



January 8, 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 Uber's Advice Letter 1A Requesting Offsets
pursuant to the TNC Access for All Act**

To the Transportation Licensing and Analysis Branch:

Thank you for the opportunity to protest Uber's Advice Letter 1A requesting retroactive offsets against the quarterly Access Fee payments collected to improve wheelchair accessible vehicle service in Quarter 3 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.

Uber submitted this Advice Letter 1A on December 4, 2020. Typically, pursuant to General Order 96-B protests are 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 8, 2021. This protest is therefore timely.

I. Protests

The Disability Advocates protest Uber's Advice Letters 1A 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.

Uber has not made these necessary showings in Advice Letter 1A and thus awarding the relief requested in Advice Letter 1A 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 Uber has not made this showing. The percentage of WAV trips completed by Uber in the counties for which Uber reports data

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

remains low. If Uber provided that level of service for people without disabilities, it would be out of business. The number of accepted trip requests (found in the “% WAV trips not Accepted” tab of the provided spreadsheet) tells the same story: significant percentages of WAV trips requested were not accepted by an Uber driver, indicating that Uber was unable to establish “presence and availability” of WAV vehicles and drivers.

In order to demonstrate “presence and availability,” a TNC must show that WAV vehicles are available and able to respond to ride requests. But, even in counties where Uber’s WAV program is most developed, this is not the case. In Los Angeles County, where the highest number of WAV rides were provided,² 73% of the recorded requests for WAV rides went unfulfilled,³ and rates for other counties are even higher. In San Joaquin County, 76% of WAV ride requests went unfulfilled.⁴ In Marin County, it was 74%; and in San Joaquin County, 76%. Even in counties that with higher acceptance rates than Los Angeles, such as Contra Costa, Orange, and San Diego Counties, the percentage of ride requests that were unfulfilled was in the high 60s.⁵

Another critically important variable is how many—or few—WAV ride requests resulted in completed trips. In Marin, Riverside, Sacramento, San Diego, San Joaquin, and Venture Counties, 5% or fewer WAV ride requests were completed.⁶ In Napa and Orange Counties, fewer than 10% were completed.⁷

Given such dismal results, Uber did not make an adequate showing of presence and availability and should therefore 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

² “WAV Trips Completed” Tab to Uber AL 1A Supplement Data Spreadsheet.

³ “% Not Accepted” and “% Cancelled by Driver” Tabs to Uber AL 1A Supplement Data Spreadsheet.

⁴ “% Not Accepted” and “% Cancelled by Driver” Tabs to Uber AL 1A Supplement Data Spreadsheet.

⁵ “% Not Accepted” and “% Cancelled by Driver” Tabs to Uber AL 1A Supplement Data Spreadsheet.

⁶ “% WAV Trips Completed” Tab to Uber AL 1A Supplement Data Spreadsheet.

⁷ “% WAV Trips Completed” Tab to Uber AL 1A Supplement Data Spreadsheet.

their outreach effort.”⁸ Uber’s Advice Letter 1A neither demonstrates outreach efforts nor provides evidence of them. All that is provided by Uber on the topic of outreach is a spreadsheet that simply provides a list of organizations to which Uber sent emails, mentions a blog post/newsletter Uber sent in Nov 2018, identifies UberWAV (Uber’s website page on accessibility), and mentions an event by California Society for the Blind that Uber sponsored.⁹ None of these appear to be effective methods of targeted outreach to promote WAVs.

A newsletter from Uber’s CEO does not target either wheelchair users specifically or a large amount of the population in counties that Uber is serving. As such, it was likely an extremely ineffective method of outreach.

For each of 15 counties, Uber lists these same organizations as having received “email outreach”:

- World Institute on Disability;
- Disability Rights California;
- DREDF;
- The Center for Independent Living;
- Designing Accessible Communities;
- Center for Accessible Technology;
- American Association of People with Disabilities;¹⁰

All three of the organizations making up the Disability Advocates are listed as community partners who received this email outreach from Uber in May 2019.¹¹ This supposedly accounts for outreach to 15 counties.¹² Our organizations report that the entirety of Uber’s outreach was to send one email (not one per quarter, but one single time) with information on UberWAV. There was no dialogue, and no joint activity; Uber did not make any request regarding dissemination of this information, and it does not know if our organizations provided any such dissemination (no follow-up to the email was conducted). While it may be possible that some of these organizations are able to reach out to wheelchair users across California’s counties, there is no information about what they actually did.

⁸ California Public Utilities Code Section 5440.5(a)(1)(B)(ii); D.20-03-007 at p. 21.

⁹ “Outreach Efforts” Tab to Uber AL 1A Supplement Data Spreadsheet.

¹⁰ “Outreach Efforts” Tab to Uber AL 1A Supplement Data Spreadsheet.

¹¹ “Outreach Efforts” Tab to Uber AL 1A Supplement Data Spreadsheet.

¹² “Outreach Efforts” Tab to Uber AL 1A Supplement Data Spreadsheet.

Uber marks sponsoring the California Society for the Blind's annual gala in March 2018 as providing outreach to 15 counties.¹³ We're not sure how this event reached 15 counties, or how sponsorship of a gala is intended to promote WAV service. Indeed, while it is certainly possible that there are wheelchair users among the membership of the California Society for the Blind, the actual number of such members, if any, is unknown.

Uber could have conducted more thorough outreach. At minimum, Uber could have tried to engage in a back-and-forth with community organizations, or even simply followed up. Uber could have advertised the WAV program on billboards, or online. Uber did none of these things. Uber sent one email to a small number of organizations, published a blog post, sponsored an unrelated event, and created a website that no one knows about because Uber didn't do thorough outreach.

In short, Advice Letter 1A provides minimal content on Uber's outreach and engagement efforts, and the limited information provided does not comply with either the statutory requirements or the provisions of the Track 2 decision.

Full Accounting of Funds: Under the Statute, TNCs must present "a full accounting of funds expended."¹⁴ The information provided in the Advice Letter does nothing of the sort – it simply lists broad categories for expenditures, such as "Paid Incentives to Fleet Partners" and "Consultant Fees for WAV program."¹⁵ It is inappropriate to award offset funds to Uber based on this limited showing.

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 Uber has not met its obligations, the Commission should determine that Uber is not eligible to offset funds for Q3 2019.

¹³ "Outreach Efforts" Tab to Uber AL 1A Supplement Data Spreadsheet.

¹⁴ California Public Utilities Code Section 5440.5(a)(1)(B)(ii).

¹⁵ "Funds Expended" Tab to Uber AL 1A Supplement Data Spreadsheet.

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