



August 4, 2020

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 and Confidentiality Objections regarding Lyft's Advice Letter 004 Requesting Offsets pursuant to the TNC Access for All Act

To the Transportation Licensing and Analysis Branch:

Thank you for the opportunity to protest and to object to the confidentiality requests in Lyft's Advice Letter 004 requesting retroactive offset against the quarterly Access Fee payments collected to improve wheelchair accessible vehicle service in Quarter 2 of 2020. 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, and also present their objections to Lyft's requests for confidential treatment of the information redacted in the Advice Letter and attachments pursuant to Section 10.5 of General Order 96-B.

I. Protests

The Disability Advocates protest Lyft's Advice Letter 004 on the following grounds: (1) 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 utility relies; and (2) The analysis, calculations, or data in the advice letter contain material errors or omissions.

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

Awarding the relief requested in Advice Letter 004 would violate the TNC Access for All Act and/or is not authorized by the TNC Access for All Act. 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.

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 This demonstration must be made through the data presented to the Commission in Lyft’s Advice Letter 004. However, there is no data available to the Disability Advocates which makes this showing. Lyft redacted information on the number of WAVs in operation, the number of WAV trips completed, the number of WAV trips cancelled, the number of WAV trips not accepted, offset response times, the number of complaints received, funds expended, and the number of drivers who received WAV training. There is no data to show how many people were served, or how quickly. If Lyft does not present this data, it cannot demonstrate “the presence and availability of drivers with WAVs on its online-enabled application or platform.”

The limited data that *is* made public suggests that in fact there may not be “presence and availability” of Lyft WAVs in Los Angeles. The percentage of WAV trips completed by Lyft in Los Angeles, while improved over prior quarters, surely does not meet the percentage of non-WAV trips completed – if Lyft provided that level of service to people without disabilities, it would be out of business. The “% WAV trips not Accepted” tab tells the same story: a significant percentage of trips were not completed.

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

In addition, under the statute, TNCs must present “a full accounting of funds expended.” The data available to the Disability Advocates does nothing of the sort – it simply lists total amounts.

As a result, a decision by the Commission to provide offset funding to Lyft based on the information available to the Disability Advocates would violate the provisions of the TNC Access for All Act. In the alternative, any such award is not authorized by the statute, which requires TNCs to demonstrate presence and availability of WAVs and a full accounting of funds expended in order to be eligible to offset funds.

B. Analysis, calculations, or data in the advice letter contain material errors or omissions

The data provided by Lyft in conjunction with Advice Letter 004 contains material omissions. Again, the Disability Advocates are unable to see the redacted data. Lyft does not attach a full set of materials (such as the emails that it sent out) to document what outreach efforts it did make. It also does not provide “a full accounting of fund expended” as required by the statute; instead, it simply lists total amounts. Each of these is a material omission.

II. Objections to Confidentiality

The Disability Advocates contacted Lyft to request that Lyft meet and confer with them regarding their objections to Lyft’s requests for confidential treatment of the information redacted in Advice Letter 004 and attachments. The Disability Advocates met and conferred with Lyft on August 3, 2020 but were unable to resolve their objections. The Disability Advocates request that the Industry Division review their protest and refer it to the Administrative Law Judge Division if the Industry Division is unable to resolve the objections.

The data redacted by Lyft is necessary to establish whether Lyft has met its obligations under the TNC Access to All Act and the Final Track 2 Decision to qualify to offset funds. These funds are not Lyft’s own money – they are funds collected for a public purpose, to redress the fact that, since their inception, the TNCs have failed to comply with state and federal disability access laws. If the funds are not applied as an offset, they will instead be distributed by the Commission for the purpose of providing accessible rides to people with disabilities. The public, and the parties to the proceeding

before the Commission, therefore have a strong interest in knowing whether Lyft has actually met the statutory requirements for offsets.

At the meet and confer, Lyft offered to share data with the Disability Advocates with an agreement to limit the distribution of information through a nondisclosure agreement. However, Lyft stated that the agreement would require the Disability Advocates to redact any data alleged by Lyft to be confidential in any protest they submitted. The Disability Advocates are nonprofit organizations that advocate on behalf of all Californians with disabilities. The people with disabilities for whom they advocate have a strong interest in knowing whether Lyft and other TNCs have actually met the offset criteria set forth in the TNC Access for All Act and the Track 2 Final Decision. They also have a strong interest in knowing the extent to which the framework set forth in the TNC Access for All Act is actually succeeding in providing access for people with disabilities. And all people paying the per-ride surcharge with the understanding that it will be expended for a public purpose have an interest in knowing that the funds are being spent consistent with the law. The Disability Advocates cannot agree to a process that not only shields the underlying data from view but also hides from the public the data on which any protests are based.

Each category of data redacted by Lyft is relevant to determining whether Lyft has met the criteria for offsets, and Lyft has not established that it has a valid interest in keeping those categories of data from the public. Tellingly, Lyft again observes that disclosing data about WAV trips would provide “insights into Lyft’s actual success in offering rides to passengers who request accessible vehicles.”² That is the entire point of the Advice Letter submission – to give the public, as well as the Commission, an understanding of the extent of any “actual success in offering rights to passengers who request accessible vehicles” by TNCs seeking to retain funds collected pursuant to the TNC Access for All Act.

In addition, the fact that Uber disclosed some of the information that Lyft redacted is an indication that there is no legitimate interest in keeping that data confidential. Moreover, an entity that seeks or accepts public funds may reasonably be required to disclose data that it might otherwise be permitted to keep confidential. If Lyft prefers not to disclose the data requested by the CPUC, it may simply use its own funds to improve the accessibility of its services, not the funds collected pursuant to the TNC Access for All Act.

² July 15, 2020 Decl. of Brett Collins at para. 7.

For the reasons set forth above, Lyft should be required to resubmit its Advice Letter 004 requesting an offset of funds with no redactions.

Thank you for your time and consideration of these protests and objection regarding confidentiality. Please contact Autumn Elliott at Autumn.Elliott@disabilityrightsca.org or (213)213-8125 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Autumn Elliott", with a stylized flourish at the end.

Autumn M. Elliott
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Disability Rights California

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