



January 20, 2021

Consumer Protection and Enforcement Division
Transportation Licensing and Analysis Branch
505 Van Ness Ave., 2nd Floor
San Francisco, CA 94102-3298
Email: TNCAccess@cpuc.ca.gov

RE: Protest regarding Lyft's Advice Letter 2A Requesting Offsets pursuant to the TNC Access for All Act

To the Transportation Licensing and Analysis Branch:

Thank you for the opportunity to protest Lyft's Supplemental Advice Letter 2A requesting retroactive offsets against the quarterly Access Fee payments collected to improve wheelchair accessible vehicle service in Quarter 4 of 2019. Disability Rights California, the Disability Rights Education & Defense Fund (DREDF), and the Center for Accessible Technology (collectively, the "Disability Advocates") protest this advice letter pursuant to Section 7.4.2 of General Order 96-B.

Lyft submitted its Advice Letter 2A on December 16, 2020. Pursuant to General Order 96-B protests are typically due within 20 days from the day the Advice Letter is filed. However, the Disability Advocates requested an extension to account for the holidays and CPED, in an email on December 18, 2020, granted a 15-day extension and stated that protests for this advice letter are due January 20, 2021. This protest is therefore timely.

The Disability Advocates protest Lyft's Advice Letter 2A on the grounds that the relief requested in the advice letter would violate statute or Commission

order, or is not authorized by statute or Commission order on which the regulated entity relies, pursuant to Section 7.4.2 of General Order 96-B.

A. Relief requested would violate statute or Commission order, or is not authorized by statute or Commission order

The TNC Access for All Act (the Statute) requires a Transportation Network Company (TNC) to make a showing of presence and availability of wheelchair-accessible vehicles (WAVs), as well as a showing regarding outreach to inform potential customers about the availability of WAVs, and a full accounting of funds spent to provide and promote WAVs in order to be eligible to claim offset funds. Section 5440.5(a)(1)(B)(ii) of the California Public Utilities Code provides:

In order to offset amounts due pursuant to this subparagraph in a geographic area, the commission shall require a TNC, at a minimum, to demonstrate, in the geographic area, the presence and availability of drivers with WAVs on its online-enabled application or platform, 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.

Lyft has not made these necessary showings in Advice Letter 2A and thus awarding the relief requested in Advice Letter 2A is not authorized by the TNC Access for All Act.

Presence and Availability: The statute requires TNCs that seek to retain funds collected pursuant to the TNC Access for All Act to demonstrate “the presence and availability of drivers with WAVs on its online-enabled application or platform.”¹ Lyft has not made this showing due to the small number of WAV rides it actually provided during this period in San Francisco. And Lyft admits in its materials that no WAV rides were available during several hours each day, even though standard Lyft service was available during those times. Lyft therefore did not make an adequate showing of presence and availability and should be found not to be eligible for offset funds.

¹ California Public Utilities Code Section 5440.5(a)(1)(B)(ii).

Response Times: Lyft did not meet the response time standards set by the Commission during this quarter.

Outreach: Under the TNC Access for All Statute, TNCs must “demonstrate” outreach efforts to inform potential customers about the availability of WAV service, and the Track 2 Decision requires TNCs to “provide evidence of their outreach effort.”² Lyft’s Advice Letter 2A provides what appears to be – it is unclear from Lyft’s materials – information sent to other organizations. Some of these PDF pages look odd, with large blacked-out areas, leaving it unclear whether important information is being obscured.

These PDF pages explain, among other things, that one must change a Lyft app *setting* for the WAV option to even appear on the app. Very few people will know to do this. In other words, Lyft has *built in* an obstacle to receiving WAV service. The DAs’ Reply comments in Track 3 discussed this very problem:

In order to obtain WAV service via Lyft, a person must change the default settings of the app; if they do not know to do that, they will not even be able to see the option of requesting a WAV ride. The Disability Advocates have received multiple queries about this issue. If a potential WAV customer cannot easily find the way to call for WAV service on a TNC’s app, demand for the service will be artificially lowered. This is termed a “capacity constraint” under the Americans with Disabilities Act and is the opposite of what the TNC Access for All Act requires, which is sufficient outreach to raise awareness of WAV capability among TNCs. The Disability Advocates reiterate that the Commission should require TNCs to ensure that it is straightforward and easy for a customer to indicate that they need WAV service from their online-enabled applications, and it should also require TNCs to report on the steps a person requesting a WAV ride needs to take. TNC apps must plainly show all of the options available to customers, including WAV rides. This requirement, and an easy to view WAV option, will also help raise awareness of the availability of WAV service.³

² California Public Utilities Code Section 5440.5(a)(1)(B)(ii); D.20-03-007 at p. 21.

³ Disability Advocates, Track 3 Reply Comments at p. 7.

The fact that Lyft has built in an obstacle to users of its app even knowing of the existence and availability of WAV rides has surely contributed to Lyft's low WAV ride numbers, and worked at cross-purposes to its required outreach efforts. A TNC that has created obstacles to access within its own app should not be permitted to offset funds collected under the TNC Access for All Act.

In addition, the "Outreach Efforts" tab shows less activity than in Advice Letter 1A. Lyft appears to have contacted eight organizations, but – with one exception – it was all by email, usually a single email. This is insufficient outreach.

Full Accounting of Funds: Under the Statute, TNCs must present "a full accounting of funds expended."⁴ At a minimum, a "full accounting" should provide an understanding of what Lyft is spending funds collected for a public purpose on. The information provided in the Advice Letter does nothing of the sort – it simply lists broad categories for expenditures, such as "fee with partnership(s) to gain preferred access of utilizing vehicles," "Consultant fees to help with implementation and compliance of the WAV program," and "26 employees and 1 contractor of various positions (including operations, science, and engineering) working on WAV."⁵ It is inappropriate to award offset funds to Lyft based on this limited showing. In the real world of contracts or of public accountability, such large numbers with no further detail would never be considered a full accounting. The reporting does not even meet the level of detail set forth in the template provided by CPED. For instance, the template suggests that, if a TNC seeks to offset funds for staff, the TNC must provide details of the individuals' position and duties, such as "5 customer service reps responding to WAV complaints."⁶ By contrast, Lyft's report on staff time simply says "various positions . . . working on WAV."⁷

Nor does Lyft's report meet the level of detail set forth in the Commission's Track 2 Decision. At Paragraph 11 of the Order, which addresses demonstration of "a full accounting of funds expended," the Commission states that "A Transportation Network Company seeking an offset for a contractual arrangement with a wheelchair accessible vehicle provider shall

⁴ California Public Utilities Code Section 5440.5(a)(1)(B)(ii).

⁵ "Funds Expended" Tab to Lyft AL 2A Supplement Data Spreadsheet.

⁶ *Id.*

⁷ *Id.*

identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined.”⁸ There is no explanation at all for “how the amount was determined” for the largest expenditure reported by Lyft, \$288,133.76, “to gain preferred access of utilizing vehicles,”⁹ other than that the amount was “agreed upon.”¹⁰

Additionally, while it is commendable that Lyft sponsored Livable City (Getting There Together) and TheCIL’s Ed Roberts Award Celebration in the amount of \$6,000, there is no explanation of how this meets the statutory requirement that funds that Lyft seeks to offset be “amounts spent by the TNC during that quarter to improve WAV service on its online-enabled application or platform for each geographic area.”¹¹

Training and Inspections: Lyft only reports that one driver was trained, even though, for instance, it reports a total of “88” WAVs in operation on Mondays at 1pm during the fourth quarter of 2019.¹² It therefore appears that either most of these drivers were never trained, or that Lyft is not reporting which portion of WAV drivers have been trained and which have not. The same is true for vehicle inspections.

Conclusion

Offsets funding is only intended to be provided to a TNC that has met its obligations to demonstrate presence and availability of WAVs, that has conducted and reported sufficient outreach, and that has provided a full accounting of funds expended to support improved WAV service. Because Lyft has not met its obligations, the Commission should determine that Lyft is not eligible to offset funds for Q4 2019.

The Disability Advocates request that the Industry Division review this protest and refer it to the Administrative Law Judge Division if the Industry Division is unable to resolve the objections.

Thank you for your time and consideration of these protests.

⁸ Track 2 Decision, D.20-03-007, at pp. 86-87.

⁹ “Funds Expended” Tab to Lyft AL 2A Supplement Data Spreadsheet.

¹⁰ “Contract Information” Tab to Lyft AL 1A Supplement Data Spreadsheet.

¹¹ California Public Utilities Code Section 5440.5(a)(1)(B)(ii).

¹² “Training and Inspections” Tab to Lyft AL 2A Supplement Data Spreadsheet.

Sincerely,

Melissa W. Kasnitz, Legal Director
Rebecca Ruff, Legal Fellow
Center for Accessible Technology

Autumn M. Elliott
Litigation Counsel
Disability Rights California

Marilyn Golden
Senior Policy Analyst
Disability Rights Education & Defense Fund