Decision 22-06-053 June 23, 2022

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

ORDER DENYING REHEARING OF DECISION 21-11-004

I. INTRODUCTION

On December 8, 2021, Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology (collectively, Disability Advocates) filed a timely application for rehearing of Decision (D.) 21-11-004 (Decision). The Decision was a result of Track 4 of this ongoing proceeding. In the Decision, we modified previously adopted rules for the implementation of Senate Bill (SB) 1376, the "TNC Access for All Act." Specifically, we adopted modifications to the Offset Time Standard, Exemption Time Standard, and Trip Completion Standard.

In their application for rehearing, Disability Advocates assert that the Decision's setting of the Transportation Network Companies (TNC) Exemption Requirements, Exemption Time Standard, and Trip Completion Standard is inconsistent with section 5440.5 subdivision (a)(1)(G)[1] (setting forth the grounds for exemption). In particular, Disability Advocates argue that the Commission incorrectly interpreted the statutory exemption standard in a prior decision, thereby misapplying the TNC Access for All Act.

[1] All statutory references are to the Public Utilities Code unless otherwise noted.

We have carefully considered all the arguments presented by rehearing applicants and are of the opinion that rehearing of the Decision is not warranted, as explained below. Disability Advocates' application for rehearing of the Decision, therefore, is denied.

II. DISCUSSION

SB 1376, codified as section 5440.5, requires TNCs to provide services accessible to persons with disabilities, with a primary focus on wheelchair users who require a wheelchair accessible vehicle (WAV). Section 5440.5 subdivision (a)(1)(B) requires TNCs to pay a minimum surcharge of $0.05 for each TNC trip completed in certain geographic areas using the TNC's online application (app) or platform. The surcharge collected (by the TNCs from the customers) is deposited in the TNC Access for All Fund (Access Fund). A TNC may offset against the amounts due for a particular quarter for any amounts spent by the TNC during that quarter to improve WAV service on its app or platform if the TNC meets certain requirements.[2] Moreover, a TNC may request to be exempt from the surcharge entirely for the next year. To be granted an exemption, the TNC must "at a minimum, [] 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."[3] A TNC may fulfill the offset or exemption requirements "by facilitating WAV service through its online-enabled application or platform, by directly providing WAV service with vehicles that it owns, or by a contract to provide WAV service with a transportation provider, or by any combination of these methods."[4]

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[2] The TNC must "at a minimum, [] demonstrate, in the geographic area, the presence and availability of drivers with WAVs on its online-enabled application or platform, improved level of service, including reasonable response times, due to those investments for WAV service compared to the previous quarter, efforts undertaken to publicize and promote available WAV services to disability communities, and a full accounting of funds expended." Pub. Util. Code, § 5440.5, subd. (a)(1)(B)(ii). See also D.20-03-007 and D.21-03-005.

[3] Pub. Util. Code, § 5440.5, subd. (a)(1)(G).

[4] *Ibid.*

The central issue raised by Disability Advocates is how to calculate the response time necessary to fulfill the exemption requirement. That is, should there be a floor based on the response times for 80 percent of *WAV trips requested*[,] via the TNC's online-enabled application or platform" or should the value be the "response times for 80 percent of *WAV trips[,] requested* via the TNC's online-enabled application or platform…."[5] Disability Advocates urge for the former interpretation, meaning that the relevant metric would be WAV trips requested, even if not completed.[6] We concluded, citing the standard we adopted in the Track 2 Decision, that the requirement is based on "80 percent of [TNC's] *completed* WAV trip response times…" because, as discussed below, the term "response time" applies only to completed trips.[7] But, according to Disability Advocates, this interpretation results in a less stringent minimum requirement that is contrary to the intent of the TNC Access for All Act.[8]

Disability Advocates' application for rehearing fails to show error for two reasons. The first is that the Disability Advocates' challenge to our interpretation of section 5440.5 subdivision (a)(1)(G) comes too late since this issue was decided in the Track 2 Decision. That decision is now final and conclusive pursuant to section 1709. The second is that although there may be some ambiguity in the language of section 5440.5 subdivision (a)(1)(G), our interpretation in the Decision (and the Track 2 Decision) of the minimum requirement is reasonable.

A. Timeliness.

Disability Advocates argue that we erred in the Track 2 Decision by not establishing "a response time standard for 80% of WAV trips *requested*, but rather set[ting] a response time standard for 80% of WAV trips *completed.*"[9] Disability Advocates assert that the Track 2 Scoping Memo should have "asked parties to address

[5] Pub. Util. Code, § 5440.5, subd. (a)(1)(G) (emphasis added).

[6] Disability Advocates App. Rehg., p. 7.

[7] Decision, p. 32.

[8] Disability Advocates App. Rehg., pp. 7-8.

[9] *Id*. at p. 2.

whether or not the Commission was bound by the statutory requirement of 'response times for 80 percent of WAV trips *requested*.'"[10] Disability Advocates fault the Track 2 Decision for not "attempt[ing] to justify in any way the issue of why the Commission decided to depart from the clear legal standard."[11] The Track 2 Decision "was only the first step in the creation of an exemption program," according to Disability Advocates.[12] They then argue the Commission utilized that reasoning in the Decision and "did not alter its analysis of the Exemption Standard's compliance with the statute or offer further explanation."[13] Because the new Exemption Standard was adopted in the Decision, Disability Advocates argue that their assertion of error now is not precluded.[14]

The Track 2 Decision created the initial exemption process outlined in section 5440.5 subdivision (a)(1)(G).[15] First, we adopted "the 80 percent threshold" as "a reasonably high standard that aligns with SB 1376's express intent."[16] Second, we adopted CPED's proposal for Level 1 and Level 2 response times as "clear, appropriate benchmarks that account for standard TNC trip response time…."[17] Third, we applied "the Level 2 WAV response times for exemption eligibility…."[18] This means that to be eligible for exemption from the WAV surcharge in San Francisco County, for example, 80 percent of WAV trips must have a response time of 16 minutes or less.[19] Fourth, we required a TNC to demonstrate its eligibility for four consecutive quarters. Thus, to qualify for a WAV surcharge exemption, a TNC "must demonstrate that: (a) 80 percent of its *completed WAV trip response times* achieve the corresponding Level 2 WAV

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[10] *Id.* at p. 3.

[11] *Ibid*.

[12] *Ibid*.

[13] *Id.* at p. 5.

[14] *Id.* at p. 6.

[15] D.20-03-007, pp. 44-50.

[16] *Id.* at p. 44.

[17] *Id.* at p. 45. See Exemption Time Standard by county for each level on pp. 45-46.

[18] *Id.* at p. 46.

[19] *Id.* at pp. 45-46.

response time, for a quarter in a geographic area, and (b) the TNC achieved the requisite response times for four consecutive quarters."[20]

We noted in the Track 2 Decision that Disability Advocates believed the 80 percent requirement for Level 2 WAV response times for exemptions was too low, and Level 1 WAV response times standard should have been adopted instead.[21] However, we also explained that we could adjust the Exemption Time Standard if it became "apparent that the Exemption Time Standards are not sufficiently high."[22] Disability Advocates did not file an application for rehearing of the Track 2 Decision.

We again addressed Disability Advocates' argument that the Track 2 Decision misinterpreted section 5440.5 subdivision (a)(1)(G) in the Decision. We explained that based on the adopted definition of response time ("the time elapsed between when a WAV ride was requested and when the vehicle arrived"[23]), "a TNC vehicle must have arrived at a waiting passenger."[24] As a result, the 80 percent minimum threshold applies a "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."[25] We thus concluded that "[t]he cited provision of § 5440.5(a)(1)(G) was correctly applied to completed WAV trips in D.20-03-007."[26]

Disability Advocates acknowledge that they "did not note the legal error in the Track 2 Exemption Standard at the time it was issued."[27] This failure is irrelevant, according to Disability Advocates, because the Track 2 Decision was "illegal", and we may not rely on an "illegal" standard to propound further standards.[28] Other parties who

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[20] *Id.* at p. 47 (emphasis added). This is the Exemption Time Standard.

[21] *Id.* at p. 78.

[22] *Ibid*.

[23] *Id*. at p. 81, Conclusions of Law 3.

[24] *Id.* at p. 31.

[25] *Ibid*.

[26] *Id.* at p. 32.

[27] Disability Advocates App. Rehg., p. 11.

[28] *Ibid*.

support Disability Advocates' application for rehearing similarly assert that the exemption standard issues were not finalized until Track 4, therefore the application for rehearing challenge is timely.[29]

However, under section 1709, the definition of "response time" and formulation of the Exemption Time Standard in the Track 2 Decision is dispositive.[30] Once a Commission decision has issued, that decision must be challenged within 30 days.[31] If a decision is not timely challenged, a court has no jurisdiction to hear a cause of action arising out of that decision.[32] Further, once a Commission determination has become final, that determination is "conclusive" in subsequent proceedings.[33]

As discussed above, we adopted the Exemption Time Standard in the Track 2 Decision based on "completed WAV trip response times" and defined "response time" as "the time elapsed between when a WAV ride was requested and when the vehicle arrived."[34] We did not reconsider these issues in the Decision. To the contrary, we cited our prior holding and explained why Disability Advocates' objections to the unchallenged "exemption standard [that] has been in effect since March 2020" were

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[29] R.19-02-012, *Response of the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology's Application for Rehearing of Track 4 Decision* (Dec. 22, 2021), pp. 3-5; R.19-02-012, *Response of the Metropolitan Transportation Commission on Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology's Application for Rehearing of Track 4 Decision* (Dec. 23, 2021), pp. 4-5.

[30] Pub. Util. Code, § 1709 ("In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.").

[31] Pub. Util. Code, § 1731, subd. (b)(1).

[32] *Marin Municipal Water Dist. v. North Coast Water Co.* (1918) 178 Cal. 324, 328 (*Marin*).

[33] Pub. Util. Code, § 1709. This Commission's "decisions and orders ordinarily become final and conclusive if not attacked in the manner and within the time provided by law." (*Sale v. Railroad Com.* (1940) 15 Cal.2d 612, 616.)

[34] D.20-03-007, p. 81, Conclusions of Law 3.

improper.[35] We then re-applied the Track 2 Decision's holding to the Exemption Standard framework.[36]

To properly challenge our holding in the Track 2 Decision setting out applicability of section 5440.5 subdivision (a)(1)(G) to "completed WAV trip response times," parties were required to have filed an application for rehearing of the Track 2 Decision by April 20, 2020—30 days after the Track 2 Decision issued.[37] The "failure to apply for an application for rehearing, or, in the event of its denial, for a review by the supreme court, must necessarily, therefore, operate as a waiver of any objection, except, perhaps, the one that the order of the commission is absolutely void on its face."[38] Parties may not avoid the effect of this statutory bar by filing this application for rehearing challenging the Track 2 Decision.[39] Because the Track 2 Decision has become final, its findings are conclusive in subsequent tracks of this proceeding (unless we explicitly hold otherwise). No legal error results when a subsequent decision in the same proceeding, involving the same parties, applies the previous holding. Disability Advocates' argument that the Track 2 Decision is "illegal" and therefore needs to, or can, be reconsidered in Track 4 is erroneous for the reasons discussed below. Disability Advocates' attempt to relitigate issues decided in D.20-03-007 therefore constitutes an impermissible collateral attack on a final Commission decision.[40]

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[35] *Id.* at p. 51.

[36] *Id*. at pp. 51-52; p. 61, Ordering Paragraph 10.

[37] Pub. Util. Code, § 1731, subd. (b)(1).

[38] *Marin, supra*, 178 Cal. at p. 328.

[39] Cf., *Northern Cal. Assn. to Preserve Bodega Head v. Public Utilities Com.* (1964) 61 Cal.2d 126, 135.

[40] Pub. Util. Code, § 1709; see also *Order Modifying D.14-02-016 and Denying Rehearing of the Decision, as Modified*, D.14-06-053, pp. 13-15 (citing *Camp Meeker Water System, Inc. v. Public Utilities Com.* (1990) 51 Cal.3d 845, 852, fn. 3 [finding that Public Utilities Code section 1709 barred parties' attempts to relitigate the findings of a study relied upon in a prior, final Commission decision to show a procurement need].)

B. Merits.

Our holding in the Track 2 Decision is not "illegal," as suggested by Disability Advocates. They assert that section 5440.5 subdivision (a)(1)(G) requires the minimum exemption standard to apply to "80 percent of WAV trips *requested*[,]" as opposed to "completed" as held by both the Decision and the Track 2 Decision.[41] Disability Advocates argue that our interpretation of section 5440.5 subdivision (a)(1)(G) in the Track 2 Decision "is directly contrary to the express language of Section 5440.5(a)(1)(G), which could not be clearer that the 80 percent requirement applies to *requested* WAV trips, not completed ones."[42] Multiple parties agree with Disability Advocates' reading of section 5440.5 subivision (a)(1)(G).[43] Uber supports the Decision's interpretation and asserts that "[a]t best for the Disability Advocates' argument, the relevant language is unclear," and therefore subject to our discretion.[44] Uber is correct.

> Section 5440.5 subdivision (a)(1)(G) reads in full:
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> The commission shall require each transportation network company to be accessible to persons with disabilities in order to be exempt from paying the charge required pursuant to

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[41] Disability Advocates Rehg. App., pp. 6-7.

[42] *Id.* at p. 9.

[43] See *Response of the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology's Application for Rehearing of Track 4 Decision* (Dec. 22, 2021), pp. 1-3; *Response of the Metropolitan Transportation Commission on Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology's Application for Rehearing of Track 4 Decision* (Dec. 23, 2021), pp. 3-4; *Response of the San Francisco Taxi Workers Alliance (SFTWA) to Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology's Application for Rehearing of Track 4 Decision* (Dec. 23, 2021), p. 2; *Response of Marin Transit on Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology's Application for Rehearing of Track 4 Decision* (Dec. 21, 2021), p. 3; *Response [of Los Angeles County Metropolitan Transportation Authority] to Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology's Application for Rehearing of Track 4 Decision* (Dec. 23, 2021), p. 3.

[44] R.19-02-012, *Uber Technologies, Inc. Response to Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology's Application for Rehearing of Track 4 Decision*, (Dec. 22, 2021), p. 1.

> subparagraph (B). The commission shall adopt a designated level of WAV service that is required to be met in each geographic area via a TNC's online-enabled application or platform in order for the TNC to be exempt from paying the fee required pursuant to subparagraph (B) for the next year in that geographic area. **As part of the designated level of WAV service for each geographic area, the commission shall require a TNC, at a minimum, to have response times for 80 percent of WAV trips requested via the TNC's online-enabled application or platform within a time established by the commission for that geographic area.** If a TNC meets the WAV service level requirement established pursuant to this subparagraph in a geographic area selected pursuant to subparagraph (D) for a particular year, the TNC is exempt from paying the fee imposed pursuant to subparagraph (B) for the next year for that geographic area only. A TNC may provide a higher level of service than the minimum service level requirement designated by the commission.[45]

The full text of the relevant portion of section 5440.5 subdivision (a)(1)(G) (emphasized above) does not sustain Disability Advocates' position that "[e]ighty percent of rides requested (not completed) is a floor set by the statute itself" and is therefore a "legislative requirement."[46] Instead, the text demonstrates that the minimum response times for "80 percent of WAV trips" must be within established time limits. The issue presented is whether the "80 percent" requirement applies to "WAV trips *requested*" or to completed WAV trips "*requested* via the TNC's online-enabled application or platform."[47] Because the statutory language is not definitive, it is helpful to consider principles of statutory interpretation.

The fundamental task in interpreting a statute is "to determine the Legislature's intent so as to effectuate the law's purpose."[48] A court first examines "the

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[45] Emphasis added.

[46] Disability Advocates Rehr. App., p. 7.

[47] Pub. Util. Code, § 5440.5, subd. (a)(1)(G).

[48] *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.

statutory language, giving it a plain and commonsense meaning."[49] The language is considered not in insolation, "but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment."[50] If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy."[51]

Section 5440.5 subdivision (a)(1)(G) sets the benchmark based on the "response times," defined by section 5440.5 subdivision (a)(1)(I)(iii) as "the time between when a WAV ride was requested and when the vehicle arrived."[52] Notably, the response time is not measured as of the passenger's initial trip request because there may be "subsequent cancellations … by passenger or driver, or … due to passenger no-show…."[53] Thus, in the Track 2 Decision, we interpreted the 80 percent requirement to apply to a "completed WAV trip,"[54] which is "a WAV trip request that results in a passenger being dropped-off at the requested location."[55] As we explained in the Decision, this is because in order to have a "'response time,' under the adopted definition, the WAV trip must be completed."[56] In other words, section 5440.5 subdivision (a)(1)(G) applies to situations where a passenger requests a WAV ride and the vehicle accepts the request, arrives, and completes the trip. If the vehicle does not accept the request and/or does not arrive, the trip cannot be completed and the "response

[49] *Ibid*.
[50] *Ibid*.
[51] *Ibid*.
[52] D.20-03-007, p. 20.
[53] *Ibid.*
[54] *Id. at* p. 47.
[55] *Id.* at p. 20.
[56] *Id.* at p. 31.

time" is not recorded. Thus, the relevant consideration is whether a "response time" can accurately be recorded to be considered against the benchmark.

The interpretation propounded by Disability Advocates focuses not on the feasibility of recording a "response time" but on the initiation of the trip, that is, the "WAV trip requested," disregarding the remaining part of the sentence ("via the TNC's online-enabled application or platform within a time established by the commission for that geographic area"). But this interpretation could result in a situation where a passenger submits a WAV trip request and cancels the request (or the request could be canceled by the driver, or the passenger does not show up) but the response time from the time of the request to the vehicle arriving would still need to be recorded and considered. There would be no "response time," however, since there would be no arrival (or the driver would arrive but not commence the trip because the passenger would not be present).

Disability Advocates acknowledge this conundrum but do not substantively address this scenario.[57] Instead, they argue that the definition of "response time" is irrelevant because it "does not bring the Track 4 Exemption Standard into compliance with the law" and it cannot "change the fact that the TNC Access for All Act does not allow the Commission to disregard ride requests that receive no response in its implementation of Section 5440.5(a)(1)(G)."[58] Disability Advocates assert that the correct way to calculate compliance with the statute is to divide "(*a*) the total number of WAV trips requested by (*b*) the total number of WAV trips that have a response time within a time established by the Commission. That is, *a* divided by *b* produces the percentage, which must be 80% or greater."[59] For this calculation, "[a] ride that is requested but not completed must be included in *a*, the denominator, because it has been

[57] Disability Advocates Rehg. App., p. 10 ("in fact, by the Commission's own definition of 'response time,' it has no response time at all").

[58] *Id.* at p. 9.

[59] *Id.* at p. 10. It appears that Disability Advocates reversed the numerator and denominator in its subsequent discussion.

requested via the TNC's online-enabled application or platform. And a ride that is requested but not completed must be excluded from *b,* the numerator, because it does not have a response time within a time established by the Commission…."[60] Disability Advocates assert that our legal error is "to exclude rides that are requested but not completed from the equation entirely, when the statute provides that they must be included in the denominator."[61]

But the outlined reasoning does not support Disability Advocates' theory. Foremost, the statutory language does not mandate that uncompleted trips must somehow be included in the benchmark. Second, uncompleted trips are accounted for in the Offset Time Standard and the Trip Completion Standard.[62] Third, Disability Advocates' proposed formula would not result in the benchmark required by the statute. For example, consider a situation where 100 rides were requested, but 20 were cancelled by the driver or passenger (and thereby there is no response time/not completed). For the remaining 80 rides, the vehicle arrived, and the rides were completed. Under Disability Advocates' proposed reasoning, 80 divided by 100 equals .8 (i.e., 80%). But this number only accounts for the percentage of rides that were completed out of all the rides requested[63] and does not address how many rides comply with the *response time* requirement. This is because rides that are requested but where the vehicle does not arrive, and therefore the ride is not completed, do not have a recorded response time (as acknowledged by Disability Advocates). To calculate how many rides must comply with the response time requirement, it is necessary to take all WAV rides *that have a recorded response time* and multiply by 0.8. This will result in the 80th percentile threshold (i.e., out of 100 rides with a recorded response time, 80 must be within the Commission guidelines).

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[60] *Ibid*.

[61] *Ibid*.

[62] Decision, p. 14.

[63] And is better assessed by the Trip Completion Standard. (See Decision, pp. 19-26.)

Disability Advocates argue that the Decision's standard is "illegal" based on their reading of section 5440.5 subdivision (a)(1)(G) that combines "WAV trips" with "requested."[64] But that interpretation is not supported by the plain language of the statute or the surrounding statutory language. Section 5440.5 subdivision (a)(1)(H) provides that a TNC may meet the requirements for the surcharge and offset "[1] by facilitating WAV service through its online-enabled application or platform, [2] by directly providing WAV service with vehicles that it owns, or [3] by a contract to provide WAV service with a transportation provider, or by any combination of these methods." Thus, there are three WAV service options that could comply with the TNC Access for All Act. Section 5440.5 subdivision (a)(1)(G) therefore appears to single out a method of WAV service eligible for the surcharge exemption: "…WAV trips *requested via the TNC's online-enabled application or platform*…."[65]

For its part, section 5440.5 subdivision (a)(1)(B)(i) levies the surcharge on "each TNC trip *completed* using the transportation network company's online-enabled application or platform,"[66] as opposed to on any trip request. Section 5440.5 subdivision (a)(1)(B)(ii), governing surcharge offsets, requires a showing of an "improved level of service, including reasonable response times," (among other conditions) calculated based on "the number of *completed* trips in a geographic area."[67] The response time standards for offsets and exemption eligibility are the same, and we have previously held that the former "align[s] with SB 1376's express intent…."[68] Moreover, section 5440.5 subdivision (a)(1)(I) specifically requires TNCs that qualify for an offset to report the number of WAV rides requested and the numbers of WAV rides fulfilled. This requirement—differentiating between rides requested and rides completed—suggests that

[64] *Ibid*.

[65] Pub. Util. Code, § 5440.5, subd. (a)(1)(G) (emphasis added).

[66] Emphasis added.

[67] Track 2 Decision, p. 9 (emphasis added).

[68] *Id.* at pp. 32-33.

the Legislature recognized that response times may only be recorded when rides are completed.

Taking the foregoing sections together, our reading of section 5440.5 subdivision (a)(1)(G) is reasonable. Section 5440.5 subdivision (a)(1)(G) sets the benchmark based on the "response time" of 80 percent of the WAV rides. Section 5440.5 subdivision (a)(1)(I)(iii) ties the response time to the arrival of the vehicle, as opposed to the initial request for the vehicle, which is recorded in coordination with the destination arrival. Section 5440.5 subdivision (a)(1)(H) provides for various options for WAV service, whereas section 5440.5 subdivision (a)(1)(G) singles out just one. Sections 5440.5 subdivisions (a)(1)(B) and (I) provide supporting context in the offset criteria. Section 5440.5 subdivision (a)(1)(I) specifically differentiates between requested rides and completed rides. Therefore, interpreting section 5440.5 subdivision (a)(1)(G)'s exemption eligibility to be based on the 80th percentile of WAV rides completed via the TNC's online-enabled application or platform is reasonable.

Moreover, nothing in the statute's purpose, legislative history, or public policy suggests that all WAV ride requests must be considered. Disability Advocates is correct in that the fundamental purpose of SB 1376 is to "ensure access to TNCs for people who use wheelchairs."[69] The Legislature had also acknowledged that providing WAV TNC services is more difficult than standard TNC services and "may take time, and requires robust dialogue, educational outreach, and partnerships to build trust in the new services."[70] As a result, the Legislature required us to "establish yearly benchmarks for TNCs and access providers to meet to ensure WAV users receive continuously improved, reliable, and available service," including benchmarks for response times.[71]

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[69] Disability Advocates Rehg. App., p. 6. See also Pub. Util. Code, § 5440, subd. (j) ("It is the intent of the Legislature that wheelchair users who need WAVs have prompt access to TNC services, and for the commission to facilitate greater adoption of wheelchair accessible vehicles on transportation network companies' online-enabled applications or platforms.").

[70] Pub. Util. Code, § 5440, subd. (i).

[71] Pub. Util. Code, § 5440.5, subd. (a)(1)(J).

But, aside from specifying the minimum requirements and establishing guidelines, the Legislature delegated the interpretation of each requirement to our discretion under our broader regulation of TNCs as charter-party carriers.[72] Although in the Track 2 Decision, we interpreted the specific language of the Public Utilities Code, in the Decision, we are interpreting our approach outlined in the Track 2 Decision. Thus, our application of section 5440.5 subdivision (a)(1)(G) in the Decision as interpreted earlier in the Track 2 Decision warrants even greater.

Additionally, we have noted "several challenges" that arise in implementing SB 1376 and balancing various public policy considerations, including implementing an unprecedented program on a large scale, adopting standards with very little existing data, and "encouraging WAV investment and innovation by TNCs, as was intended by the statute."[73] As a result, we have committed to continually reevaluating and updating its requirements as the program develops and further data is acquired.[74] This means that we could adopt more stringent response time standards for exemption eligibility as urged by Disability Advocates, if appropriate in the future.[75] Disability Rights presents various hypothetical scenarios purportedly demonstrating that section 5440.5 subdivision (a)(1)(G) as interpreted by us in the Track 2 Decision does not set a stringent enough benchmark for exemption eligibility.[76] However, because section 5440.5 subdivision (a)(1)(G) first concerns the response times, as discussed above, the most relevant variable in the exemption standard is the response times as set. We may choose to update the response time requirements in the future if doing so is warranted by data or policy.

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[72] Pub. Util. Code, § 5440.5, subd. (a) ("As part of the regulation of transportation network companies (TNCs) referenced in subdivision (a) of Section 5440, the commission shall do all of the following….").

[73] Decision, p. 6, citing Track 2 Decision, p. 18.

[74] Decision, pp. 6-7.

[75] See Disability Rights Rehg. App., pp. 6-8.

[76] *Ibid*.

Disability Advocates objections to the Exemption Standard and the Trip Completion Standard are entirely predicated on the interpretation of section 5440.5 subdivision (a)(1)(G).[77] But, as discussed above, our interpretation is reasonable. Thus, Disability Advocates fails to demonstrate legal error as to either standard.

III. CONCLUSION

For above reasons, we deny rehearing of the Decision.

THEREFORE, IT IS ORDERED that:

1. Rehearing of D.21-11-004 is denied.
2. This proceeding remains open.

The order is effective today.

Dated June 23, 2022, at San Francisco, California

ALICE REYNOLDS
President
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN R.D. REYNOLDS
Commissioners

[77] See generally Disability Rights Rehg. App.