U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

October 17, 2022

VIA EMAIL

MTA New York City Transit
Paige Graves
General Counsel
Office of the Vice President & General Counsel
130 Livingston Street
Brooklyn, NY 11201

Re: Investigation of the New York City Transit Authority's Access-A-Ride Program Under Title II of the Americans with Disabilities Act

Dear Ms. Graves:

We write to report the findings of the United States Attorney's Office for the Southern District of New York's ("USAO") investigation of the New York City Transit Authority's ("NYCTA") Access-A-Ride ("AAR") paratransit program with respect to its compliance with the Americans with Disabilities Act ("ADA"). As you are aware, we received numerous complaints that the AAR paratransit program is not in compliance with the ADA. During our investigation, we assessed NYCTA'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. Parts 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. NYCTA is a public entity under the ADA and thus subject to the statute's 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

As outlined in more detail below, AAR'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). Specifically, AAR engages in "operational pattern[s] or practice[s] that significantly limit[] the availability of service to ADA paratransit eligible persons." 49 C.F.R. § 37.131(f)(3). These capacity constraints include significant untimely drop-offs and excessive travel times. *See id.*

II. INVESTIGATION

In response to complaints received by the Department of Justice, the USAO opened an investigation of AAR, and NYCTA has cooperated with the investigation.

The USAO has reviewed all the information provided by NYCTA in response to our requests for information. The information reviewed by the USAO includes but is not limited to operations data, operations procedures, documents describing performance definitions and standards, training materials, carrier contracts, audit documents, phone data, schedules, and logs. The USAO has also considered publicly available information and complaints of AAR users.

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:

> [N]o 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. NYCTA is thus a public entity under the ADA.

Title II of the ADA requires that public entities, like NYCTA, 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 NYCTA:

> [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.").

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

NYCTA 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 AAR constitute a level of service *below* the level of service provided by AAR 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).

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[1] NYCTA's fixed-route system includes subway and bus service.

Specifically, as identified below, AAR has imposed capacity restraints in two areas in violation of the governing regulations. Capacity constraints limit the availability of service to ADA paratransit eligible persons. Capacity constraints include, but are not limited to: substantial numbers of significantly untimely pickups or drop-offs; substantial numbers of trip denials or missed trips; and excessively long trips. 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.* 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. Untimely Drop-Offs

Based on our review we have found that late drop-offs are a capacity constraint for AAR in violation of 49 C.F.R. § 37.131(f). In its published guidance, FTA C 4710.1, November 4, 2015 (the "FTA Circular"), the FTA "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. NYCTA, however, considers drop-offs to be on-time when they occur up to five minutes after the requested appointment time. An analysis of drop-off performance for a sample week revealed that for all AAR trips with a requested drop-off time, 13.9 percent were late according to FTA's standard of requiring drop-offs to be no later than the appointment time. By borough, this ranged from 10.5 percent (Queens) to 16.4 percent (Manhattan). Excluding drop-offs that were one to five minutes late, consistent with NYCTA's approach, 9.9 percent of drop-offs were *more* than five minutes late. Our review also revealed a concerning number of very early drop-offs; specifically, 38.7 percent of drop-offs occurred more than 30 minutes prior to the requested appointment time, another indication of a capacity constraint.

B. Excessive Travel Times

We have also found that excessive travel times are a capacity constraint for AAR service. The FTA Circular advises that a pattern or practice of substantial numbers of trips with excessive trip lengths is a form of capacity constraint per § 37.131(f)(3)(i)(C). To evaluate whether a trip is "excessive" requires a comparison to the time required to make a similar trip using the fixed route system. FTA C 4710.1, Ch. 8.5.5. Specifically, FTA encourages transit agencies "to establish travel time performance standards, such as 'at least X percent of complementary paratransit trips shall have travel times equal to or less than comparable fixed route travel times.'" *Id.*

NYCTA, however, uses "trip distance bands" to measure comparable trip lengths. Specifically, AAR's "Guide to Access-A-Ride Service" states that "a trip's maximum ride time

is based on trip distance."[2] For example, pursuant to NYCTA's guidelines for maximum travel times, for a trip that is three miles or less, the maximum travel time should be 50 minutes, while a trip over 14 miles should have a maximum ride time of 2 hours and 35 minutes. The table below presents "the amount of time a customer can anticipate traveling, based on trip miles."

Table 1 - AAR Travel Time Guidelines

Miles	Maximum Ride Time (mins)
0-3	50
3-6	1 hour 5 minutes
6-9	1 hour 35 minutes
9-12	1 hour 55 minutes
12-14	2 hours 15 minutes
>14	2 hours 35 minutes

The "miles" used for the travel time guidelines are neither the straight-line distance between the pickup and drop-off addresses, nor the actual direct street network odometer distance between pickup and drop-off addresses. Instead, the "miles" used for these travel time guidelines is a metric derived by NYCTA's paratransit software: a measure that is close to but usually greater than the actual street network odometer distance.

An analysis of AAR paratransit travel times to fixed route travel times revealed that AAR travel times are generally excessive for travel originating in Brooklyn, Manhattan, and Queens. Specifically, using a sample set of trips, our analysis compared the AAR travel time to the fixed route by using the MTA online trip planner. In using the trip planner, our analysis applied trip planner preference such as "minimize my travel time," walk no more than a half-mile, and travel by subway and/or bus. For the sample set of trips analyzed, we found paratransit travel times to be excessive for 78% of trips originating in Brooklyn, 91% of trips originating in Manhattan, and 72% of trips originating in Queens. There were not a substantial number of paratransit times that were excessive for trips originating in the Bronx and Staten Island. By contrast, an analysis of travel times during a sample week using the NYCTA standard for travel revealed that among the 13 private carriers, the proportion of trips that exceeded the NYCTA standard for travel time ranged from 2.20 percent to 5.96 percent. That analysis further revealed that six of the 13 carriers had less than three percent of their respective trips exceed the NYCTA travel time standard, while one other carrier had more than five percent of its trips exceed the travel time standard.

The comparison between the results of the analysis using the fixed route travel times as opposed to the NYCTA travel time standard—the mileage metric—confirms that the NYCTA standard fails to identify the true extent of the excessive travel times. As identified in the analysis above, the proper way to assess appropriate travel times is to compare paratransit travel time to comparable fixed route trips. For example, allowing 50 minutes for any trip shorter than three miles is simply not reasonable. While there are three-mile trips for which 50 minutes is a reasonable interval, there are other three-mile trips for which 50 minutes is *not* a reasonable

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[2] 2022 *Guide to Access-A-Ride Paratransit Service*, https://new.mta.info/document/15711, at 17.

interval. For example, a five-block trip (a quarter mile) taken by bus should not be allowed 50 minutes by paratransit. Similarly, a long-distance trip, such as from Brooklyn Borough Hall to the Metropolitan Museum of Art, could also have an excessive ride time while still complying with AAR's travel time guidelines. At certain times, that trip would take about 45 minutes by train. For such a trip, an AAR ride of about two hours would meet NYCTA's travel time standard, but would actually be excessive. Accordingly, the mileage/ride time bands established by NYCTA allow too much travel time for many trips, and travel times are a capacity constraint for AAR service.

V. RECOMMENDED REMEDIAL MEASURES

To remedy the violations discussed above to protect the civil rights of riders with disabilities, NYCTA must reform the operations of its paratransit system to address the identified capacity constraints. These reforms must include oversight to ensure their objectives are accomplished. At a minimum, NYCTA must:

1. Establish performance standards for on-time drop-offs to ensure that untimely drop-offs are not an operational pattern or practice that significantly limits the availability of paratransit service.

2. Collect and maintain data on requested drop-off times in its paratransit database.

3. Conduct analyses, at least monthly, of on-time drop-off performance. Such analysis should be performed on all trips for which the rider requested a drop-off time. The analysis should look at overall drop-off performance, as well as by borough, by carrier, and for subscription and non-subscription trips.

4. Establish incentives for a contractor meeting on-time drop-off performance standards and consequences for a contractor's failure to do so on a monthly a basis.

5. Adopt a standard that ensures NYCTA does not provide a substantial number of trips with excessive trip length. "Excessively long trip" shall mean any trip where the time from pickup to drop-off is more than 15 minutes longer than the transportation time would be from origin to destination if traveled using the fixed route system.

6. Conduct analyses, at least monthly, of comparable travel times for AAR trips. The sample of trips to be analyzed shall include trips from all boroughs and include weekday and weekend trips. The analyses shall examine overall travel time performance, as well as by borough, by carrier, and for trips taken by ambulatory and non-ambulatory riders.

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 AAR to negotiate a court-enforceable agreement that brings NYCTA's paratransit service into compliance with the ADA and assures the above-cited violations will not recur. We recognize that the COVID-19 pandemic may have presented additional challenges on NYCTA's paratransit service, and we are willing to work cooperatively to address any such issues.

Very truly yours,

DAMIAN WILLIAMS
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