



November 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](mailto:TNCAccess@cpuc.ca.gov)

**RE: Disability Advocates' Protest and Confidentiality Objections  
regarding Lyft's Advice Letter 005 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 005 requesting retroactive offsets against the quarterly Access Fee payments collected to improve wheelchair accessible vehicle service in Quarter 3 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 005 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 service 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 005 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.”<sup>1</sup> This demonstration must be made through the data presented to the Commission in Lyft’s Advice Letter 005. 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, the number of total unique WAV trips, retroactive response times, offset response times, funds expended, the data regarding WAV training, and contract information. 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 surely does not meet the percentage of non-WAV trips completed – if Lyft provided that level of

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<sup>1</sup> Cal. Pub. Util. Code § 5440.5(a)(1)(B)(ii).

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 accepted.

In addition, the statute requires TNCs to demonstrate “efforts undertaken to publicize and promote available WAV services to disability communities.”<sup>2</sup> The final Track 2 Decision provides at page 21:

CPED proposes that TNCs provide evidence of their outreach efforts, which may include the following: a list of entities the TNC partners with from disability communities, how the partnership publicized or promoted WAV services, and marketing or promotional materials of those activities (e.g., advertisements, website screenshots). DA support this proposal and no other proposals were offered. We adopt CPED’s proposal as reasonable to demonstrate the efforts undertaken to publicize and promote WAV services to disability communities.<sup>3</sup>

Meaningful outreach efforts are necessary in order for Lyft to adequately demonstrate “presence and availability” of WAVs. The legislature passed the TNC Access for All Act in order to remedy years of neglect of people with disabilities by the TNCs, including Lyft. If Lyft does not adequately publicize its new efforts to provide accessible transport, demand for WAVs will be artificially lowered, and the data reported regarding “presence and availability” of WAVs will not reflect whether WAVs are in fact present and available for the numbers of people who need them. Lyft’s Advice Letter 005 reflects contact with a very small number of the many organizations within the Los Angeles and San Francisco areas that could partner with Lyft in publicizing and promoting WAV services. Further, Lyft has not provided much information about what activities it engaged in with these organizations, and whether Lyft’s efforts resulted in measures to inform the disability community that wheelchair-accessible rides are available.

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.

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<sup>2</sup> Cal. Pub. Util. Code § 5440.5(a)(1)(B)(ii).

<sup>3</sup> D.20-03-007.

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 005 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 funds 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 November 2, 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. As before, 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. Given that resolution of the Commission's decision whether to adopt Draft Resolution-ALJ 388, which rejected Lyft's claims of confidentiality in Advice Letters 1-3, is currently pending, Lyft also offered to draft language that would relieve the Disability Advocates of any nondisclosure obligation if either Lyft exhausted its remedies without prevailing or decided to give up fighting for confidentiality.

The Disability Advocates were unable to accept Lyft's offer. First, if the Commission does adopt Draft Resolution-ALJ 388, compliance with the Commission's decision would require Lyft to make the data public, so the Disability Advocates could not agree to a nondisclosure agreement that extended beyond the Commission's decision on Draft Resolution-ALJ 388. Second, 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. 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

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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.

For the reasons set forth above, Lyft should be required to resubmit its Advice Letter 005 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](mailto:Autumn.Elliott@disabilityrightsca.org) or (213)213-8125 with any questions.

Sincerely,



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