



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 2A 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 2A requesting retroactive offsets against the quarterly Access Fee payments collected to improve wheelchair accessible vehicle service in Quarter 4 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 2A 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 the protests for this advice letter are due January 8, 2021. This protest is therefore timely.

I. Protests

The Disability Advocates protest Uber's Advice Letter 2A on the grounds that the relief requested in the advice letters 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 2A and thus awarding the relief requested in Advice Letter 2A 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 77% of the recorded requests for WAV rides went unfulfilled.³ The rates for other counties are similarly concerning. In Solano County, 86% of WAV ride requests went unfulfilled.⁴ In Ventura County, it was 83%.⁵ Even in the counties that had higher acceptance rates such as Orange, San Francisco, and San Mateo Counties, the percentage of unfulfilled rides was in the 60s.⁶

Another critically important variable is how many—or few—WAV ride requests resulted in completed trips. In San Francisco and San Mateo Counties, only approximately 25% of WAV ride requests were completed.⁷ Other counties’ results were even worse. In Contra Costa County, only 18% of WAV ride requests were completed, and in Los Angeles County, only 11%.⁸ In Marin, Monterey, and Orange Counties, under 10% of WAV ride requests were completed, and in Solano and Ventura Counties, it was less than 5%.⁹

Given such dismal results, Uber did not demonstrate adequate presence and availability of WAV service and is therefore not eligible for funds.

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

³ “% Not Accepted” and “% Cancelled by Driver” Tabs to Uber AL 2A Supplement Data Spreadsheet.

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

⁵ “% Not Accepted” and “% Cancelled by Driver” Tabs to Uber AL 2A Supplement Data Spreadsheet.

⁶ “% Not Accepted” and “% Cancelled by Driver” Tabs to Uber AL 2A Supplement Data Spreadsheet.

⁷ “% WAV Trips Completed” Tab to Uber AL 2A Supplement Data Spreadsheet.

⁸ “% WAV Trips Completed” Tab to Uber AL 2A Supplement Data Spreadsheet.

⁹ “% WAV Trips Completed” Tab to Uber AL 2A Supplement Data Spreadsheet.

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.”¹⁰ Uber’s Advice Letter 2A neither demonstrates outreach efforts nor provides evidence of them. Uber’s spreadsheet simply provides a list of organizations that it sent emails to and identifies the existence of UberWAV (Uber’s website page on accessibility).¹¹

For each of 15 counties, Uber lists these only 7 organizations (the same for all of these counties) 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;¹²

All three of the organizations making up the Disability Advocates are listed as community partners who received this email outreach from Uber in May 2019.¹³ This supposedly accounts for outreach to 15 counties.¹⁴ 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.

Uber could have conducted more thorough outreach. 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

¹⁰ California Public Utilities Code Section 5440.5(a)(1)(B)(ii); D.20-03-007 at p. 21.

¹¹ “Outreach Efforts” Tab to Uber AL 2A Supplement Data Spreadsheet.

¹² “Outreach Efforts” Tab to Uber AL 2A Supplement Data Spreadsheet.

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

¹⁴ “Outreach Efforts” Tab to Uber AL 1A Supplement Data Spreadsheet.

seven organizations and created a website that no one knows about because Uber didn't do thorough outreach.

In short, Advice Letter 2A 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."¹⁵ 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."¹⁶ 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, and that has conducted and reported sufficient outreach, and 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 Q4 2019.

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,

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¹⁵ California Public Utilities Code Section 5440.5(a)(1)(B)(ii).

¹⁶ "Funds Expended" Tab to Uber AL 1A Supplement Data Spreadsheet.

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