter	75%	70%	60%

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

To demonstrate improved level of service for offset eligibility, a TNC must demonstrate that it met or exceeded:

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

A TNC may elect to be compared to the prior quarter or prior year’s same quarter, if applicable.

7. For the Trip Completion Standard (TCS) adopted in Ordering Paragraph 6, the 1st Quarter percentages shall apply to the first quarter that a Transportation Network Company (TNC) submits an Offset Request in a given county. Once the schedule begins for a TNC in a given county, the schedule shall advance each quarter, regardless of whether a TNC submits an Offset Request in that quarter/county. The adopted TCS framework is effective beginning in the 2nd Quarter of 2022. For the 1st Quarter of 2022 and prior quarters, the TCS adopted in Decision 21-03-005 shall continue to apply for offset eligibility.

8. Consumer Protection and Enforcement Division (CPED) is authorized to submit a report to the Commission in February 2024 that evaluates the Trip Completion Standard (TCS) and any other relevant information. This report may be submitted in combination with the Annual Benchmark Report to be submitted in the 1st Quarter of 2024. This modifies the direction in Decision 21-03-005 for CPED to submit a TCS report in December 2021.

9. For a qualifying offset expense, total qualifying offset expenses shall be net of fare revenues collected from wheelchair accessible vehicle (WAV) service delivery in the quarter for which a Transportation Network Company requests an offset.

10. For a Transportation Network Company (TNC) seeking an exemption, the following Exemption Standard framework is adopted to replace the combined Exemption Time Standard (ETS) and Trip Completion Standard (TCS) framework adopted in Decision (D.) 20-03-007 and D.21-03-005. To qualify for an exemption, a TNC must demonstrate that:

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

These requirements are referred to as the Exemption Standard. The Exemption Standard requirements are effective beginning in the 2nd Quarter of 2022. For exemption eligibility for the 1st Quarter 2022 and prior quarters, the previously adopted ETS and TCS shall apply. For Exemption Requests that are based on four quarters that straddle the previous requirements and the newly

adopted Exemption Standard, each quarter shall be evaluated based on the applicable standard for that quarter.

11. Consumer Protection and Enforcement Division (CPED) is authorized to submit a report to the Commission in February 2024 that evaluates the Exemption Standard, including the number of Transportation Network Companies (TNC) that qualified for an exemption. The February 2024 report may be submitted in combination with the Annual Benchmark Report to be submitted in the 1st Quarter of 2024.

12. A non-permitted transportation carrier is eligible to apply as an Access Provider if the carrier provides documentation that demonstrates the following:

- (1) Background checks: Carriers must perform background checks that meet or exceed what is required of Transportation Network Companies (TNCs) under the TNC Application Form.
- (2) Insurance: Carriers must have levels of insurance equivalent to or higher than what is required of charter-party carriers under General Order 115.
- (3) Controlled substance and alcohol testing: Carriers must be enrolled in a controlled substance and alcohol testing program.
- (4) Secretary of State registration: Carriers must have their articles of incorporation filed with the Secretary of State.
- (5) Motor Carrier Profile with California Highway Patrol (CHP): Carriers must complete the CHP 362 Motor Carrier Profile and obtain a CA Number from the CHP.

These requirements are in addition to the requirements for any transportation carrier to apply as an Access Provider, as adopted in Decision (D.) 20-03-007 and D.21-03-005.

A non-permitted carrier applying to serve as an Access Provider shall submit a declaration to the respective Access Fund Administrator affirming

compliance with each of the requirements. A non-permitted carrier that is approved to serve as an Access Provider shall ensure that each requirement is in effect during the term the carrier operates as an Access Provider.

13. Each Access Fund Administrator (AFA) shall affirm to the Commission that for each approved Access Provider, each requirement in Ordering Paragraph 12 has been demonstrated and is in effect during the term that the carrier operates as an Access Provider. This shall be part of the annual certification, as directed in Decision 20-03-007. Each AFA has the discretion to audit an Access Provider prior to and during the term that the carrier operates as an Access Provider.

14. For the purposes of Access Provider eligibility, a Transportation Network Company (TNC) is eligible to serve as an Access Provider in a geographic area so long as it has not provided wheelchair accessible vehicle (WAV) services in that geographic area since July 2019. This shall be referred to as the New Service Exception. The definition of “operating WAV service” in Ordering Paragraph 4 shall apply here.

For a TNC that has operated WAV services since July 1, 2019 in a given geographic area, the TNC may continue to be eligible as an Access Provider in that geographic area if it qualifies under the exemption exception adopted in Decision 21-03-005.

15. To demonstrate compliance with the New Service Exception adopted in Ordering Paragraph 14, a Transportation Network Company shall submit an attestation with its Access Provider application attesting to compliance with the requirement.

16. For purposes of the TNC Access for All program, “community WAV demand” shall be defined as: the number of people who may be eligible to use

and benefit from a transportation program relating to accessibility for persons with disabilities, including wheelchair users who need a wheelchair accessible vehicle.

17. Consumer Protection and Enforcement Division (CPED) is authorized to conduct an analysis of the appropriate measure of community wheelchair accessible vehicle (WAV) demand, with potential support from the independent entity authorized in Decision 21-03-005. The analysis of community WAV demand may include, but is not limited to, consideration of data collected by the U.S. Census Bureau's American Community Survey, a survey of WAV users, and/or consultation with disability rights organizations. The resulting analysis shall be included in the 2024 Legislative Report.

18. All requirements adopted in this decision are effective immediately unless otherwise stated.

19. Rulemaking 19-02-012 remains open.

This order is effective today.

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

MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE HOUCK
Commissioners

Commissioner Marybel Batjer, being necessarily absent, did not participate.