



January 8, 2021

Consumer Protection and Enforcement Division
Transportation Licensing and Analysis Branch
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San Francisco, CA 94102-3298
Email: TNCAccess@cpuc.ca.gov

RE: Protest and Confidentiality Objections regarding Uber's Advice Letter 4A 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 4A requesting retroactive offsets 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 Uber's requests for confidential treatment of the information redacted in the Advice Letters and attachment pursuant to Section 10.5 of General Order 96-B.

Uber submitted this Advice Letter 4A 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 this protests for this particular advice letter are due January 8, 2021. This protest is therefore timely.

I. Protests

The Disability Advocates protest Uber's Advice Letter 4A 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 4A and thus awarding the relief requested in Advice Letter 4A is not authorized by the TNC Access for All Act.

Presence and Availability: The statute requires a TNC that seeks 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 remains low. If Uber provided that level of service for people without

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

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 this is not the case. 85% of requests for WAV rides in Kern County went unfulfilled, and 81% in Riverside County were unfulfilled.² These rates for other counties are similarly concerning. The rates in Orange, San Joaquin, and Stanislaus Counties were in the 70s, with Orange County at 79%.³ For Marin and Contra Costa Counties, 68% of requests for WAV rides were unfulfilled.⁴

Another critically important variable is how many—or few—WAV ride requests resulted in completed trips. In Riverside and Kern Counties, 0% of WAV ride requests were completed.⁵ In Orange and San Joaquin Counties, 5% or fewer WAV ride requests were completed.⁶ In Marin County, 9% were completed.⁷ And both Contra Costa and San Francisco Counties’ rates of completion were near or under 25%.⁸

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 their outreach effort.”⁹ Uber’s Advice Letter 4A neither demonstrates

² “% Not Accepted” and “% Cancelled by Driver” Tabs to Uber AL 4A Supplement Data Spreadsheet

³ “% Not Accepted” and “% Cancelled by Driver” Tabs to Uber AL 4A Supplement Data Spreadsheet

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

⁵ “% WAV Trips Completed” Tab to Uber AL 4A Supplement Data Spreadsheet.

⁶ “% WAV Trips Completed” Tab to Uber AL 4A Supplement Data Spreadsheet.

⁷ “% WAV Trips Completed” Tab to Uber AL 4A Supplement Data Spreadsheet.

⁸ “% WAV Trips Completed” Tab to Uber AL 4A Supplement Data Spreadsheet.

⁹ California Public Utilities Code Section 5440.5(a)(1)(B)(ii); Decision on Track 2 Issues: Offsets, Exemptions and Access Provider Disbursements at p. 21.

outreach efforts nor provides evidence of them. All that is provided by Uber on this topic of outreach is a spreadsheet that does nothing other than list of organizations that were sent email by Uber and a few organizations that Uber had interviews with.¹⁰ While the Disability Advocates appreciate the list of organizations has been expanded, the list itself does not demonstrate effective outreach efforts. The emails sent to the organizations do not suggest a back-and-forth interaction where Uber checked on how the organizations were distributing information on wheelchair-accessible rides, whether the organizations were having any problems, or whether the organizations had any questions or concerns.

Uber engaged in interviews with disability rights organizations, but it does not provide any information showing that this resulted in improved outreach efforts.¹¹ Advice Letter 4A does not provide any information on what was discussed in these interviews or what learnings may have come out of them. Furthermore, Uber has not provided any information showing that it has conducted outreach to the broader population so as to reach individuals with wheelchairs who are not affiliated with a community organization. Uber still falls short of the statutory requirements.

In short, Advice Letter 4A 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."¹² 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."¹³ It is inappropriate to award offset funds to Uber based on this limited showing.

II. Objections to Confidentiality Claims

¹⁰ "Outreach Efforts" Tab to Uber AL 4A Supplement Data Spreadsheet.

¹¹ "Outreach Efforts" Tab to Uber AL 4A Supplement Data Spreadsheet.

¹² California Public Utilities Code Section 5440.5(a)(1)(B)(ii).

¹³ "Funds Expended" Tab to Uber AL 1A Supplement Data Spreadsheet.

Notwithstanding the Commission's prior determination that information on TNC WAV service should not be confidential,¹⁴ Uber continues to claim that certain information will not be provided and to redact such information in the Advice Letter. The data redacted by Uber is necessary to establish whether Uber has met the requirements under the TNC Access to All Act and the Final Track 2 Decision to qualify to offset funds. These funds are not Uber'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.¹⁵ If the funds are not provided to a TNC as an offset, they will instead be distributed by the Commission to other providers for the purpose of supporting the availability 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 Uber has actually met the statutory requirements to be eligible to obtain an offset.

As we have done previously, the Disability Advocates requested a meet and confer regarding 4A to protest the confidentiality claims with Uber. At the meet and confer, Uber offered to share data with the Disability Advocates if the advocates would enter into a nondisclosure agreement. As we have repeatedly explained, Disability Rights California, Center for Accessible Technology, and DREDF are nonprofit organizations that advocate on behalf of all Californians with disabilities. The people with disabilities for whom we advocate have a strong interest in knowing whether Uber 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 consistently with the law. The Disability Advocates thus maintain our ongoing position that we 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.

¹⁴ R.12-12-012 Decision on Data Confidentiality Issues Track 3.

¹⁵ O'Hanlon et al. v. Uber Technologies, Inc. et al., Civil Action No. 2:19-cv-00675, U.S. Dist. LEXIS 196029 (W.D. Pa. Nov. 12, 2019); Namisnak v. Uber Techs., 2018 U.S. Dist. LEXIS 221054 (Apr. 13 2018).

Each category of data redacted by Uber is relevant to determining whether Uber has met the criteria for offsets, and Uber has not established that it has a valid interest in keeping those categories of data from the public.

When an entity accepts public funds, it may reasonably be compelled to disclose data that it would not otherwise be required to share. Should Uber wish to avoid disclosing the data requested by the CPUC as part of an offset application, 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.

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 Uber is not eligible to offset funds for Q2 2020. In addition, in keeping with its prior determination that information on WAV service should be available to the public, the Commission should require Uber resubmit its Advice Letter 4A with no redactions.

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.

Thank you for your time and consideration of these protests and objections.

Sincerely,

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