



U.S. Department of Justice

*United States Attorney
District of Maryland*

Jane E. Andersen
Assistant United States Attorney
Jane.Andersen@usdoj.gov

Mailing Address:
6500 Cherrywood Lane, Suite 200
Greenbelt, MD 20770-1249

Office Location:
6406 Ivy Lane, 8th Floor
Greenbelt, MD 20770-1249

*DIRECT: 301-344-4422
MAIN: 301-344-4433
FAX: 301-344-4516*

June 29, 2023

Via Email: Ehartwig@mdot.maryland.gov

Eric S. Hartwig
Assistant Attorney General
State of Maryland
Office of the Attorney General
Maryland Transit Administration
6 St. Paul Street, 12th floor
Baltimore, Maryland 21202

Re: Investigation of the Maryland Transit Administration's Paratransit Program Under Title II of the Americans with Disabilities Act, USAO No. 2021v01174, DJ No. 204-35-304

Dear Mr. Hartwig:

We write to report the findings of the United States Attorney's Office for the District of Maryland's (USAO) investigation of the Maryland Department of Transportation Maryland Transit Administration's (MTA) MobilityLink paratransit program (MobilityLink) with respect to its compliance with the Americans with Disabilities Act (ADA). As you are aware, we received numerous complaints that MobilityLink is not in compliance with the ADA. During our investigation, we assessed MTA's compliance with Title II of the ADA, 42 U.S.C. §§12131-12150, and the regulations implementing Title II, 28 C.F.R. Part 35 and 49 C.F.R. Part 37. Under the ADA, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132. MTA is a public entity under the ADA and thus subject to this nondiscrimination mandate. *See* 42 U.S.C. § 12131(1)(B).

Pursuant to 42 U.S.C. § 12133 and 28 C.F.R. §§ 35.171 and 35.190(e), the Department of Justice (of which the USAO is a component) is authorized to investigate the allegations in this matter. Our investigation revealed violations of the ADA, and this Letter of Findings sets out our findings of fact, conclusions of law, and the actions necessary to correct those violations. 28 C.F.R. § 35.172. If we cannot secure a voluntary compliance agreement to resolve the violations, the Attorney General may bring an enforcement action in District Court. 28 C.F.R. §§ 35.173 and 35.174; *see also* 42 U.S.C. § 12133.

I. SUMMARY OF FINDINGS

MTA's paratransit service fails to provide service that is "comparable to the level of designated public transportation services provided to individuals without disabilities using such system." 42 U.S.C. § 12143(a). "To be deemed comparable to fixed route service" MTA must meet the requirements set forth in 49 C.F.R. §§ 37.123-37.133. *See* 49 C.F.R. § 37.121(b). MobilityLink has capacity constraints that significantly limit the availability of service to ADA paratransit eligible persons in violation of 49 C.F.R. § 37.131(f)(3), including a significant number of untimely pickups and drop-offs and lengthy waits for telephone service.

II. INVESTIGATION

In response to complaints received by the Department of Justice, the USAO opened an investigation of MobilityLink, and MTA has cooperated with the investigation. The USAO has reviewed all the information provided by MTA in response to our requests for information. The information reviewed by the USAO includes operations data, operations procedures, training materials, service provider contracts, audit documents, and telephone data. The USAO has also considered publicly available information and input from MobilityLink riders and local advocates for accessible public transportation.

III. STATUTORY AND REGULATORY BACKGROUND

Congress enacted the ADA in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). In so doing, Congress found that the forms of discrimination encountered by individuals with disabilities include "the discriminatory effects of architectural, transportation, and communication barriers" and the "failure to make modifications to existing facilities and practices." *Id.* § 12101(a)(5). Congress further determined that "discrimination against individuals with disabilities persists in such critical areas as . . . transportation." *Id.* § 12101(a)(3). For these and other reasons, Congress enacted Title II of the ADA, which prohibits discrimination against individuals with disabilities by public entities: "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity." *Id.* § 12132. The ADA defines a "public entity" to include any local government and any department or agency of a local government. *Id.* § 12131(1)(B); 49 C.F.R. § 37.3. MTA is thus a public entity under the ADA.

Title II of the ADA requires that public entities, like MTA, provide accessible transportation to people with disabilities. *See* 42 U.S.C. § 12132. Part B of Title II contains provisions that apply specifically to public entities that operate public transportation services and defines what shall be considered discrimination for purposes of the ADA. *See* 42 U.S.C. §§ 12141-12150. Pursuant to Sections 12143 and 12149 of the ADA, the U.S. Department of Transportation (DOT) has issued regulations for Title II of the ADA, which reflect the statute's broad nondiscrimination mandate. *See* 49 C.F.R. Parts 37 and 38. Specifically, the regulations

provide that “[n]o entity shall discriminate against an individual with a disability in connection with the provision of transportation service.” 49 C.F.R. § 37.5.

Title II establishes that it is “considered discrimination” for the operator of a fixed route system, such as MTA:

[T]o fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities . . . that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without using such system.

42 U.S.C. § 12143(a); *see also* 49 C.F.R. § 37.121 (“[E]ach public entity operating a fixed route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.”). To be deemed comparable to fixed route service” MTA must meet the requirements set forth in 49 C.F.R. § § 37.123-37.133. *See* 49 C.F.R. § 37.121(b).

Section 37.131 of the implementing regulations lists service criteria that a complementary paratransit system must meet. Relevant here is the prohibition against “capacity constraints” set forth in 49 C.F.R. § 37.131(f). Specifically, 49 C.F.R. § 37.131(f) prohibits covered entities from limiting the availability of complementary paratransit service to ADA paratransit eligible individuals including by, but not limited to:

- (3) Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons.
 - (i) Such patterns or practices include, but are not limited to, the following:
 - (A) Substantial numbers of significantly untimely pickups for initial or return trips;
 - (B) Substantial numbers of trip denials or missed trips;
 - (C) Substantial numbers of trips with excessive trip lengths.
 - (ii) Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists.

IV. FINDINGS OF FACT / CONCLUSIONS OF LAW

MTA has failed to provide paratransit services at a level of service comparable to the level of service provided to individuals who use the fixed route system.¹ Pursuant to 42 U.S.C. § 12143(a) and 49 C.F.R. § 37.121(a), a transit system is required to provide paratransit services to individuals with disabilities at a level of service which is comparable to the level of service provided to individuals without disabilities who use the fixed route system. The violations concerning MobilityLink constitute a level of service *below* the level of service provided by MTA to individuals without disabilities who use the fixed route system, and are thus violations of 42 U.S.C. § 12143(a) and 49 C.F.R. § 37.121(a).

Specifically, as identified below, MobilityLink has capacity constraints in two areas in violation of the governing regulations. Capacity constraints limit the availability of service to ADA paratransit eligible persons. Capacity constraints include “[a]ny operational pattern or practice that significantly limited the availability of [paratransit] services [.]” 49 C.F.R. § 37.131(f). “The capacity constraints provision was designed to provide adequate redress for systemic problems in service delivery [T]he provisions of § 37.131(f) gauge whether a provider has fulfilled its obligation to meet demand.” *Anderson v. Rochester-Genesee Reg’l Transp. Auth.*, 337 F.3d 201, 209 (2d Cir. 2003) (internal quotations and citations omitted). Thus, patterns or practices that limit demand may be considered capacity constraints. *Id.*, see also *Disability Rights Council of Greater Wash. v. Wash. Metro. Area Transit Auth.*, 239 F.R.D. 9, 19 (D.D.C. 2006) (finding capacity constraint may be based upon “rude customer service, inadequate telephone reservation service, failure to respond to complaints, dangerous driving, ‘false no-shows,’ untimely pickups, missed trips, and denied trips.”). In addition to situations where transit systems are openly denying requests for paratransit, a system can also “illegally impos[e] limits on the number of paratransit riders it serves by . . . making service so poor that it discourages riders from using it.” *Martin v. Metro. Atlanta Rapid Transit Auth.*, 225 F. Supp. 2d 1362, 1371 (N.D. Ga. 2002).

A. Poor On-Time Performance²

On-time performance is a capacity constraint for MobilityLink in violation of 49 C.F.R. § 37.131(f). In its published guidance, FTA C 4710.1, November 4, 2015 (the “FTA Circular”),

¹ MTA’s paratransit service includes all areas of Baltimore City, all portions of Baltimore and Anne Arundel Counties which are located inside the Baltimore Beltway (I-695), and all other areas of Baltimore and Anne Arundel Counties located within a 3/4-mile radius of MTA’s core fixed route services, including MTA’s Local Bus, Light RailLink, and Metro SubwayLink.

² We recognize that the COVID-19 pandemic may have presented challenges on MTA’s paratransit services in 2020 and 2021. And we recognize that MTA has taken affirmative steps to improve on-time performance, including entering into new contracts, raising wages for drivers, and creating performance incentives for on-time performance.

the Federal Transit Administration (FTA) notes that poor on-time performance “may discourage riders from using such services and may discourage other individuals with disabilities from applying to become eligible riders.” FTA C 4710.1, Ch. 8.5.3.³ Both excessively late pickups and drop-offs are a capacity constraint for MTA.

i. Untimely Pickups

FTA permits transit agencies to establish a reasonable “window” around the scheduled pickup time. FTA C 4710.1, Ch. 8.4.5. FTA considers a pickup on-time if drivers arrive at pickup locations within the established window. FTA C 4710.1, Ch. 8.5.3. MTA has established a 30-minute pickup window, so that a pickup is considered “late” if the driver arrives more than 30 minutes past the scheduled pickup time. MTA’s own reported on-time performance⁴ reveals an operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons. 49 CFR § 37.131(f)(3).

MobilityLink has experienced periods of poor on-time pickup performance since at least September 2018, when only 87.4 percent of pickups were on time. In April 2019, only 74.2 percent of pickups were on time. This means that riders experienced late pickup on over 46,500 occasions during this month.⁵ When ridership dramatically decreased at the start of the COVID-19 pandemic (from 175,168 riders in February 2020 to a low of 43,477 riders in April 2020), MTA’s on-time performance improved. However, as ridership began to slowly increase, performance once again fell to unacceptable levels. Specifically, on-time performance was poor between February 2021 through June 2022, with a low of only 59.2 percent of pickups being on-time in September 2021, resulting in late pickups on over 38,600 occasions.

Untimely pickups negatively impact riders in many ways. Late pickups have caused riders to miss doctor’s appointments, religious services, and plans with friend; resulted in riders being left outside in cold, hot, or unsafe conditions for long periods of time; caused riders to have to cancel trips; and required riders to incur unnecessary expenses. For example, one rider was scheduled to be picked up at 8:30 p.m. from an event that was scheduled to end at 9:00 p.m. At 8:55 p.m., the rider received an automated call from MTA informing her that she would not be picked up before 2:37 a.m., essentially cancelling her ride and forcing her to find an alternative way home. Fortunately, a friend was able to pick her up, but the rider’s power

³ A Copy of the FTA Circular is available at: https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_ADA_Circular_C_4710.1.pdf

⁴ MTA reports on-time performance on its website at <https://www.mta.maryland.gov/performance-improvement>. When calculating on-time performance, transit agencies often combine early pickups together with on-time pickups when documenting on-time-performance. FTA C 4710.1, Ch. 8.5.3.

⁵ MTA reports ridership on its website at <https://www.mta.maryland.gov/performance-improvement>.

wheelchair would not fit in the car. She was forced to leave her wheelchair at the venue, only to have to find a way to pick it up the next day. Another rider scheduled a return pickup from church for 12:15 p.m., but MobilityLink did not arrive until 4:00 p.m., forcing him to wait over three hours. The church building had closed, forcing him to find a safe location to wait. Another rider is routinely scheduled to be picked up from work at 3:30 p.m. and has experienced frequent delayed pickups. For example, on one occasion, when his ride did not arrive by 4:00 p.m., he called the late line⁶ and was told his ride would not arrive until 4:52 p.m. When his ride still did not arrive, he called the late line again. His ride did not arrive until 6:16 p.m.—more than 2 hours late—and he did not get home from work until 7:35 p.m. One rider we spoke to stated she had such bad experiences with untimely pickups that she began using an alternative service at a significant financial cost to her.

ii. Untimely Drop-Offs

MTA also has untimely drop-offs that are a capacity constraint for MobilityLink, in violation of 49 C.F.R. § 37.131(f). For certain trip requests, a rider provides MTA Mobility with an appointment time, i.e., the rider wants to reach the destination no later than a specified time. The FTA Circular “encourages establishing policies to drop off riders no more than 30 minutes before appointment times and no later than appointment times.” FTA C 4710.1, Ch. 8.5.6. The FTA Circular explains:

All travelers using a transportation provider to travel to a time-sensitive appointment want to have confidence in the provider’s reliability. This is also true for complementary paratransit. Frequently arriving late to appointments could discourage use of the service. As such, FTA considers a pattern or practice of untimely drop-offs for trips with stated appointment times as a capacity constraint.

An analysis of drop-off performance for a sample week (October 2-8, 2022) shows that for all MobilityLink trips with a requested appointment time, 14.7 percent of drop-offs were after the appointment time. Of these late drop-offs, 4.5 percent were 16 or more minutes late. Our review also revealed a significant number of very early drop-offs; specifically, 25.7 percent of drop-offs occurred more than 30 minutes prior to the requested appointment time, another indication of a capacity constraint. Combined, MTA only met FTA’s guidance of dropping off riders no more than 30 minutes before appointment times and no later than appointment times 59.6 percent of the time. The table below presents MobilityLink’s on-time drop-off performance for all trips with a requested appointment time during the relevant time period.

⁶ MTA operates a call center for MobilityLink riders to address a range of needs, including a late line for riders to check on the status of a late trip.

Table 1 – Drop-off Performance: All Mobility Trips, October 2-8, 2022

>60 minutes late	21	0.2%
46-60 minutes late	45	0.5%
31-45 minutes late	92	1%
16-30 minutes late	267	2.8%
1-15 minutes late	958	10%
All Late	1,383	14.7%
0-15 minutes early	2,477	26.3%
16-30 minutes early	3,139	33.3%
All within 30 min Window	5,616	59.6%
All Very Early (> 30 minutes early)	2,422	25.7%

Multiple MobilityLink users reported that they missed important events due to late drop-offs. For example, one MobilityLink users reported scheduling a ride with MobilityLink by providing MTA with the time of his church service, but was dropped off late as church was letting out. On other occasions, this rider was forced to cancel scheduled rides and miss church because MTA delayed the pickup times such that the rider knew he would not be dropped off on time.

B. Poor Telephone Performance

Excessive telephone call wait times are a capacity constraint for MobilityLink, in violation of 49 C.F.R. § 37.131(f). The FTA Circular states:

...the telephone remains the primary means for complementary paratransit riders to request trips and to check on the status of a ride. Poor telephone performance can limit the availability of complementary paratransit riders...and has the potential to constitute a capacity constraint under § 37.131(f)(3)(i).

Properly functioning telephone systems for complementary paratransit have sufficient capacity to handle calls from riders, along with the appropriate staffing to answer calls in a timely manner; they do not have busy signals or excessively long hold times....

Promptly responding to trip-status calls for late pickups, commonly known as “where’s my ride?” calls, is especially important. Riders may not be in a suitable position to remain on hold while waiting for a response from transit agency representatives.

FTA C 4710.1, Ch. 8.5.6.

MTA operates a call center for MobilityLink riders to address a range of needs, including requesting a trip and checking on the status of a late trip. The call center accepts reservations for

MobilityLink between the hours of 8:00 a.m. and 5:00 p.m., seven days a week. The MTA telephone “late line,” to check on the status of a late trip, is open 24 hours a day, seven days a week.

An analysis of incoming telephone calls to the reservations line (56 percent of all incoming calls) for the period of September 30, 2022 to November 30, 2022 reveals that callers attempting to make reservations experience telephone hold times over three minutes 33 percent of the time.⁷ Performance during the afternoon hours is particularly poor. For example, only 20 percent of calls made between 2:15 p.m. to 2:30 p.m. are answered within three minutes. And many riders were on hold for much longer than 3 minutes. For example, on a majority of days in November, callers experienced hold times over 10 minutes, with the longest wait time in November being 33 minutes and 58 seconds. Notably, the rate of abandoned calls increases after 11:30 a.m. Abandoned calls generally correspond to callers who are frustrated and no longer want to wait for their calls to be answered. The table below presents the percentage of calls on hold more than three minutes and percentage of abandoned calls between 1:45 p.m. and 5:15 p.m., in 15-minute increments.⁸

⁷ MTA has set its own performance standard goal of answering 90 percent of all telephone calls within three-minutes, which it has failed to meet. Notably, MTA’s standard is lax compared to the standards used by other paratransit operations. For example, the paratransit service in New York City (Access-a-Ride) has a performance standard of answering 95 percent of calls within 3 minutes.

⁸ While the MTA reservation line closes at 5:00 p.m., the data reports a small proportion of reservation calls between 5:00-5:15 p.m., which represent calls that were initiated before 5:00 p.m. but not answered (or abandoned) until after 5:00 p.m.

Table 2 – Telephone Performance by Time Period for Reservations Calls

Time period	Total Calls Answered	Calls Answered within Three Minutes	Percentage of Callers on Hold More Than Three Minutes	Percentage of Abandoned Calls
1:45-2:00 p.m.	2,573	876	66.0%	23.3%
2:00-2:15 p.m.	2,678	574	78.6%	29.6%
2:15-2:30 p.m.	3,431	678	80.2%	25.5%
2:30-2:45 p.m.	3,705	967	73.9%	23.3%
2:45-3:00 p.m.	3,765	1,123	70.2%	21.6%
3:00-3:15 p.m.	4,239	1,605	62.1%	18.2%
3:15-3:30 p.m.	4,249	1,975	53.5%	16.3%
3:30-3:45 p.m.	4,358	1,819	58.3%	17.4%
3:45-4:00 p.m.	4,655	2,077	55.4%	15.0%
4:00-4:15 p.m.	4,865	2,352	51.7%	13.5%
4:15-4:30 p.m.	4,960	2,213	55.4%	14.6%
4:30-4:45 p.m.	4,940	2,221	55%	14.4%
4:45-5:00 p.m.	5,240	2,599	50.4%	11%
5:00-5:15 p.m.	352	51	85.5%	13.3%

Similarly, an analysis of incoming telephone calls to the late line (28 percent of all incoming calls) for the period of September 30 to November 30, 2022, revealed that of all answered calls, 15.6 percent of callers were on hold for more than three minutes. And again, performance varied greatly depending on the time of day. Average hold times worsen after 11:30 a.m. and are very poor from 1:45 p.m. until 5:00 p.m. For example, for riders who had their calls answered between 2:00-2:15 p.m., 75.8 percent of them were on hold for more than three minutes. The data for abandoned calls similarly correlates with the hold time data. Between 2:00-2:15 p.m., for example, 29.6 percent of calls were abandoned. For a rider who is waiting for her vehicle, long telephone hold times can be a significant deterrent to using the service. The table below presents the percentage of callers on hold for more than three minutes and the percentage of abandoned calls between 1:45 p.m. and 5:00 p.m., in 15-minute increments.

Table 3 – Telephone Performance by Time Period for Late Line Calls

Time period	Total Calls Answered	Calls Answered within Three Minutes	Percentage of Callers on Hold More Than Three Minutes	Percentage of Abandoned Calls
1:45-2:00 p.m.	635	268	57.8%	44.4%
2:00-2:15 p.m.	732	177	75.8%	53.0%
2:15-2:30 p.m.	780	200	74.4%	51.1%
2:30-2:45 p.m.	1,070	328	69.3%	45.4%
2:45-3:00 p.m.	934	292	68.7%	43.3%
3:00-3:15 p.m.	1,121	465	58.5%	36.6%
3:15-3:30 p.m.	1,020	547	46.4%	36.8%
3:30-3:45 p.m.	1,158	529	54.3%	35.1%
3:45-4:00 p.m.	961	464	51.7%	36.0%
4:00-4:15 p.m.	1,039	524	49.6%	33.6%
4:15-4:30 p.m.	790	407	48.5%	36.5%
4:30-4:45 p.m.	811	395	51.3%	37.2%
4:45-5:00 p.m.	899	603	32.9%	27.1%

This data supports the experiences of the MobilityLink users, many of whom complained of long telephone wait times. For example, one user reported experiencing several issues with the reservation line, including one occasion where he was on hold for over 15 minutes during two different attempts, leaving him feeling defeated and causing him to abandon his attempt to schedule a ride.

V. RECOMMENDED REMEDIAL MEASURES

To remedy the violations discussed above, MTA must reform its operations to address the identified capacity constraints. These reforms must include oversight to ensure their objectives are accomplished. At a minimum, MTA must:

1. Invest in additional resources, including vehicles and drivers, as well as any other operational improvements necessary, to ensure sustained on-time performance (both pickups and drop-offs) such that eligible riders no longer experience such capacity constraints.

2. Revisit performance standards so that MTA MobilityLink accurately identifies and remedies service issues before they rise to the level of discriminatory capacity constraints.
3. Provide adequate resources (i.e. lines, equipment) and adequate staffing of the MobilityLink call center to ensure that wait times are not a capacity constraint.
4. Track and provide to the United States more detailed performance metrics.
5. Improve MTA's process of reviewing annual MobilityLink demand, such that MTA plans for and provides service each year that is free from capacity constraints.

VI. CONCLUSION

We recognize your ongoing cooperation in this investigation, and we are committed to working with you to find a resolution. Please contact the undersigned within 14 days of receipt of this letter to confirm that you remain interested in working cooperatively with the United States Attorney's Office to resolve this matter. In the event we determine that we cannot secure compliance voluntarily to correct the deficiencies identified in this letter, the Attorney General may initiate a lawsuit pursuant to the ADA. *See* 42 U.S.C. § 12133. We would prefer, however, to resolve this matter by working cooperatively with MTA to negotiate an agreement that brings MTA's paratransit service into compliance with the ADA and assures the above-cited violations will not recur.

Very truly yours,

Erek L. Barron
United States Attorney

Jane E. Andersen
Assistant United States Attorney