

**February 10, 2021**  
**Uber Technologies, Inc.**  
**PSG0038150**

California Public Utilities Commission  
Consumer Protection and Enforcement Division  
Transportation Licensing and Analysis Branch  
505 Van Ness Avenue  
San Francisco, CA 94102

***Re: Reply of Uber Technologies, Inc. to San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, San Francisco Mayor's Office on Disability, Disability Rights California, Disability Rights Education & Defense Fund, and the Center for Accessible Technology's Protests to Uber Technologies, Inc.'s Advice Letter No. 8***

Pursuant to Decision 20-03-007 (the "Track 2 Decision") and General Order ("GO") 96-B, Rule 7.4.3, Uber Technologies, Inc. ("Uber") hereby replies to the protests submitted by parties regarding Uber's Advice Letter No. 8 ("AL-8"). Protests were submitted on February 4, 2021, by the following parties:

- San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively, "San Francisco"); and
- Disability Rights California, Disability Rights Education & Defense Fund, and the Center for Accessible Technology (collectively, the "Disability Advocates").

San Francisco and Disability Advocates appear determined to continue to protest Uber's offset requests, whether Uber meets the requirements of the Track 2 Decision and SB 1376 or not. In doing so, both groups repeatedly ignore the plain language of the Track 2 Decision, and improperly use their protests to advocate for preferred policy proposals for administering the TNC Access for All Act.

Uber has submitted all unredacted data and information required by the Track 2 Decision. San Francisco and Disability Advocates have had ample time to review and analyze this content. Instead of identifying areas where Uber's offset requests are inconsistent with the requirements of the Track 2 Decision and SB 1376, both groups use Uber's data to argue that the Commission's performance benchmarks for offsets are insufficient, and that the TNC Access for All program should be designed differently.

Further, Uber has provided all expense data for Quarter 4 of 2020. Instead of demonstrating why Uber's expenses are not appropriate for an offset, San Francisco simply urges that Uber's request be denied because its costs are too high. This rationale cuts against both the letter and spirit of the TNC Access for All program, as discussed herein. It is precisely because of the high cost of providing WAV service that this program exists.

Uber remains willing to work with all interested parties to expand and improve accessibility transportation options across California. And Uber welcomes both groups' continued engagement to advance our shared goals. However, these protests to re-litigate and re-write the Track 2 Decision are not constructive, are substantively flawed and procedurally inappropriate, and must be rejected.

## **BACKGROUND**

Uber filed AL-8 pursuant to the Track 2 Decision, issued March 19, 2020, pertaining to Senate Bill ("SB") 1376 and the TNC Access for All Act ("Act"). The Track 2 Decision implements the framework within which to apply for an offset as described within Public Utilities ("Pub. Util.") Code § 5440.5.

## **PROTESTS**

Six parties protested Uber's AL-8. The protests are summarized as follows, for reference:

### **San Francisco**

San Francisco claims that Uber's data does not demonstrate "presence and availability" of WAV service, improved level of service, or adequate outreach to the disability community. San Francisco additionally claims that Uber's "high costs per trip" do not meet the requirements of the Act.<sup>1</sup>

### **Disability Advocates**

Disability Advocates claim that the relief requested violates statute or Commission order because Uber has not met its obligations with respect to presence and availability of WAV service, outreach efforts, and providing a full accounting of funds.<sup>2</sup>

## **UBER'S REPLY TO PROTESTS**

The protests are procedurally and substantively flawed. Both San Francisco and Disability Advocates' protests rely heavily on policy objections instead of the substance of Uber's AL-8. This approach to protesting is invalid per GO 96-B, § 7.4.2, which states "a protest may not rely on policy objections to an advice letter where the relief requested in the advice letter follows rules or directions established by statute or Commission order applicable to the utility." Additionally, "a protest may not be made where it would require relitigating a prior order of the Commission."<sup>3</sup> Moreover, San Francisco protests Uber's AL-8 based on § 7.4.2(6), which permits protest if "the relief requested in the advice letter is unjust, unreasonable, or discriminatory, provided that such a protest may not be made where it would require relitigating a prior order of the Commission."

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<sup>1</sup> San Francisco protest at 5.

<sup>2</sup> Disability Advocates protest at 4.

<sup>3</sup> GO 96-B, § 7.4.2(6).

San Francisco claims it is not using its protest to re-litigate past policy decisions.<sup>4</sup> Yet in the very same paragraph, San Francisco once again attempts to argue for a benchmark that was not adopted in the Track 2 Decision or SB 1376. Specifically, San Francisco urges CPED staff to deny Uber’s offset request because Uber’s “occasional record of reasonably prompt response times” should be “entirely overshadowed” by a presence and availability performance benchmark that does not exist.<sup>5</sup> The rest of San Francisco’s protest is similarly filled with arguments about policy and its preferred offset criteria, not about Uber’s compliance with the Track 2 Decision or SB 1376. Throughout Track 2 of Rulemaking 19-02-012, San Francisco could have proposed methodologies, formulas, or templates for TNCs to utilize in demonstrating offset criteria. San Francisco, however, chose not to make any such proposals. Following that silence, San Francisco now seeks to upend and re-litigate the offset criteria requirements by introducing new arguments within its protest. San Francisco’s efforts are impermissible under the Commission’s rules.

## 1. Offset Criteria

In general, San Francisco and the Disability Advocates claim that Uber has not met its burden to demonstrate that offsets are warranted. However, their broad and erroneous arguments fail for several reasons.

### a. Presence and Availability of WAVs

San Francisco and the Disability Advocates have repeated much of their arguments from previous protests. San Francisco correctly notes that the Track 2 Decision did not adopt a specific methodology to prove the presence and availability of WAVs.<sup>6</sup> However, in its attempt to claim that CPED cannot “simply write the statutory requirement for a demonstration of presence and availability out of their analysis for offset eligibility,”<sup>7</sup> San Francisco ignores the Commission delegated role in the execution of SB 1376. The Legislature explicitly said:

“**The commission shall** authorize a TNC to offset against the amounts due pursuant to this subparagraph for a particular quarter the amounts spent by the TNC during that quarter to improve WAV service on its online-enabled application or platform for each geographic area and thereby reduce the amount required to be remitted to the commission.”<sup>8</sup>

It cannot be more clear in the direct language of SB 1376 that the Commission **shall** authorize offsets for TNCs, and has the authority to create the standards by which to do so. The Commission has done so in its Track 2 Decision, and Uber has met those clear standards.

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<sup>4</sup> San Francisco protest at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> Pub. Util. Code § 5440.5(B)(ii) (emphasis added).

San Francisco claims that “mere submission of data does not ‘demonstrate’ presence and availability.”<sup>9</sup> When in fact data is submitted for the purposes of doing just that — demonstrating presence and availability of WAVs under the Commission’s Track 2 Decision.<sup>10</sup> Simply because San Francisco wishes to protest something does not mean it is acceptable to misconstrue what TNCs must provide to show that WAVs are on the road (*i.e.*, data regarding the presence and availability of WAVs). As noted, San Francisco had an opportunity to advocate for its desired policy proposals and chose not to do so. Doing so here is inappropriate and procedurally flawed.

San Francisco’s attempt to re-litigate the Track 2 Decision is again apparent in its conclusory analysis of Uber’s presence and availability data. On one hand, San Francisco acknowledges that the Track 2 Decision did not adopt a specific methodology for assessing presence and availability of WAV service.<sup>11</sup> On the other hand, San Francisco claims that Uber’s presence and availability of WAV service is inadequate.<sup>12</sup> San Francisco does not explain this apparent tension. Instead, San Francisco cherry picks data that it believes shows Uber’s deficiency. San Francisco does not articulate what level of presence and availability it would find sufficient. It simply concludes that Uber has not done a good enough job. This is not the standard set forth in the Track 2 Decision. Under the Track 2 Decision, submission *is* sufficient for demonstrating — *i.e.*, describing or providing information about — presence and availability. Uber has fully demonstrated the presence and availability of WAVs as required by the Track 2 Decision. San Francisco has shown nothing to the contrary.

Disability Advocates’ analysis is similarly speculative and incomplete. Disability Advocates claim that the percentage of WAV trips completed by Uber is “low” and speculate about Uber’s business practices. Disability Advocates then cite statistics from Uber’s WAV ride data that they believe demonstrate an insufficiency with Uber’s WAV presence and availability.<sup>13</sup> However, similar to San Francisco, they provide no further analysis. They do not explain what they would consider sufficient “presence and availability” of WAV data, nor could they, given that no specific methodology has been adopted by the Commission or SB 1376.<sup>14</sup>

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<sup>9</sup> San Francisco protest at 2.

<sup>10</sup> “Accordingly, to demonstrate the presence and availability of drivers of WAV vehicles for an Offset Request, TNCs shall submit data on: (1) the number of WAVs in operation - by quarter and aggregated by hour of the day and day of the week, and (2) the number and percentage of WAV trips completed, not accepted, cancelled by passenger, cancelled due to passenger no-show, and cancelled by driver — by quarter and aggregated by hour of the day and day of the week. “In operation” is defined as when a WAV: (a) is available to receive a trip request, (b) has accepted a trip request until the passenger exits the vehicle or until the trip request is no longer accepted. By “quarter and aggregated by hour of the day and day of the week” means the total number of WAVs for a certain hour of the day for each day of the week (e.g., the total number of WAVs in operation at 1:00 p.m. on a Tuesday for the quarter is X).” Track 2 Decision at 8. *See, also*, Track 2 Decision at 83 (Ordering Paragraph 1).

<sup>11</sup> San Francisco protest at 2.

<sup>12</sup> *Id.* at 3-4.

<sup>13</sup> Disability Advocates protest at 2-3.

<sup>14</sup> Submission of this data is a reporting provision, not a performance benchmark. The Commission has explained that the submission would allow it to *evaluate* Uber’s WAV program, not limit funding to the program. *See* Track 2 Decision at 7.

Rather than offer constructive solutions about WAV, these protests attempt to discredit Uber’s good faith efforts to improve WAV service. This is unproductive, does not serve the public’s best interests, and frustrates the Legislature’s intention for TNCs to explore WAV service and work with stakeholders to find solutions.

### **b. Improved Level of Service**

Without offering any supporting citations, San Francisco erroneously claims that “[t]he Track 2 Decision suggests that improvements should be measured in minutes.”<sup>15</sup> This is a false and unsupported statement. There is no such suggestion that improvements should be measured in minutes. Next, San Francisco argues that Uber did not meet the Offset Response Time performance benchmark for certain counties in Q4 2020.<sup>16</sup> However, in doing so, San Francisco mischaracterizes the improved level of service requirement set forth in the Track 2 Decision, and fails to demonstrate why Uber’s response times are inconsistent with that requirement. In fact, Uber has demonstrated an improved level of service as required by the Track 2 Decision, and San Francisco has shown nothing to the contrary.

### **c. Outreach Efforts**

San Francisco argues that Uber failed to demonstrate adequate efforts to promote WAV services to disability communities. San Francisco acknowledges that the Track 2 Decision does not specify a methodology, yet concludes that the “mere submission of any evidence at all cannot be sufficient to warrant expenditure of public funds.”<sup>17</sup> San Francisco provides no authority for this position. San Francisco also suggests that Disability Advocates should be consulted to assess whether Uber has met its outreach requirement.<sup>18</sup> This is a policy proposal, not a requirement imposed by the Track 2 Decision or SB 1376. Under § 5440.5(a)(1)(B)(ii), the Commission shall require a TNC to demonstrate in a geographic area “efforts undertaken to publicize and promote available WAV services to disability communities . . . .” The Commission adopted the following simple test for how a TNC might satisfy this requirement:

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).<sup>19</sup>

Uber has sufficiently demonstrated its outreach efforts, including detailing such efforts using the CPED-designed template and providing a comprehensive narrative documenting its efforts (including sample marketing and promotional material).

The Disability Advocates also seek to impose their own standard for meeting the requirements of SB 1376, despite the clear language of the Track 2 Decision. The Disability Advocates opine that

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<sup>15</sup> San Francisco protest at 4.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Track 2 Decision at 21.

“Uber does not report sufficient information to demonstrate whether its efforts were interactive. There is no indication as to whether Uber’s contacts ever progressed to interaction with any of these groups or actual partnership activities.”<sup>20</sup> While Uber invites any suggestions for improving its outreach, the Disability Advocates are insisting on a standard that is not an offset requirement imposed by the Track 2 Decision or SB 1367. Similar to presence and availability, the standard is that a TNC demonstrates efforts undertaken to publicize and promote WAV services, not that a TNC meets a subjective performance standard imposed by a party to the proceeding.

Uber continues to raise awareness about the program’s availability, solicit feedback, respond to questions and concerns from accessibility stakeholders, and leverage partnerships with community-based advocates to disseminate educational materials about Uber’s accessible services. Uber will continue to seek new opportunities to engage in meaningful outreach, and welcomes proactive feedback from all parties for how to improve this outreach to be as effective as possible.

#### **d. Uber’s Funds Expended**

Both San Francisco and Disability Advocates claim that Uber’s accounting of funds is insufficient. Disability Advocates take issue with the “broad categories” that Uber used, noting that it would be “inappropriate” to allow offsets using these categories.<sup>21</sup> There is no authority to support this position; Uber used CPED-provided data templates — and the categories specified therein — to complete its AL-8 submission.

San Francisco opposes Uber’s request for fee offsets because it claims that Uber has not shown the cost-effectiveness of its efforts to improve WAV service.<sup>22</sup> San Francisco cites no authority for its position, nor could it, given that the Track 2 decision and SB 1376 impose no “cost-effectiveness” benchmark for offset eligibility. Nor does San Francisco explain what it views as a reasonable per-trip or aggregate offset request. It simply devises a metric (average offset request per completed TNC trip) and claims that Uber’s costs are unreasonably high.

If a TNC has met the statutory requirements for a fee offset, then it is entitled to a reimbursement of its reasonable expenses. The Track 2 Decision, which implements SB 1376, outlines the requirements for a qualifying expense:

“(1) a reasonable, legitimate cost that improves a TNC’s WAV service, (2) incurred in the quarter for which a TNC requests an offset, and (3) on the list of eligible expenses attached as Appendix A.”<sup>23</sup>

Uber has detailed each category of its qualified expenses in its AL-8 submission. These costs are directly attributable to Uber’s efforts to improve its WAV service. San Francisco does not assert that the specific expenses claimed by Uber are inconsistent with the Track 2 Decision or SB 1376. It simply notes that the high costs associated with Uber’s WAV service “raise concerns

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<sup>20</sup> Disability Advocates protest at 3.

<sup>21</sup> *Id.* at 3-4.

<sup>22</sup> San Francisco protest at 5.

<sup>23</sup> Track 2 Decision at 25; see also Pub. Util. Code § 5440.5(B)(ii) (establishing the requirement that a TNC provide a full accounting of funds expended).

about whether [Uber] is meeting the Act’s requirements,” and asks CPED to reject Uber’s offset request.<sup>24</sup>

San Francisco’s observation that WAV service is costly speaks to the very core of the Act. As the California Legislature aptly observed: “WAVs have higher purchase prices, higher operating and maintenance costs, higher fuel costs, and higher liability insurance, and require additional time to serve riders . . . .”<sup>25</sup> If WAV service was cost-effective, there would be no need for Californians to subsidize its development, operation, and expansion. Uber is developing and operating a first-of-its-kind on-demand WAV service throughout the state.<sup>26</sup> Without subsidy, Uber’s ability to improve and expand this service would be severely impacted. Any argument that Uber is somehow not qualified to seek its expenses because its costs are high — whether in the aggregate or on a per-trip basis — lacks any authority and disregards a core problem that SB 1376 attempts to address. Uber has met the statutory requirements for an offset, and is entitled to offset its qualifying expenses.

#### **e. Protesting Parties’ Material Omissions**

Beyond the specific errors described above made by San Francisco and Disability Advocates in their protests, they also make general material omissions in their analysis.

For example, in its protest, San Francisco flatly ignores the fact that Uber was the first TNC to enable WAV services via its platform, has the geographically broadest platform for the WAV industry, and has likely invested the most capital in contracting with third-party WAV providers, even *before* the possibility of any recoupment of funds was an option. The Legislature understands the challenges with enabling WAV service, and likely so do parties and cities, since on-demand WAV services have never before been successfully executed (*i.e.*, typically 24-hour minimum wait times for current paratransit services), despite cities having years of access to public subsidy not funded by the operators themselves.

Further, as discussed above, San Francisco and Disability Advocates do not attempt to analyze how the amounts invested correlate to the service enabled. Indeed, one might inquire as to why it takes millions of dollars in investments to enable WAV service. If the parties were genuinely interested in enabling improved WAV service, they would not protest receipt of funds by TNCs to enable bolstered WAV service. Rather, one would expect San Francisco and the Disability Advocates to offer solutions as to how funds should be *better* allocated or how partnerships can be *enhanced* through offset funds. Withholding access to funds at this stage would neither benefit the public nor increase access for people with disabilities, which is the Act’s true goal.

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<sup>24</sup> San Francisco protest at 5.

<sup>25</sup> Pub. Util. Code § 5440(f).

<sup>26</sup> This on-demand service requires Uber to position WAVs strategically throughout service areas to be available to receive a WAV trip request. Further, because WAV service is designed to serve a small percentage of the overall population, WAV is inherently unable to benefit from the economies of scale that other forms of transportation do.

## **CONCLUSION**

In sum, AL-8 is consistent with the Commission's determinations in the Track 2 Decision and the Legislature's intent behind SB 1376. The protests are procedurally and substantively flawed and must be rejected.

For the forgoing reasons, Uber respectfully requests that the Commission reject the protests and promptly approve AL-8.

Respectfully submitted,

**/s/ Adam Bierman**

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