



February 4, 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 6 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 Advice Letter 6 requesting retroactive offsets against the quarterly Access Fee payments collected to improve wheelchair accessible vehicle service in Quarter 1 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.

Lyft submitted its Advice Letter 6 on January 15, 2021. Pursuant to General Order 96-B protests are due within 20 days from the day the Advice Letter is filed. This protest is therefore timely.

The Disability Advocates protest Lyft's Advice Letter 6 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.

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 6 and thus awarding the relief requested in Advice Letter 6 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 high percentage of WAV requests were not completed. 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.

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 6 provides what appears to be – it is unclear from Lyft’s materials – information sent to other organizations.

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

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

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

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.

Lyft alleges in its replies to the Disability Advocates' prior protests that it has created this obstacle to screen out "users who have no need for a WAV" and cannot fathom "any other way to ensure that a ride request was submitted by an individual who actually needs a WAV."⁴ But there are

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

⁴ Lyft AL 6 at pp. 3-4.

many ways that Lyft could do such screening – if it is actually necessary, which Lyft has not established – without reducing access for people with disabilities. For instance, Lyft could allow the WAV option to be visible to *all* users, with a pop-up screen asking, “Is a WAV ride needed due to a disability?” when users select that option. 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, Lyft appears to have only given a presentation to one organization in Los Angeles and contacted another via email.⁵ This is insufficient outreach.

Full Accounting of Funds: Under the Statute, TNCs must present “a full accounting of funds expended.”⁶ 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 for the most part does nothing of the sort – mainly listing 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 “14 employees of various positions (from engineering to operations) working on WAV (400 hours total).”⁷ 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.”⁸ By contrast, Lyft’s report on staff time simply says “various positions . . . working on WAV.”⁹

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

⁵ “Funds Expended” Tab to Lyft AL 6 Supplement Data Spreadsheet.

⁶ California Public Utilities Code Section 5440.5(a)(1)(B)(ii).

⁷ “Outreach Efforts” Tab to Lyft AL 6 Supplement Data Spreadsheet.

⁸ *Id.*

⁹ *Id.*

contractual arrangement with a wheelchair accessible vehicle provider shall identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined.”¹⁰ There is no explanation at all for “how the amount was determined” for the largest expenditures reported by Lyft, \$473,992.09 to First Transit, “to gain preferred access of utilizing vehicles,”¹¹ other than that the amount was “agreed upon.”¹²

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 2020.

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.

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

¹⁰ Track 2 Decision, D.20-03-007, at pp. 86-87.

¹¹ “Funds Expended” Tab to Lyft AL 6 Supplement Data Spreadsheet.

¹² “Contract Information” Tab to Lyft AL 6 Supplement Data Spreadsheet.