

Decision 24-10-034

October 17, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on
Regulations Relating to Passenger
Carriers, Ridesharing, and New Online-
Enabled Transportation Services.

Rulemaking 12-12-011

**ORDER MODIFYING DECISION 23-12-015 AND
GRANTING LIMITED REHEARING OF THE DECISION**

I. INTRODUCTION

Decision (D.) 13-09-045¹ authorized the operation in California of a new category of transportation charter party carriers called Transportation Network Companies (TNCs). As a condition to operate, D.13-09-045 set forth various requirements that TNCs must comply with, one of which is the obligation to submit verified Annual Reports to the Commission that include information about each trip provided by a TNC driver for the 11 months prior to the Annual Report's due date. D.13-09-045 permitted the TNCs to submit their Annual Reports confidentially to Commission staff. (D.13-09-045 at 33, fn. 42.)

In D.20-03-014, we revisited our earlier confidentiality determination and found that Annual Reports were no longer entitled to a presumption of confidentiality. Instead, D.20-03-014 mandated that going forward any claim for confidential treatment of information required in a TNC's Annual Report must be made by motion and filed 90 days before the deadline for submitting the report to Commission staff. (D.20-03-014 at 37 (Ordering Paragraph (OP) 1 & 2.a.)) D.20-03-014 deferred the question about whether

¹ Unless otherwise noted, citations to Commission decisions are to the official pdf versions, which are available on the Commission's website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

this change should apply to Annual Reports filed between 2014 and 2019 when D.13-09-045's presumption of confidentiality was in effect.

Subsequently, in D.23-12-015 (Decision), we revisited the presumption of confidentiality for the 2014-2019 TNC Annual Reports. The Decision found that the TNC data should no longer be afforded a presumption of confidentiality and instead should be subject to the Commission's typical process of requiring regulated entities, such as the TNCs, to demonstrate confidential treatment is warranted. In doing so, the Decision took measures to protect customer privacy and addressed whether the data was a trade secret. The Decision revised the level of aggregation in the public version of the trip data, allowing the time stamp for the start and end of each trip to be aggregated to the nearest 30-minute interval. This aggregation is intended to reduce the privacy risk to passengers posed by granular data that could be reverse engineered to identify individual riders. Lastly, the Decision concluded that the data was not a protected trade secret.

On January 16, 2024, Lyft, Inc. (Lyft) filed an application for rehearing of the Decision and an accompanying motion for stay. On February 21, 2024, the Commission granted a stay of the Decision at least until the Commission resolves Lyft's application for rehearing. (D.24-02-048.)

In its rehearing application, Lyft alleges that the Decision is in error because it: (1) makes an incorrect conclusion that disclosure of a trade secret does not destroy a property right under the Fifth Amendment; (2) errs in finding that Lyft had no expectation of confidentiality when filing its Annual Reports; (3) mischaracterizes *Carpenter v. U.S.* (2018) 138 S.Ct. 2206 (*Carpenter*); (4) errs in finding that Lyft failed to establish independent economic value of its trip data; (5) misconstrues the requirements of Evidence Code section 1060 to support disclosure of Lyft's trip data; (6) violates Lyft's constitutional right to privacy under the Fourth Amendment; (7) does not protect privacy with time aggregation; (8) does not accurately follow putative expert approaches to data disclosure; (9) rejects expert analysis in an arbitrary and unsupported manner; (10) does not consider each of Lyft's objections raised in proposed decision comments; and (11) improperly requires Lyft to establish confidentiality.

San Francisco Municipal Transportation Agency (SFMTA) and San Francisco County Transportation Authority (SFCTA) jointly filed a response to Lyft's rehearing application on January 31, 2024. The response recommends denial of Lyft's application on the grounds that Lyft is improperly relitigating matters the Commission already considered and rejected.

We have carefully considered all the arguments presented by the rehearing applicant and are of the opinion that certain modifications of the Decision are appropriate, as explained below. In addition, we grant limited rehearing on the issue of whether Lyft's Annual Report trip data has independent economic value. Finally, the stay of the Decision will continue until at least the issuance of a decision on limited rehearing.

II. DISCUSSION

A. Trade Secret Arguments

1. Limited rehearing is granted on the issue of whether Lyft's trip data has independent economic value.

Lyft argues that the Decision errs in holding that Lyft did not meet its burden of establishing that the trip data had independent economic value to qualify as a trade secret. The Decision's holding is based largely on the finding that Lyft's primary evidence, the Declaration of Alix Rosenthal, does not provide the "'necessary factual specificity' to establish the independent economic value" of the trade secret data. (App. Rehg. at 10.) Lyft's argument has merit.

California law defines a trade secret as information that "derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use." (Civ. Code, § 3426.1.) Independent economic value may be established by direct evidence "relating to the content of the secret and its impact on business operations" or circumstantial evidence, including "the amount of resources invested by the plaintiff in the production of the information, the precautions taken by the plaintiff to protect the secrecy of the information ..., and the willingness of others to pay for access to the information."

(*Altavion, Inc. v. Konica Minolta Systems Laboratory Inc.* (2014) 226 Cal.App.4th 26, 62 (*Altavion*), internal quotation and citation omitted.)

In *Yield Dynamics, Inc. v. TEA Systems* (2007) 154 Cal.App.4th 547 (*Yield Dynamics*), the court, citing to the Third Restatement of Unfair Competition, explained a “fact finder is entitled to expect evidence from which it can form some solid sense of *how* useful the information is, e.g., *how much* time, money, or labor it would save, or at least that these savings would be ‘more than trivial.’” (See *Yield Dynamics, supra*, 154 Cal.App.4th at 565, original emphasis.) It is enough for the information to provide an actual or potential “economic advantage over others.” (*Id.* at 564.) Alternatively, simply stating information was “helpful or useful to another person” for that activity or that it “may save someone time” is not sufficient to find independent economic value. (*Id.* at 564-565.)

The Decision relies on *Yield Dynamics* to reject the Rosenthal Declaration evidence as lacking the “factual specificity” to support the claims. (Decision at 65-66.) The Decision’s rejection of the Rosenthal Declaration’s evidence of independent economic value as lacking specificity is not supported by the legal standard. First, the Rosenthal Declaration attests that at least one non-TNC party inquired about purchasing or licensing the company’s trip data. (Rosenthal Decl. at ¶ 13.) Second, the declaration describes how Lyft took significant steps to maintain the secrecy of the trip data. (Rosenthal Decl. at ¶ 14.) Third, Lyft points to record evidence submitted by various entities representing the City and County of San Francisco that details the economic value of the trip data to San Francisco (i.e., San Francisco would have saved substantial staff hours and thousands of dollars if it had the trip data instead of needing an alternative way to investigate the impact of TNC services on the City). (Opening Comments of SFMTA, SFCTA, San Francisco City Attorney, and San Francisco International Airport (collectively, “San Francisco”) to Phase III.C Scoping Memo and Ruling of Assigned Commissioner: Track 3 – TNC Data, filed December 3, 2019, at 10.) Thus, we vacate the Decision’s conclusion that Lyft’s evidence is not sufficient to meet its burden to show independent economic value.

However, on the facts here, there is a further question of whether, even assuming the data once had independent economic value, if that value still exists given that the data is now between five and ten years old. Because the trip data is now several years old, it is possible that any value the data once had has become obsolete or stale such that they “cannot form the basis for a trade secret claim because the information has no economic value.” (*Fox Sports Net North, LLC v. Minn. Twins Partnership* (8th Cir. 2003) 319 F.3d 329, 336; see also *Taylor v. Babbitt* (D.C. Cir. 2011) 760 F.Supp.2d 80, 81 [“Obsolete information that provides no competitive advantage is not commercially valuable and cannot constitute a trade secret”]; *Vendavo, Inc. v. Long* (N.D.Ill. 2019) 397 F.Supp.3d 1115, 1133 [internal information about clients “cannot be protectable as a trade secret forever” where “companies evolve and information becomes stale”].) Trade secrets in highly volatile and fast-moving industries can lose their value quickly. (See e.g., *Microstrategy, Inc. v. Business Objects, S.A.* (E.D.Va. 2009) 661 F.Supp.2d 548, 554 [nine-year-old business document containing a business strategy for products that had not been in market for at least seven years not a trade secret]; *Vendavo, Inc. v. Long* (N.D.Ill. 2019) 397 F.Supp.3d at 1133 [declining to treat three-year-old client data as a protectable trade secret].) Indeed, our rehearing order on Lyft’s 2020 trip data noted that staleness may be an issue even for more recent trip data. (D.23-02-041 at 21.)

In addition, the record evidence is insufficient to determine whether Lyft’s 2014-2019 data has economic value. For example, the Rosenthal Declaration is from 2022, thus leaving questions about whether the non-TNC party interested in Lyft’s data would still be interested. Further, the declaration does not identify the years of data this actor was interested in purchasing. Also, while San Francisco found value in the data in the past, its comments from 2019 state that the results of the *TNCs and Congestion* report “are likely already out of date because this data collection in 2016 was ‘one time only’ due to restrictions imposed by TNC companies.” (San Francisco Opening Comments on Phase III.C Scoping Memo and Ruling (Dec. 3, 2019) at 10.) Thus, the material issue of whether Lyft’s 2014-2019 trip data has independent economic value remains outstanding considering the age of the data, the evolving TNC industry, and evidence in the record.

To address this issue, we reopen the record for a limited rehearing to determine whether Lyft's 2014 to 2019 trip data has independent economic value.

2. The Decision is modified to reflect the treatment of trade secrets under the Fifth Amendment.

The Fifth Amendment of the U.S. Constitution protects several rights, including the protection against the government's ability to take one's property without just compensation. The Decision determines that disclosure of Lyft's Annual Reports would not constitute a taking under the Fifth Amendment of the United States Constitution. (Decision at 28.) Lyft asserts that the Decision's Fifth Amendment analysis errs.

First, Lyft argues that the Decision errs by citing an incorrect legal standard that would limit constitutional takings to situations where there is a "permanent physical invasion" of property. (App. Rehg. at 5-6.) Lyft misses the point. Although the Decision finds that Lyft has failed to establish a Fifth Amendment takings claim because there was "no permanent physical invasion not Lyft's property," as clearly stated in the Decision, the discussion of the physical taking was done for completeness and was not the sole legal standard considered. (See Decision at 26 ["But for completeness's sake, and consistent with how rules are interpreted and applied when clauses are separated by a conjunctive, we will evaluate Lyft's takings argument against all of the criteria set forth, *supra*, in both *Lingle* and in *Penn Central*."].)

Second, Lyft contends that the Decision errs in its regulatory takings analysis by emphasizing that Lyft could still use the data for business purposes, rather than viewing disclosure of the trade secret as the "deprivation" of the property right. (App. Rehg. at 6.) Upon further review of Fifth Amendment case law that specifically addresses trade secrets, we conclude that Lyft's argument has merit. (*Ruckleshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1004, 1011-1012 (*Monsanto*) [holding that trade secret loses its property value once it is publicly disclosed regardless of whether the company can still use the information for its internal purposes and value].) Accordingly,

the Decision is modified to accurately reflect the treatment of trade secrets under the Fifth Amendment as stated in the proposed Ordering Paragraphs below.

Nevertheless, this modification does not change the Decision's conclusion that disclosure of Lyft's Annual Reports would not constitute a taking under the Fifth Amendment. As explained in the section below, Lyft fails to establish that disclosure of its Annual Report trip data constitutes a regulatory taking in violation of the Fifth Amendment because the company did not have a reasonable expectation of confidentiality.

3. The Decision correctly finds that Lyft had no expectation of confidentiality.

Lyft relies on footnote 42 from D.13-09-045 to challenge the Decision's finding that the company had no investment-backed expectations of confidentiality. (App. Reh'g. at 7.) Footnote 42 states: "[f]or the requested reporting requirements, TNCs shall file these reports confidentially unless in Phase II of this decision we require public reporting from [Transportation Charter Party (TCP)] companies as well." Lyft argues that in this footnote the Commission "stated clearly and unequivocally that reports would be confidential" and that this was an "express promise upon which TNCs relied" in their submissions. (*Id.* at 7.) Lyft argues that prior letters from Legal Division rejecting California Public Records Act (CPRA) requests due to this footnote support its read of D.13-09-045. (*Id.* at 7, fn. 11.) Lyft further claims that the California Uniform Trade Secrets Act refutes the Decision's statement that there is no controlling state or federal law "holding that the trip data at issue is inherently private or that the creation of same invests it with some sense of privacy." (*Id.* at 7-8.) Lyft relies on *Monsanto* to bolster its claims.

In *Monsanto*, the U.S. Supreme Court considered a takings claim regarding trade secret data submitted to the U.S. Environmental Protection Agency (EPA). (*Monsanto, supra*, 467 U.S. 986.) The pesticide manufacturer Monsanto applied to the EPA for a license under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) during a time when the rules over confidential treatment of data submissions changed significantly. Monsanto challenged revisions to this law that would permit disclosure of

its trade secret data, arguing that such disclosure would constitute a taking under the Fifth Amendment and that it was entitled to just compensation. The Court held that trade secrets were property that was entitled to protection under the Fifth Amendment but that the right to compensation only applied when there was a “reasonable investment-backed expectation” of confidentiality. (*Id.* at 1009.) The Court found that only a portion of the data was entitled to this protection based on whether it was submitted during certain periods when there was an express commitment to protect the trade secrets. (*Id.* at 1013.) EPA disclosure of data submitted during other time periods, however, would not constitute a taking because there was no express statutory guarantee to this effect. (*Ibid.*)

Lyft’s reliance on *Monsanto* fails for two reasons: (1) footnote 42 is not reasonably read as an express guarantee that the 2014-2019 data would be treated confidentially in perpetuity, and (2) Lyft misunderstands *Monsanto*. Lyft’s argument misses a critical step in establishing the factual record that its data submissions can be analogized to those in *Monsanto*. The Annual Reports requirements first arose in D.13-09-045. As a condition to operate as a TNC, entities were required to follow certain requirements, including the submission of an Annual Report with information about each trip provided by all TNC drivers in the prior year. D.13-09-045 permitted TNCs to submit these reports confidentially, specifically providing: “[f]or the requested reporting requirements, TNCs shall file these reports confidentially unless in Phase II of this decision we require public reporting from TCP companies as well.” (D.13-09-045 at 33, fn. 42.) Seven years later, the Commission reversed the confidentiality determination in D.20-03-014, holding that Annual Reports were no longer entitled to a presumption of confidentiality.

The earlier presumption of confidentiality is not the equivalent of a federal law mandating that a government agency maintain confidentiality of material designated as “trade secret or commercial or financial information” as in *Monsanto*. (*Monsanto*, *supra*, 467 U.S. at 992.) It was a statement of Commission policy at the time the decision issued that the TNCs would not have to justify the confidential treatment of the reports *upfront* – not a commitment to treat the data as confidential in perpetuity.

Based on the above, Lyft fails to identify legal error. Thus, we deny rehearing on this point.

4. The Decision correctly finds that nondisclosure of the trip data would work an injustice.

The Decision applied the Evidence Code section 1060 balancing test for disclosure of alleged trade secrets set forth in *Bridgestone/Firestone, Inc. v. Superior Court* (1992) 7 Cal.App.4th 1384 (*Bridgestone/Firestone*) and held that concealing the “alleged trade secret protected trip data would work an injustice” because of the strong public interest in accessing the trip data. (Decision at 73.) Lyft argues that the Decision errs in finding that injustice would result if the trip data is not disclosed. Specifically, Lyft contends that the Commission did not adhere to the *Bridgestone/Firestone* balancing test because it relied on the local transportation agency’s heightened public interest in disclosure of the data to assist in transportation planning. Lyft asserts that “the public interest in disclosure” must “contribute significantly to public understanding of government activities.” (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008 (*San Jose*)). Lyft also cites *Los Angeles Unified School Dist. v. Superior Court* (2014) 228 Cal.App.4th 222 (*LAUSD*) for this proposition that the only relevant public interest is the extent to which the information would shed light on an agency’s performance of its statutory duties or otherwise let citizens know what their government is up to. (*Id.* at 228.) Lyft’s attempt to paint the Decision’s order to disclose trip data as improper under Evidence Code section 1060 and *Bridgestone/Firestone* is unavailing.

A party asserting a trade secret privilege under Evidence Code section 1060 in court has the burden of proving all elements of the code, which are:

If he or his agent (sic) or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. (Evid. Code § 1060.)

The court in *Bridgestone/Firestone* established the following test for court litigants under Evidence Code section 1060:

We therefore hold that the party claiming the privilege has the burden of establishing its existence. ... Thereafter, the party seeking discovery must make a prima facie, particularized showing that the information sought is relevant and necessary to the proof of, or defense against, a material element of one or more causes of action presented in the case, and that it is reasonable to conclude that the information sought is essential to a fair resolution of the lawsuit. It is then up to the holder of the privilege to demonstrate any claimed disadvantages of a protective order. Either party may propose or oppose less intrusive alternatives to disclosure of the trade secret, but the burden is upon the trade secret claimant to demonstrate that an alternative to disclosure will not be unduly burdensome to the opposing side and that it will maintain the same fair balance in the litigation that would have been achieved by disclosure.

(*Bridgestone/Firestone*, *supra*, 7 Cal.App.4th at 1393.)

Lyft's cited cases are not relevant to the issue of trade secret disclosure under the *Bridgestone/Firestone* test. Both *LAUSD* and *San Jose* involved privacy, specifically whether to disclose information about individuals in sensitive situations. *LAUSD* involved records identifying individual teachers and their students' test score data. *San Jose* involved the identities of individuals who made noise complaints about a local airport. Neither involved trade secret disclosure under the CPRA and are thus inapplicable here.²

Even assuming for sake of argument that these cases were relevant to the disclosure of trade secrets, Lyft's argument fails. Our broad authority to regulate TNCs, which are a subset of charter-party carriers, including regulation of safety protocols, insurance, and background checks, is well settled. This regulatory authority is rooted in the California Constitution (Cal. Const, art. XII, § 4) and was later codified in the Public Utilities Code. By statute, we "may supervise and regulate every charter-party carrier of passengers in the State and may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." (Pub. Util. Code, § 5381.)

² We note that Lyft's argument suffers other flaws. We have already explained that the *Bridgestone/Firestone* test does not necessarily apply to our proceedings and does not apply in the CPRA context. (D.23-02-041 at 24-25.)

In 2013, we established TNC annual reporting requirements. (D.13-09-045; Pub. Util. Code, § 5440.) These reports contain information about various aspect of TNC operations and services to allow Commission staff to evaluate TNC performance, and to guide enforcement and regulatory oversight. This is the raw data that the Commission uses to regulate the TNCs. By its very nature, it sheds light on the Commission’s process of regulating the TNCs and helps the public know what the “government is up to,” and easily satisfies the disclosure standard cited by Lyft in *LAUSD* and *San Jose*. (*LAUSD*, *supra*, 228 Cal.App.4th at 241.) Indeed, the Decision outlines several ways in which the annual reports benefit the public’s understanding of government functions, including the safety of TNC operations, whether TNCs operate in a nondiscriminatory manner and are accessible to people with disabilities, and the impact of TNCs on traffic congestion, infrastructure and air pollution. (Decision at 85-91.)³

Furthermore, Lyft ignores that the purpose for a CPRA request does not determine whether the information should be released. (Gov. Code § 7921.300; see *San Jose*, *supra*, 74 Cal.App.4th at 1018 [“The purpose of the requesting party in seeking disclosure cannot be considered”].) In other words, Lyft’s attempt to elevate the Decision’s reference to how the information might be used by persons or entities other than the Commission does not change that the information reveals the Commission’s business. Lyft focuses on the Decision’s references to the party comments establishing the heightened public interest by other agencies, such as San Francisco, while glossing over the fundamental public interest in these records. Instead, the local agencies are one party articulating the broader point that there is public interest in understanding what is

³ The CPRA declares that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state,” a principle that became part of the California Constitution. (Gov. Code, § 7921.000; Cal. Const., art. I, § 3, subd. (b)(1).) Further, the CPRA was enacted “to give the public access to information in possession of public agencies in furtherance of the notion that government should be accountable for its actions and, in order to verify accountability, individuals must have access to government files. [Citation.]” (*Gilbert v. City of San Jose* (2003) 114 Cal.App.4th 606, 610.) To these ends, the CPRA is “broadly construed if it furthers the people’s right to access, and narrowly construed if it limits the right of access.” (Cal. Const., art. I, § 3, subd. (b)(2).)

going on with the Commission's TNC regulation. That other factors are referenced in the discussion of party comments in support of the Decision does not take away this fundamental attribute of the trip report data.

Lyft also cites several cases outside of the CPRA context for the principle that piercing trade secret privilege requires more than showing that the data is useful or helpful. This misrepresents the nature of the public interest in disclosure, which involves evaluation of public safety, discrimination, accessibility, critical transportation planning, and air quality impacts. (See Decision at 20-22; see also D.23-02-041 at 34 [noting that the public's interest in TNC annual report data may also shed light on "driver fatigue, obstructing access to public parks and streets, and equal access to TNC services"].)

Finally, Lyft is incorrect that a subpoena is the only appropriate means for local government agencies to obtain the type of data contained in the Annual Reports. While administrative searches are subject to Fourth Amendment protections, Lyft overlooks that the Decision does not rely solely on the public's interest in the trip data for investigatory purposes. (See, e.g., *Patel v. City of Los Angeles* (9th Cir. 2013) 738 F.3d 1058, 1064 [reasonableness tests for warrantless administrative searches].) The Decision explains that the public's interest in the data includes environmental and infrastructure benefits, public safety, and investigation purposes. (Decision at 72-76, 116-117.) In fact, several of the reasons stated in *City and County of San Francisco v. Uber Technologies, Inc.* (2019) 36 Cal.App.5th 66 (*Uber Technologies*) to support San Francisco's investigation touch upon public interests that are relevant to the matter at hand beyond violations of the law (e.g., driver fatigue, obstructing access to public parks and streets, and equal access to TNC services). (*Uber Technologies, supra*, 36 Cal.App.5th at 74-75; see *Lyft, Inc., et al., v. City of Seattle* (2018) 190 Wash.2d 769, 793 [TNC records arguably involve matters of public interest, including traffic and infrastructure concerns and discriminatory redlining].) Lyft fails to cite authority for the proposition that there is a Fourth Amendment concern simply because one public interest in the trip data among many may be for investigatory purposes.

B. Privacy Arguments

1. The Decision accurately describes the *Carpenter v. U.S.* (2018) 138 S.Ct. 2206.

The Decision concludes that the trip data at issue is subject to disclosure under the CPRA. (Decision at 44.) As part of its analysis, the Decision distinguishes *Carpenter v. U.S.* (2018) 138 S.Ct. 2206 (*Carpenter*), a case involving Fourth Amendment protections for cell phone data, from the issues here. The Fourth Amendment of the U.S. Constitution protects against unreasonable searches and seizures by the government. Lyft, which relies on this case to argue disclosure of the data has significant privacy implications, contends that the Decision mischaracterizes *Carpenter*. (App. Rehg. at 8-9.)

As an initial matter, the statement that Lyft challenges contains a typographical error. The passage, which refers to Uber Technologies, Inc.’s (Uber’s) arguments against disclosure on privacy grounds, states:

Uber cites *Carpenter v. United States*, *supra*, and *United States v. Jones*, *supra*. But as we have noted above, both decisions deal with GPS monitoring which is more precise and pervasive than the trip data at issue since GPS monitoring can provide a time stamp display of a subject’s every movement. In contrast, the trip data at issue does not provide the same type of information with such locational specificity.

Carpenter concerns cell site location information (CSLI) not GPS data. *United States v. Jones* concerns GPS data. We modify the Decision to correct this typo, as stated in the Ordering Paragraphs below.

Lyft objects to the Decision’s emphasis on the annual collection of trip data compared to the real time collection in *Carpenter*. (App. Rehg. at 9.) Lyft contends that the Fourth Amendment protections do not depend on time of collection and that “historical repositories” still pose a privacy risk. (*Ibid.*) Lyft’s arguments that the Decision improperly distinguished *Carpenter* fail to consider a critical factual difference between that case and the trip data in this case. In *Carpenter*, the CSLI data was directly linked to an individual cell phone owner’s name and number. The court noted that individuals “compulsively carry cell phones with them all the time ...[,] faithfully follow[ing] its owner beyond public thoroughfares and into private residences, doctor’s

offices, political headquarters, and other potentially revealing locales.” (*Carpenter, supra*, 138 S.Ct. at 2218.) Therefore, the Court held that this collection was a search under the Fourth Amendment and that the government was required to secure a warrant before conducting such a search. (*Id.* at 2221.)

Unlike in *Carpenter*, Lyft’s trip data does not include individuals’ names and Lyft failed to show that the trip data subject to disclosure could be used to deduce an individual’s movements with precision within a census tract. Relatedly, the burden of proof is on Lyft, and the Commission is not required to infer an invasion of privacy where Lyft has not demonstrated beyond mere conjecture that one exists, and where the Decision permits redaction of information likely to infringe on driver and passenger privacy interests. (See Decision at 53.) Further, census tract data does not provide the precise locational information noted in *Carpenter*, where CSLI could pinpoint a phone’s location within 50 meters.

Lyft’s contention that it is improper to distinguish *Carpenter* because that case involved continual surveillance over 127 days versus an annual filing is also meritless. *Carpenter*’s holding clarifies that under the Fourth Amendment, a warrant is required to conduct an invasive, four-month long search of a specific phone record in support of a criminal proceeding. The facts here are different. The Annual Report trip data is not gathered to support a criminal prosecution; therefore, the Fourth Amendment does not apply. Rather, the disclosure of Annual Report data, like all data collected as part of the Commission’s oversight of the TNC industry, is governed by the California Public Records Act.

2. Disclosure of trip data does not implicate the Fourth Amendment.

Lyft argues that public disclosure of the trip data would violate its Fourth Amendment rights. (App. Reh’g. at 20.) Lyft is wrong. Lyft’s argument conflates cautionary language guarding against searches and seizures protected by the Fourth Amendment with the regulatory compliance filings at issue here. As noted in the rehearing order addressing Lyft’s 2020 trip data, the Amendment’s protections against

unreasonable searches do not extend to public disclosure of records collected therefrom. (D.23-02-041 at 32-33; see, e.g., *Airbnb, Inc. v. City of New York* (S.D.N.Y. 2019) 373 F.Supp.3d 467, 499-500 [discussing and analyzing separately plaintiff's claims of Fourth Amendment violations and the risk of public dissemination of the information collected by the City]); see also *Patel, supra*, 738 F.3d 1058 [addressing whether the company had a reasonable expectation of privacy in the records and whether the government's warrantless search of those records was reasonable], *Airbnb, Inc. v. City of Boston* (D. Mass. 2019) 386 F.Supp.3d 113 [same].) Indeed, as the Decision recognizes, other laws, not the Fourth Amendment, govern whether the public release of a regulated entity's records submitted to an agency is lawful. (Decision at 98; see, e.g., Gov. Code, §§ 7922.000, 7927.705; Evid. Code, § 1060.) And even if the Fourth Amendment did apply, the Decision explains why Lyft's rights would not be violated because the cases it relies upon are distinguishable. (Decision at 46-48.) Thus, we find no merit to Lyft's Fourth Amendment arguments and deny rehearing as to this issue.

3. The Decision's determination that aggregating time-stamp information addresses privacy concerns is supported by record evidence.

The Decision concluded that aggregating trip data in half hour increments addresses privacy concerns about reidentification of individual riders from trip report data. (Decision at 107-108.) The Decision then details how this approach is supported by the City of Chicago's practice dating to 2016 of aggregating trip data into 15-minute increments. (*Id.* at 108.) Lyft takes issue with the Decision's references to the City of Chicago's data disclosure practices on several grounds, including that the approach contrasts with their expert witnesses, that the Commission would not necessarily be aware of any privacy violations arising out of Chicago, that the Commission does not propose to follow Chicago's practices faithfully, and that the Decision improperly seeks to shift the burden of proof onto Lyft for establishing that the Chicago approach to data aggregation adequately protects privacy. (App. Reh'g. at 21-24.) Lyft also contends that the Decision

is not supported by substantial evidence as required by Public Utilities Code section 1757(a)(4). (*Id.* at 23-25.)

As an initial matter, Lyft cites the wrong standard of review. Section 1757 applies to a “complaint or enforcement proceeding, or ... a ratemaking or licensing decision of specific application that is addressed to particular parties.” (Pub. Util. Code § 1757, subd.(a).) Public Utilities Code section 1757.1 applies to all other proceedings. The Decision was issued in a quasi-legislative rulemaking proceeding to establish generic rules for the TNC industry, and therefore, the applicable standard of review is under section 1757.1.

Pursuant to section 1757.1, the Commission’s factual findings are reviewed under the abuse of discretion standard and afforded significant deference, although the Court’s review is not entirely precluded. (*California Community Choice Assn. v. Public Utilities Com.* (2024) 103 Cal.App.5th 845, 856, 861-864 (*Community Choice*).) Under the abuse of discretion standard, the Court may not reweigh the evidence or substitute its judgement for that of the Commission’s, and in general considers only whether the Commission’s decision was “arbitrary, capricious, or entirely lacking in evidentiary support.” (*Id.* at 856, 861, internal citations and quotations omitted; *id.* at 863 [concluding that a “proper exercise of discretion requires only that the Commission have some factual basis for its finding ...” and emphasizing that this standard is not the same as the substantial evidence test].)

Furthermore, Lyft’s argument misunderstands the Decision. The City of Chicago’s TNC trip data practice is not the sole basis for the Decision’s final recommendation on data aggregation. Instead, the Decision looked to Chicago as an example of time stamp aggregation and public disclosure. (Decision at 108-109.) The City of Chicago took a novel approach to reporting TNC trip data, electing to round trip reports to the nearest 15-minute increments. (Decision at 108.) The Decision noted that Chicago has maintained this reporting structure since 2016 without Uber or Lyft reporting “any breaches of personal passenger privacy.” (Decision at 108-109.)

Critically, the Decision adopted even further privacy protections than implemented by Chicago’s method of trip aggregation, opting for 30-minute increments rather than the 15 minutes used by Chicago. Thus, the Decision reasonably concluded that 30-minute aggregation addresses privacy concerns considering that the aggregation was double that of the Chicago’s approach, which already provides adequate protection. (See *Securus Technologies, LLC v. Public Utilities Com.* (2023) 88 Cal.App.5th 787, 803 [findings affirmed unless arbitrary and capricious or entirely lacking evidentiary support]; cf. *Lorimore v. State Personnel Board* (1965) 232 Cal.App.2d 183, 187 [a decision is supported by substantial evidence when an agency makes reasonable inferences based on the evidence so long as those inferences are not arbitrarily drawn or without reasonable foundation].)

In addition, the 30-minute aggregation approach is supported by other record evidence, including the comments submitted by SFMTA and SFCTA and the U.C. Davis Policy Institute for Energy, Environment, and the Economy (U.C. Davis) in response to the May 9, 2023, Assigned Commissioner Ruling Reopening the Record. Specifically, San Francisco endorsed a more granular time stamp approach, proposing to disclose trip data with time stamps of at least one minute and even preferably one second time increments. (SFMTA and SFCTA Comments to the May 9, 2023 Ruling seeking Further Comments Re Whether TNC Trip Data Should be Aggregated, filed June 15, 2023, at 3.)

U.C. Davis proposed several alternatives for trip data disclosure outside of the proposed 15-, 30- or 60-minute aggregation figures proposed in the Commission Ruling contending it would “better ensure privacy in sensitive data, while preserving computational capacity,” though U.C. Davis also stated that aggregation of time-stamps would “prevent effective analysis of spatial, temporal, and possible demographic explanatory factors on time performance.” (U.C. Davis Comments to the May 9, 2023 Ruling seeking Further Comments Re Whether TNC Trip Data Should be Aggregated, filed June 15, 2023, at 4-5.) It also noted that New York City previously released precise time stamp data over a three-year period for the years 2019, 2020, and 2021. (*Ibid.* at 15.)

Again, the Decision goes above and beyond what other states have done and what other parties and researchers have recommended are sufficient to protect privacy.

For the reasons above, the Decision's conclusion that TNCs should provide the time stamp aggregation in 30-minute increments is supported by the record evidence. Thus, Lyft's objections to the Decision's references to the City of Chicago, along with its other arguments about unknown privacy breaches and the allegedly misapplied burden of proof do not demonstrate legal error.

C. Lyft's remaining arguments are unpersuasive and do not require rehearing.

1. The Decision's treatment of expert evidence and academic publications is reasonable.

The Decision considered numerous expert reports and academic studies in reaching its conclusions about the appropriate levels of data disclosure to protect consumer privacy. Lyft alleges that the Decision improperly relied on an article by Ann Cavuokian and Daniel Castro, discussing the risks of reidentification of trip data, which it asserts does not support the Decision's findings. (App. Rehg. at 25.) Lyft also asserts that the Decision improperly rejected certain expert analysis. (*Id.* at 29.) Lyft is incorrect.

As explained in the previous section, there is record support for the Decision's conclusions to allow time stamp aggregation as well as the findings about the risks of data reidentification. For example, San Francisco and UC Davis both submitted evidence supporting the findings allowing limited data aggregation and disclosure. (SFMTA and SFCTA Comments at 4; UC Davis Comments at 5-7.) There is not uniform support among the record evidence that the data disclosures presented an unwarranted risk of reidentification. (*Ibid.*) Moreover, there is also record support from San Francisco refuting Lyft's proffered expert witness studies and arguments about reidentification. (SFMTA and SFCTA Reply Comments to the May 9, 2023 Ruling seeking Further Comments Re Whether TNC Trip Data Should be Aggregated, filed on June 29, 2023, at 1-2.) That the Decision rejected Lyft's position on data aggregation and the risks of reidentification—when there is supporting evidence for a different outcome—is not a

basis for finding legal error. (See, e.g., *Community Choice*, *supra*, 103 Cal.App.5th at 856, 861.) [courts do not reweigh the evidence].)

2. The Commission is not required to respond to every objection raised in comments.

Lyft argues that the Decision errs by not considering several comments raised in response to the Proposed Decision. Lyft is incorrect. We are not required to respond to any, let alone each, party comment received in response to a proposed decision. (See, e.g., D.20-05-027 at 6; D.19-01-051 at 48-49; D.16-12-070 at 13.)

3. The Decision does not contradict prior decisions.

Lyft argues that the Decision improperly dismissed evidence concerning reidentification of data. Lyft claims this dismissal violates the prior instruction in D.21-06-023 that purportedly states that TNCs “need not show that reports include particular data to sustain a claim of confidential treatment.” (App. Rehg. at 33.) Lyft’s argument misstates the context and findings of that previous decision.

In D.21-06-023, Lyft and Uber challenged a requirement that TNCs submit confidentiality motions for their Annual Reports 90 days in advance of the filing deadline. (D.21-06-023 at 23.) Lyft claimed that it was impossible to prepare a confidentiality application that far in advance because it might not yet know the specific data it seeks to protect. (*Ibid.*) We rejected this argument, finding that the TNCs would be able to prepare a confidentiality motion without the specific data at issue. (*Ibid.*) Lyft’s attempt to reframe D.21-06-023 as restricting our ability to evaluate Lyft’s evidentiary showing with respect to the 2014-2019 Annual Report trip data is unpersuasive.

III. CONCLUSION

For the reasons stated above, we find good cause to grant limited rehearing of the Decision on the issue of whether Lyft’s 2014-2019 trip data is not stale, and therefore, has independent economic value. We also modify D.23-12-015 as specified below to: (1) vacate the Decision’s conclusion that Lyft’s evidence is not sufficient to meet its burden to show independent economic value; (2) accurately reflect the treatment

of trade secrets under the Fifth Amendment; and (3) correct typographical errors. We do not find good cause has been demonstrated for rehearing of the remaining portions of the Decision, as modified. The stay of the Decision will continue until a decision on the limited rehearing has issued.

THEREFORE, IT IS ORDERED that:

1. Limited rehearing of Decision 23-12-015 is granted on the issue of whether Lyft, Inc.'s trip data for 2014-2019 is not stale and therefore has independent economic value.
2. Decision 23-12-015's discussion and finding about whether Lyft, Inc. demonstrated its 2014-2019 trip data has independent economic value are vacated, including:
 - a. The first sentence in the first full paragraph on page 64.
 - b. The first full paragraph on page 65 continuing through the partial sentence at the top of page 69.
3. Decision 23-12-015 is modified as follows:
 - a. The last sentence in the first paragraph on page 26 is replaced with the following: "But for completeness's sake, and consistent with how rules are interpreted and applied when clauses are separated by a conjunctive, we will evaluate Lyft's takings argument against the criteria set forth, *supra*, in both *Lingle* and in *Penn Central*."
 - b. The first sentence in the second full paragraph on page 26 is replaced with the following: "Lyft's regulatory takings argument fails two of the *Penn Central* factors."
 - c. The first full paragraph on page 27 is deleted.
 - d. The last sentence from the paragraph starting on page 27 and ending on page 28 is deleted.
 - e. The first full paragraph on page 52 is replaced with the following: "Uber cites *Carpenter v. United States*, *supra*, and *United States v. Jones*, *supra*. But as we have noted above, those decisions deal with either GPS monitoring or CSLI which are more precise and pervasive than the trip data at issue since GPS and CSLI monitoring can provide a time stamp display of a subject's every movement. In contrast, the trip data at issue does

not provide the same type of information with such locational specificity.”

- f. Conclusion of Law 2 is replaced with: “It is reasonable to conclude that, except as applied to Lyft, the TNCs have failed to carry their burden of proving that the trip data at issue in the Annual Reports for the years 2014-2019 is exempt from public disclosure by the trade secret protection.”
- g. Conclusion of Law 4 is replaced with: “It is reasonable to conclude that, except as applied to Lyft, the trip data at issue does not meet the definition of a trade secret provided by Civil Code §§ 3426 through 3426.11.”
- h. Conclusion of Law 11 is replaced with: “Except as applied to Lyft, it is reasonable to conclude that considering the evidentiary record, there is substantial evidence that the trip data at issue is not protected from public disclosure on trade secret grounds.”

4. Rehearing of the remaining portions of Decision (D.) 23-12-015, as modified herein, is denied.

5. The stay of D.23-12-015 issued on February 21, 2024 in D.24-02-048 remains in effect pending further Commission order.

This order is effective today.

Dated October 17, 2024, at Sacramento, California.

ALICE REYNOLDS
President
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
MATTHEW BAKER
Commissioners