

**Forum on Disability and Transportation  
Forum Report  
March 15, 2018  
Organized by the Southwest ADA Center at TIRR  
Memorial Hermann and the National Center for Aging  
And Disability at TIRR Memorial Hermann**

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## Forum on Disability and Transportation

### Forum Report

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## Your Comments on this Report are Encouraged

This report is presented for comment and recommendations from those interested in transportation for persons with disabilities. The forum participants and organizers took the important first steps of identifying key issues and posing recommendations. Now, it's time for the even more important steps of hearing from those of you who review the report.

You are encouraged to review this report carefully and help by considering and responding to the following questions:

- What issues are not addressed that should be?
- What do you consider to be the most important transportation challenges the disability community faces or will face in the next several years?
- What solutions do you propose to address those challenges?
- What are your reactions to the recommendations of forum participants?

You may make comments by sending an email to the following email address:

- [disabilitytransportationsolutions@gmail.com](mailto:disabilitytransportationsolutions@gmail.com)

Also, in 2018, the Southwest ADA Center at ILRU and the National Center for Aging and Disability will hold a series of online video conferences in which you and others may discuss the issues and recommendations of this report. The video conferences will be announced through ILRU's extensive mailing lists. To be sure you receive an announcement, send a request to be notified of the conferences to the email address listed above.

## Preface

As we near the close of the second decade of the 21st century, we, persons with disabilities, continue to face significant transportation inequities.

- Long-standing barriers to transportation and to the streets, intersections and sidewalks of our cities continue to exist more than 27 years beyond the passage of the Americans with Disabilities Act.
- Emerging approaches to transportation such as transportation network companies and autonomous vehicles hold as much potential to set back access as they do to offer hope of opportunity for new freedom and mobility.
- Funding for expansion and improvement of aging transit systems, few of which have been made truly accessible is very much in question.
- Those in rural and frontier areas of our nation continue to face significant obstacles to daily travel.

Many of us with disabilities are “transit dependent” for employment, daily activities, medical care, and access to schools, libraries and other public places; those systems on which we depend are often inaccessible and inadequate. The public rights-of-way on which we travel in the first and last miles of our daily trips often lack curb ramps, accessible pedestrian signals and other access features and are frequently poorly maintained.

In consideration of these and other factors, a group of about 25 participants and organizers gathered in Houston in June 2017 to review the current state of transportation and to develop a set of recommendations which they and the larger disability community could use in making access better for our communities. A large majority of those of us who organized and participated in the forum are persons with disabilities. Other participants are dedicated advocates or experts in the field.

As the forum opened, one of the participants, Maria Town, Director of the Houston Mayor’s Office for People with Disabilities, posed these important questions which the forum participants considered and which our larger community must also consider: “How can our transportation agenda...connect transportation access to other social justice and disability community fights like the fight to maintain existing home and community-based services or the fight for disability employment? How can we support other marginalized communities like native communities, low wage workers in their transit advocacy work and build coalitions with them to provide solutions that reflect the diversity of the disability community?”

We hope persons with disabilities, advocates, policymakers and industry leaders will read and comment on this report. Instructions for how to do this are shown in the section headed Your Comments on this Report are Encouraged; on page iv. We will act to ensure as many as possible do have the opportunity to review and comment by disseminating this report widely and by receiving recommendations and comments through a variety of channels.

As you will see as you read this report, we are both concerned about the current state and future of transportation and we are passionate about creating solutions. We know important decisions will be made in the months and years to come and believe it is crucial that our community be about ensuring that those decisions advance access, not hinder it. We are optimistic that our community can make transportation and access better and are committed to the hard work that will be required to ensure this hope is realized.

## Introduction

Planning for the Forum on Disability and Transportation began in the fall of 2016. Organizers from the Southwest ADA Center at ILRU and the National Center for Aging and Disability sought the assistance of colleagues at the Disability Rights Education & Defense Fund (DREDF) to organize a forum to address crucial transportation-related issues faced by the disability community. Organizers Richard Petty and Marisa Demaya, with the support of ILRU's Vinh Nguyen and Lex Frieden, planned initial meetings with DREDF's Marilyn Golden. In concert they made the decision to include on the planning team transportation experts Carol Tyson, a private consultant and Toby Olson, Executive Secretary of the Washington State Governor's Committee on Disability Issues and Employment. The team began weekly meetings which continued through the time of the forum.

The organizers developed an initial topic outline and then shared that outline informally with disability leaders (several of whom later attended the forum) and subsequently refined that outline from their reactions and comments. They arranged for case studies around key issues which would be addressed in the forum and assembled a list of background readings which were shared with participants in advance of the forum. (The case studies and references to the background readings are included in the appendixes.)

The organizing team established several criteria for participant recruiting. First, a majority of participants were to be people with disabilities who had demonstrated specific knowledge about transportation and associated issues. Other advocates with useful knowledge would also be included, as would experts from some industries or those noted for expertise in particular areas. Participants needed to be representatives of as many disability populations as possible, since issues faced by different groups are not the same. Geographic diversity was a criterion. A concerted effort was made to address intersectionality and equity across racial, ethnic and gender lines. Recruiting was done through an approach similar to "Snowball sampling," a research recruiting approach that uses a small pool of initial informants to nominate other participants who could potentially contribute to the work, analogous to a snowball increasing in size as it rolls downhill. The approach relied on extended associations and recommendations. The recruiting objectives of disability, expertise, gender, age and geography were largely achieved, although final on location participation was not as racially and ethnically diverse as planned or hoped.

The forum was organized into four major topic areas:

1. Transportation network companies.
2. Autonomous vehicles.
3. Public Rights-of-way.
4. Funding and infrastructure.

The issue of rural transportation was seen as crosscutting and incorporated into all areas.

The forum was conducted in Houston on June 20, 21 and 22, 2017. On the first day, in a plenary session, there were presentations on the key topic areas from participants with expertise in each area. On the morning of the second day, four groups met, each focusing on one of the key forum areas. That afternoon and the following morning, the full group reconvened to review and respond to the work of the small groups. On the morning of day three, additional comments from the full group were received and there was a brief wrap-up. The group adjourned shortly before noon.

This report is a summary of the discussions, findings and recommendations of forum participants. The segment for each topic area includes a highlight of current circumstances and issues as well as recommendations. Participants received and commented on a preliminary version of this report during the fall of 2017.

## **Acknowledgements**

The organizers wish to thank the participants who gave generously of their time and expertise. They read materials in advance and traveled to Houston for three days, taking time away from full schedules. Many also reviewed drafts of the report. In addition, apart from their participation in this policy discussion, many are engaged in disability transportation policy discussions on many levels with a variety of agencies and organizations. Organizers are grateful for their participation and their support of this important issue. In addition, the organizations with which many of the participants were affiliated supported the forum by paying travel costs of participants and some provided guidance and recommendations during forum development. Notable among these is Marca Bristo of Access Living who reviewed and commented on plans and materials.

This forum was made possible with funding from the Southwest ADA Center from the National Institute on Disability, Independent Living and Rehabilitation Research (NIDILRR) (federal grant 90DP0022), from the TransitCenter and from the Lakeshore Foundation. Without support from all of these organizations, the forum would not have been possible.

NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this report do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government.

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## **Forum Facilitators and Supporters**

The forum was organized by the Southwest ADA Center at ILRU and the National Center for Aging and Disability. These organizations are programs of TIRR (The Institute for Rehabilitation and Research, part of the Memorial Hermann Health System). Primary support also was provided by the Disability Rights Education & Defense Fund (DREDF). The organizing team included Richard Petty, National Center for Aging and Disability and Southwest ADA Center; Marilyn Golden, Disability Rights Education & Defense Fund; Carol Tyson, Consultant; Toby Olson, MPA, Washington State Governor's Committee on Disability Issues and Employment; and Marisa Demaya, Coordinator, Southwest ADA Center. ILRU's Lex Frieden and Vinh Nguyen provided important support to the organizing team. Susan Henderson of DREDF presented a session on autonomous vehicles in the forum and supported the organizing team.

ILRU's administrative team supported the forum. Marisa Demaya, Marj Elhardt, and Dawn Heinsohn provided editorial assistance. Marisa Demaya, Dawn Heinsohn and Dionne Rauseo assisted with registration and other on-location support.

## Findings and Recommendations

### Transportation Network Companies

#### *Work Group Members*

Carol Tyson, George Powers, Tony Stephens, Jim Weisman, Laura Wilson

#### *Overview*

*Transportation Network Companies Emerge Rapidly: Fill Transportation Gap for Some, Widen it for Others.*

Transportation network companies (TNCs) provide on-demand transportation across the country and the world.<sup>1</sup> TNCs burst onto the scene in San Francisco late in the first decade of this century, competing directly with taxis, offering what was marketed as cheaper, more convenient on-demand transportation requested through a smartphone app.<sup>1</sup> The TNC model relies on drivers using their personal cars to provide the service. The more drivers available in a market; the lower the wait times and cost for the customer.

TNCs have filled a gap in transportation access for some members of the disability community, and have widened that gap for others. Those who do not require wheelchair accessible vehicles now have access to true on-demand options that allow them to get to work, meet up with friends, and travel to meetings and appointments at a moment's notice or in an emergency. TNCs operating in suburban and rural or in underserved urban, areas can open up a world of opportunity to people who have lacked access to their communities.

Yet, very significant challenges remain. Disability advocates have consistently raised the need for wheelchair accessible service and anti-discrimination measures that ensure service to guide-dog and service animal users. In most markets, access to TNCs still requires a smartphone and access to debit/credit cards, limiting access to many low income individuals and those who may find operating a smartphone a barrier. Evidence exists of racial and ethnic discrimination. Driver advocates have noted low wages and few benefits.

While TNC service is often less than ideal, especially for persons with disabilities, the model has been accepted by the public. What was once touted as the future of transportation is now very much the present. The federal government has encouraged transit agencies and state departments of transportation to partner with TNCs. Clear equity performance measures, requirements for full accessibility and equivalent service could increase access to transportation for all and benefit communities.

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<sup>1</sup> Note on TNC versus ride-sourcing, rid-sharing and ride-hailing.

## *Expansion of the Wider Field of New Transportation Approaches*

TNCs are just one mode among the new category of service termed “mobility on demand” (MOD) services. MOD can be an alternative, or supplement, to traditional fixed route transit and personal car ownership. MOD encompasses shuttle services that operate pop-up fixed routes, autonomous vehicles (AVs), bikeshares, and taxis. Mobility as a service (MAAS) companies and programs connect the riding public with the fastest, cheapest, or most convenient mode per trip for a subscription.

Many companies providing transportation or manufacturing vehicles are branching out. Ford continues to manufacture vehicles, but also operates a bike-share program; has partnered with start-ups to design and test AVs; acquired Chariot, a van-pooling shuttle providing TNC-like service; and plans to compete directly with TNCs with its AVs in the future.<sup>2,3,4</sup>

As each of these new modes has developed, accessibility needs and requirements have been overlooked. It took an advocate complaint with the Department of Justice to highlight the steps backward taken by the former shuttle service, Leap.<sup>5</sup> The company had refurbished accessible shuttle buses by replacing the lifts with coffee bars. Advocates have been in discussions with AV manufacturers. While individual vehicles tested are not yet wheelchair accessible, engineers are beginning to take into account access needs for those who are blind or have low vision, as well as those who are Deaf or hard of hearing. Local Motors has called for new accessible design ideas for its 3D printed shuttle, Olli, and bikeshare company Zagster is providing a range of adaptive bikes in its bikeshare line.<sup>6,7</sup>

## *Transportation Network Companies: The Advocacy Challenge*

Transportation advocates in and outside the disability community have raised concerns and challenges regarding TNCs rapid rise in markets nationwide and globally. TNCs and related modes are now taken for granted in many cities. As they continue to grow, the disability community, and allies, must work to shape the future of transportation by providing a vision of how these modes can and must benefit all.

## **Current and Potential Challenges**

### *Operational Challenges*

- **Inaccessibility to Wheelchair Users.** With few exceptions, TNCs have neglected to provide adequate wheelchair accessible vehicle (WAV) service. Uber and Lyft have provided an option to request a WAV on their app in some markets. Wait times and vehicle availability are inconsistent. Smartphone apps may not always be accessible to those who are blind or have low vision. Service relies mostly on a smartphone linked to a credit or debit card, which creates a significant barrier for low income individuals, or those with limited English proficiency, who do not own a smartphone, may not have a bank account, or may find operating a smartphone difficult.

- Denial of Service. Wheelchair users who wish to transfer into a vehicle and have their chairs stowed during the trip, users of dog guides, and other users of service dogs have reported refusal of service from some TNC drivers. Drivers have refused to assist in folding and stowing chairs or have denied service to the dog users. The disability community has a long history of facing similar discrimination from taxi drivers. Advocates have noted that the Uber and Lyft apps allow blind and low-vision riders to identify offending drivers and report discrimination to the TNCs.
- Driver Recruiting Challenges. Overall, TNC driver turnover is reportedly high. The arms-length interactions between the TNCs and their drivers, as well as low wages, may be factors. TNCs have reported added difficulty in finding WAV drivers, yet have placed barriers in the way of those few who want to participate. Few drivers own a WAV. Uber has announced pilots to increase WAV availability by leasing WAVs, and providing additional incentives to drivers, though these efforts affect only a tiny portion of the areas they serve. Finding WAV drivers has been a reported challenge in markets where taxis provide WAV service.<sup>8</sup> Incentives such as creating voucher programs, lower rental rates, licenses or tags in closed markets, free or cheaper medallions, or additional bonuses per trip have had some limited success over time.

#### *Diminished Access to Other Forms of Transportation*

- Diminished Access to Private Transportation. In markets where TNCs operate, there has been a significant decline in the numbers of taxis and taxi drivers.<sup>9</sup> Taxi companies and drivers have reported a loss in revenue and trips due to TNC competition.<sup>10</sup> Cities such as San Francisco and Chicago that have relied on WAV taxis have seen a marked decline in availability, which diminishes accessible transportation all the more when TNCs fail to provide a WAV alternative. The NYC Taxis for All campaign led to a Taxi and Limousine Commission plan to ensure 50% of Manhattan's taxis will be wheelchair accessible by 2020. With fewer taxis overall, the number of WAV taxis will be severely diminished.
- Diminished Access to Public Transportation. Transit agencies and state departments of transportation are partnering with TNCs. Think tanks and respected-consultants such as Brookings, Nelson\Nygaard and McKinsey have recommended partnerships: as a cost saving measure; to fill gaps in first mile/last mile access; as alternatives when subways or bus lines are out of service; and as an alternative to, or a direct provider of, paratransit service. The FTA Mobility on Demand Sandbox program has encouraged states and transit agencies to creatively explore potential TNC partnerships, awarding \$8M for 11 agency pilots nationwide. Transit advocates have expressed concern that increased TNC ridership could lead to declines in bus and rail ridership. Fewer transit riders could result in decreased funding and cuts in bus and rail, which would also affect the availability of paratransit. Whether TNCs will replace or supplement public transit is yet to be seen, though data is beginning to reflect public transit declines.<sup>11</sup>
- Two-Tier, Inequitable Transportation. Transit agencies have been encouraged to provide more efficient real-time demand-responsive service to "ambulatory" passengers through TNCs, while providing services to wheelchair users using

traditional paratransit services, requiring them to reserve the day before (“next day service”). Advocates have called on agencies and TNCs to ensure provision of equivalent WAV service and strong anti-discrimination requirements in any partnership. Advocates have also called on agencies to require TNCs to provide accessible service in their private transportation. How responsive they will be remains to be seen.

- NEMT Partnerships. Providers of Non-Emergency Medicaid Transportation (NEMT) have begun partnering with TNCs to augment or even replace traditional NEMT service provision, though without assurances that TNC service will be available to wheelchair users. LogistiCare, a leading provider of NEMT, announced a partnership with Lyft to augment NEMT service in 267 cities across 31 states.<sup>12</sup> In 2015 Lyft announced a pilot partnership with National MedTrans Network in NYC.<sup>ii</sup> In rural or tribal areas that lack fixed route public transportation and paratransit, NEMT may provide one of few transportation options for the disabled or older adult community.<sup>iii</sup>

### *Regulation & Policy Challenges*

- Lightly Regulated TNCs. TNCs initiated service in many cities as unregulated entities, at times operating illegally. In many markets the taxi industry lobbied for TNCs to comply with the same set of regulations. Disability rights advocates argued for WAV requirements, anti-discrimination measures and ADA compliance. Stakeholders have achieved varied measures of success. TNCs have consistently lobbied for limited regulation across the board. In some cities, such as Austin, TNCs left the market altogether when TNCs considered requirements to be too strict. Even though TNCs face virtually no regulations in New York City, they must comply with a requirement for background checks. Houston instituted regulations that required WAV access.<sup>13</sup> Seattle collects \$.10 from each TNC trip in an inaccessible vehicle towards an accessible vehicle fund, collects data on numbers of accessible trips requested, and requires TNCs to provide a way to request WAV service on smartphone apps.<sup>14</sup>
- State vs Local Regulation. For the most part, regulatory efforts at the city or county level have been initiated by organizations and individuals (including the disability community) concerned about the disruptive impacts of TNCs. Some cities and counties have convened stakeholder groups to secure input into the regulatory language before an ordinance is drafted or introduced. In contrast, state level efforts at TNC regulations have largely been initiated and promoted by the TNCs themselves, and have negated and foreclosed TNC rules established by local

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<sup>ii</sup> Call center operators can book a ride through Lyft using Concierge, a web-based dashboard designed specifically for the pilot. To date, all of the patients transported were elderly and ambulatory, and did not have a smartphone. The pilot has been deemed successful and the scope was expanded in NYC, with plans to expand to clients in California and Nevada with additional states in 2017.

<sup>iii</sup> While TNCs represent a potential threat to equitable provision of NEMT, some states are seeking ways to cut service altogether. Policymakers in Arizona, Arkansas, Indiana and Iowa have used Section 1115 Waivers to restrict NEMT coverage to non-expansion Medicaid populations, or place limits on the benefits. In March 2017, HR 13954 was introduced. The bill would repeal the 50 year assurance of NEMT service.

governments within the state, including elimination of stronger local accessibility requirements.

A prime example is illustrated in Houston. The Commission on Disabilities passed a resolution calling on the mayor and the city council to ensure wheelchair access and that the needs of people who used service animals were considered. A stakeholder committee was formed and came to an agreement that there would be two options for access, one based on a percentage of vehicles and purchases of vehicles; the other based on response time. In May 2017, a state law overturned local control of TNCs and undid the access that Houstonians with disabilities fought for and achieved.<sup>15</sup> An OpEd by the Mayor of Houston, Sylvester Turner, and Maria Town, the Director of the Mayor's Office on People with Disabilities, argued against the state law, noting that the accessibility requirements were weak and that passage would send "a clear message that Texans with disabilities are to be treated as second class citizens."<sup>iv,16</sup>

### *Litigation*

- TNCs and the Americans with Disabilities Act. TNCs have claimed that they are exempt from the provisions of the ADA, contending that they are not public accommodations. However, the U.S. Department of Justice has stated that regardless of whether TNCs are determined to be public accommodations, they are private entities primarily engaged in providing transportation services and subject to the ADA on that basis.<sup>17</sup> Clear recognition of the rights guaranteed to people with disabilities under the ADA, without infringements, are a clear goal. Model minimum protections and additional equity requirements are provided in the Appendix.
- Disability Discrimination Litigation. Current open cases, including those in Chicago and in Jackson, Mississippi, brought by Access Living, and Washington, D.C., charge Uber with discrimination against wheelchair users and argue for equivalent service.<sup>18,19, 20</sup>
- Other Pending Litigation. Uber is currently facing more than 70 lawsuits from a variety of stakeholders, including cities, drivers and passengers for price fixing, lack of background checks, and discrimination, among other things.
- NFB Settlement Agreement. Uber settled a landmark suit brought by the National Federation of the Blind (NFB) resulting in significant gains for the blind and low vision community.<sup>21,22</sup>

### *Additional TNC Equity Issues*

- Driver Conditions. Most TNCs treat their drivers as independent contractors rather than employees. Drivers do not receive benefits such as paid vacations, sick days, or health insurance. Companies that utilize a contractor model are able to avoid

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<sup>iv</sup> Turner and Town continued, "Ensuring equal access to transportation for all Texans should be a priority at each and every level of government. While technology and innovation stand to move the rest of the world forward, these bills would leave Texans with disabilities behind."

labor laws, vehicle insurance, and operational costs. The surge pricing used by many TNCs leads to inconsistent fares and unreliable pay checks. A recent academic study of DC Uber drivers found that many are unhappy, citing high stress and low wages, which may contribute to the high turnover rates.<sup>23,24</sup> An unstable workforce could be problematic later on, especially if transit agencies come to rely on TNCs to augment or replace transportation services.

- **Race and Service Discrimination.** Light regulation could contribute to inconsistent service in underserved neighborhoods. A 2016 Washington Post study found that Uber offered better service in DC's whiter neighborhoods.<sup>25</sup> An academic study in Seattle and Boston found that Uber and Lyft drivers took longer to accept trips requested on TNC platforms by those with African-American sounding profiles.<sup>26</sup>
- **Background Checks.** TNCs have resisted requiring traditional background checks that many taxi and transit drivers must undergo. The National Employment Law Project (NELP) has called for TNCs and other companies to utilize fair hiring processes that take into account the criminalization of applicants of color, and ensure drivers are covered by EEOC and Consumer Financial Protection Bureau laws.<sup>27</sup> There is debate within the disability community over background checks. Some advocates feel safer with a traditional FBI background check. Others call for equal standards between taxi, transit and TNC drivers. Some encourage hiring reform that takes into account NELP's analysis.
- **Community Impact.** As TNCs become embedded in transportation systems, there have been calls to ensure they are benefitting rather than harming communities. Guaranteeing good working conditions for drivers is key, as is providing needed employment within the headquarters and regional offices. TNC impact on pollution, congestion and bicycle and pedestrian safety has been raised. TNCs could support complete streets initiatives, increased accessibility, local businesses, and the needs of the communities they serve. Advocates have raised concerns regarding the reliability of TNCs going forward. Neither Uber nor Lyft are profitable.

### *Current and Potential Gains*

- **Uber & Lyft Policy.** Persistent advocacy has led Uber and Lyft to adopt zero tolerance policies prohibiting discrimination, and to make (and have drivers make) commitments to accessibility for all. The policies require strong enforcement mechanisms and provision of wheelchair accessible service.
- **Employment.** In 2015 Uber announced upgrades to its Uber Partner App to make it easier for deaf and hard-of-hearing individuals to serve as drivers.<sup>28</sup> In 2016 Uber announced a partnership with Communication Services for the Deaf to create online support guides in ASL and host events around the country to sign up drivers.<sup>29</sup>
- **Greater Independence, Access to Community.** Many people in the disability community who do not require a WAV have benefited from TNC service. People in the blindness community who have relied on and been frustrated with paratransit, primarily the requirement to make an appointment the day before, can now travel when needed.
- **Sandbox Performance Measures.** The TransitCenter was given a USDOT grant to develop a way to evaluate emerging mobility services and partnerships in the MOD

SandBox Project. The TransitCenter developed goal-oriented performance indicators that would be cut by equity modifiers. For example, the indicator -- number of jobs accessible by public transportation breaks out into the equity modifiers: race, income, disability, limited English proficiency, gender and job type. Applying the measure to an Uber partnership in Florida, one can ask, are there low income communities that don't have this access because they can't afford the service? Are there people with disabilities who do not have access to the service?

- USDOT Regulations and Guidance. USDOT released guidance to governments and agencies in the form of a Shared Mobility Dear Colleague Letter and frequently asked questions in December 2016.<sup>30, 31</sup> Then Secretary Foxx reminded recipients of their obligation to equity and access, and that it is important to “balance technological innovation with the basic civil rights principles of equity and accessibility inherent in the provision of transit service.” The letter suggested the need to adhere to Title VI requirements (a condition of federal funding), and ADA requirements that are independent of funding. USDOT acknowledged that TNC service may be a barrier to low income and Limited English Proficiency speakers who don't own a smartphone, have a credit card or bank account. There is an obligation under Title VI to ensure there are alternative payment and reservation methods.
- USDOT acknowledges that many TNCs lack WAVs, and calls on agencies and governments to ensure service is accessible and usable by all. The letter reminds recipients that public entities must acquire accessible vehicles, or ensure equivalent service through partnerships with providers who can provide WAV service, and stresses that any TNC options for paratransit service must be available to all, not just “ambulatory” riders.
- TNCs in Rural Areas. TNCs are beginning to provide service in rural areas, and are targeting the older adult market. Liberty Mobility uses apps and call centers in Texas, Nebraska and Ohio.<sup>v</sup> Many of their drivers are retired seniors themselves who would be isolated in their communities if they were not drivers. The Area Agencies on Aging are helping to connect these companies with business. *GoGoGrandparent* provides a service connecting riders with TNCs through a land line or cell phone via text.<sup>vi</sup> Adult children of seniors or people who require regular medical care and need assistance getting to and from appointments are key stakeholders.

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<sup>v</sup> Liberty Mobility is providing on demand transportation service, but lists as its main goal to provide Mobility as a Service packages, i.e., connecting people with the full range of transportation options available to them at any given moment.

<sup>vi</sup> Geared towards, though not limited to, older adults, *GoGoGrandparent* is a low-tech mobility as a service provider that allows families and riders to request a ride on-demand, or pre-scheduled from TNCs like Uber and Lyft through a land line or cell phone. *GoGoGrandparent* manages drivers, monitors rides, and notifies family of the ride status. The operator's arrangement fee is .19/minute from when they start monitoring a service (i.e., when a request is entered) to when they notify the family that the ride has arrived at their destination. The company operates through call centers and the service is available in all 50 states and Canada.

- **Public Receptivity and Company Culture.** TNCs have been described as media darlings, and have relied on their popularity with the riding public to push back against regulation in new markets. Events in the past year suggest the public may be more open to calls for TNC accountability across equity issues.

After the administration announced a travel ban in January 2017, activists flooded to airports in protest. The New York Taxi Worker’s Alliance announced it would be present at LaGuardia and halted service in solidarity. When Uber continued to provide rides to the airport the hashtag #DeleteUber began trending. More than 200,000 riders deleted Uber from their phones.<sup>32</sup> Following this campaign and mounting scandals alleging sexism, low employee diversity figures, and harassment within the company,<sup>33</sup> the Uber CEO stepped down, along with several key members of the leadership team and Board. The company has suggested that improving its image and culture are priorities.<sup>34</sup>

- **Advocacy and Coalitions.** Working in coalition, across the disability community and with the broader social justice community, has proven successful. In Houston, an advisory council included cross-disability concerns ensuring local requirements considered all needs. In Washington, DC, the Transportation Equity and Accessibility Movement (TEAM), a coalition of unions and riders with disabilities, called for equity in any transit agency partnership with TNCs or taxis, including adequate numbers of WAVs, good working conditions of drivers and other workers, prioritizing the hiring of ADA paratransit workers displaced by the shift to taxi or TNC-based drivers, and compliance with the ADA.

### ***Recommendations from Forum Participants***

1. **Convene a National Disability Coalition.** A national coalition could keep members fully informed of local and national initiatives, including successes and challenges. Members could alert one another to potential threats. The coalition could meet regularly by telephone or video conference.
2. **Establish Model language for Ordinances, Laws and Policies.** Provide model language for TNC access to foster unified, aligned efforts.
3. **File Strategic Lawsuits.** Access Living of Chicago has filed a lawsuit against Uber over its lack of accessible vehicles. Support “good” litigation that supports and will not weaken the ADA.
4. **Resist Any Effort to Weaken Disability Rights Legislation.** There are concerns Uber may attempt to have the Americans with Disabilities Act amended to weaken access requirements.
5. **Produce Position Papers on Access.** Develop papers and secure partner sign on from organizations with similar interests.
6. **Foster Grassroots Advocacy.** Train and support local advocates to create convincing arguments that accessibility expands the market. Encourage creative local advocacy actions. Encourage and support advocates to meet with TNCs.
7. **Advocate for Federal Support of Innovation in Accessibility.** In the past two years, advocates have had meetings with the Department of Transportation about the Mobility on Demand (MOD) Sandbox Projects and were asked to serve on advisory

councils for pilot efforts of the project. Advocates should continue to raise concerns with Department of Transportation officials and work for higher goals than a requirement for “some accessibility” in projects. Also, advocate with other federal agencies (such as the Administration for Community Living) and Congress (including allies such as Senator Tammy Duckworth, Senator Bob Casey, Representative James Langevin and others), and use national conferences as platforms to be vocal about concerns.

8. Advocate at the State and local levels. Advocate to have laws and ordinances passed by city councils, county governments and state legislatures that require accessibility and nondiscrimination by transportation providers. Revise existing state regulatory laws to require equivalent service. Many states have already preempted local efforts with weakened state laws. Secure disability advocate appointments to local boards, commissions and committees to foster greater understanding of the issues.
9. Advocate For Ordinances And Legislation Requiring a Percentage Of Accessible Rides, and Comparable Or Meaningful Service Levels. The New York City Limo/Taxi Commission will require all companies to provide 25% of their rides in accessible vehicles. This ensures accessible vehicles will be on the street and available for those who require them. This is likely to lower overall cost because of the standard approach.
10. Advocate that TNCs Lease Wheelchair Accessible Vehicles to Drivers.
11. Advocate for Taxes or Fees to Support Accessibility. New York City has initiated the Taxi Improvement Fund. The fund covers costs of securing or modifying vehicles for wheelchair access. Similar arrangements could be established for TNCs. This is not ideal, but could reduce operator objections to accessible service.
12. Advocate for TNC Training on Access and Nondiscrimination. An example from bus access is that drivers were trained to assist passengers and to inspect and test lifts, securements (tie-downs) and other access features. Similar requirements could be imposed on TNCs.
13. Advocate with TNCs to Hire People with Disabilities. Each TNC should hire an ADA and accessibility officer in a high level position. People with disabilities should be recruited and involved in other staff positions, even at local branch offices. It is important TNCs have input from those who have disabilities that require transportation access. With significant involvement in the corporate culture, it may be possible to create or encourage change from within the organization.

## **Autonomous Vehicles**

### ***Work Group Members***

Toby Cole, Toby Olson, Charlie Petrof, Maria Town, Richard Petty (occasional)

### ***Overview***

Autonomous vehicles (AVs) are vehicles which require no driver or which augment driver tasks with automation. AVs are being tested in several large cities and regions. Some AV features are now being incorporated into current vehicle production by traditional and new entry manufacturers, with a range of automation levels. More than

one congressional committee is reviewing AV design and safety, and legislation is now being authored. Many state legislatures have enacted laws or incorporated legislative language that governs operation of AVs. AVs are being used on private property and other confined environments to transport employees and others within a defined range of locations.

### ***Current and Potential Challenges***

- **Vehicle based issues.** There are a variety of vehicle design considerations that must be taken into account to ensure full accessibility of AVs. These features include: physical access to interior of vehicle; provision of wheelchair tie downs for safety; personalization (i.e., identifying the vehicle for entry); accessible and equivalent methods of communication with the vehicle and service; additional interior design and accommodation features specific for wheelchairs and guide dog users; and different varying levels of technology based on cost.
- **System based Issues.** In addition, there are a variety of system-based design issues that must be addressed to ensure access for all... These include: access to payment systems for all potential riders, including low income riders or those who may be unbanked or lack access to a credit or debit card; equitable access to payment cards and systems; the need to convert individual vehicles to WAVs; ensuring equitable access to licensing for all riders and drivers; continuity of connection for riders who may need assistance (e.g., persons with cognitive limitations); and ensuring the involvement of the disability community, and all marginalized communities, in planning. The potential impact of funding for, and investment in, mass transit and the impact on jobs (i.e., freight drivers, bus drivers, etc.) must be taken into account.
- **Civil Rights and Privacy Issues.** As AV systems, and regulations, are discussed and implemented, the civil rights and privacy of all riders must be respected and maintained. Of note: restrictions based on disability or other discriminatory practices must be countered; who owns and controls private information collected by systems or vehicles (including medical trips-) should be considered, and data protected; access to vehicles based on citizenship, warrants, or other considerations, and how individual lives are valued when a crash or injury is unavoidable must be considered.
- **Departure Point and Destination Issues.** Regulators, advocates and AV companies must also take into account: the need for accessible loading and disembarking areas (should there be separate accessible areas and a database of accessible areas); how accessible pickup and drop-off locations are recorded and used; and ensuring accessible features for passengers to override or redirect misdirected vehicles.

### ***Recommendations of Forum Participants***

1. **Assess Disability Community Capacity to Address This and Other Access Challenges.** The community is already stretched by existing issues. Who has the capacity to work on this future threat and opportunity?
2. **Develop a Rapid Response Team.** Create a team or ongoing committee to monitor AV deployment. Coordinate Media Activities through the team.
3. **Produce Position Statements on AV Accessibility.** Produce a list of accessibility requirements for AVs (physical, communication, comfort, safety (i.e. who dies first),

payment, data privacy, etc.). Access and quality control processes must be built-in from the start and must be implemented before roll-out of new vehicles. People with disabilities must be on the development teams.

4. Work to Establish a Unified Position on AVs. Coordinate groups to create the voice of the entire disability community (not just specific interest groups).
5. Find Common Cause with Others for Whom AV Implementation Will be Important. Connect with National League of Cities, US Council of Mayors, National Association of Counties, National Governors Association, National Council of State Legislators and Justice League to alert them to the need to consider accessibility as they consider traffic/transportation adaptations in response to AV roll out.
6. Develop Model Laws. Develop a model state statute to eliminate barriers for adoption for use of AVs by people with disabilities at all stages of AV development.
7. Adopt a Strategy to Use Funding Streams as a Tool to Advance Access. Get AVs on approved transportation funding source lists--medical transit, VR and VA, paratransit, etc. Connect industry to get them to want these funding streams to continue.
8. Advocate for Enforcement of Medicaid, VR and VA Regulations. Ensure that AV transportation programs comply with access requirements of these federally funded programs.
9. Identify People with Disabilities as Early Adopters. Those in the disability community may be early adopters. Explore leveraging this as a means towards working with the industry to ensure access.
10. Advocate for Access in all Pilot Programs. Disability access should be integrated in all pilot programs at all stages. There should not be separate pilot programs just for disability issues.
11. Advocate to Include Disability Consideration in all Levels of Planning. Do not wait for "Level 4" (fully autonomous) development. Integrate at all levels of development. Ideally, persons with various disabilities would be PART of the development teams of these vehicles...to ensure they provide TRUE access! That means HIRING folks with disabilities.
12. Make the Business Case for Accessibility. Quantify the value of autonomous vehicles for the disability community and for the world as a whole. Include conversion vehicles in the argument.

## **Funding and Infrastructure**

### ***Work Group Members***

Billy Altom, Todd Brogan, Chris Hart, Robin Holzer, Ericka Jones, Chris Pangilinan, Mel Plaut, Gary Talbot

### ***Overview***

Across the country, many transit agencies are grappling with how to fund public transportation, including bus, rail, and paratransit. Decreasing ridership in urban areas leads to lower revenues and fewer funds to operate routes in already underserved areas. Many transit agencies are searching for ways to decrease paratransit ridership

by providing alternative, lower-cost on-demand options through taxis or TNCs. Renovating older inaccessible transit stations and maintaining or installing sidewalks is often not a priority. Rural and tribal areas face their own issues each year working to ensure adequate funding is set aside to provide transportation programs, utilizing grants and coordinating programs to fill gaps.

Surface transportation programs have largely been funded with monies from the federal Highway Trust Fund generated by a gas tax, as well as state and local dollars. According to the National Council on State Legislatures, states still face shortfalls. Fewer than half the states raised their gas taxes between 2013 and 2015.<sup>35</sup>

The federal government has yet to reach consensus on a sustainable funding measure, while states and local governments consider diverse approaches to funding, including sales taxes, vehicle taxes and fees, general funds, and bonds. Continued and increased funding for the Enhanced Mobility of Seniors and Individuals with Disabilities (Section 5310) grant, Formula Grants for Rural Areas (Section 5311), and bicycle/pedestrian grant programs is a critical need, as well as better coordination to ensure options are available across populations and resources are best spent and utilized is key, especially in rural and tribal areas. A new campaign to address New York City subway station infrastructure is promising and could lead to a reprioritization of accessibility efforts moving forward. Disability advocates are looking to partner with organizations that have a stake in local infrastructure and transportation to advance funding measures, and ensure access is considered in new development or rebuilding.

Transit agencies are seeking ways to address their financial woes. Riders that have no transportation alternatives may see cuts in bus routes, and decreased operating hours, which can also lead to cuts in ADA paratransit service. Shuttle bus companies operating TNC-like service through pop-up bus routes are filling service gaps in some neighborhoods, and could be drawing from transit ridership. Although convenient, many shuttle services have failed to provide wheelchair accessible service in the past.<sup>36</sup>

Transit agencies or local governments, especially in rural or suburban areas, may also provide fixed route deviation service on some routes as a way to save money, or attempt to decrease paratransit ridership. Fixed route deviation is considered on-demand transportation by the FTA and must comply with ADA requirements for on-demand providers.<sup>37</sup>

As older infrastructure and vehicles are repaired, accessible options can replace them. The Metropolitan Transportation Authority (MTA) in New York City (NYC) will be closing the L Train for 15 months. During that time an accessible shuttle will provide service between the stops. Riders can advocate for permanent accessible stations during the repair stage.

## ***Current and Potential Challenges***

### *Funding Issues*

- **Highway Trust Fund Limitations.** Federal Budget. Surface transportation, including public transit and sidewalks, have been funded, in part, with monies from the Highway Trust Fund largely generated by a gas tax. The Fund is unable to generate sustainable levels of funding as a result of higher fuel economy standards, and adoption of hybrid and electric vehicles; changes in driver habits leading to fewer vehicle miles driven; and a decreased share of funding from the federal government. Some advocates believe that earmarks as a bartering tool for infrastructure funding should be restored.
- **Mass Transit Funding.** Decreased federal funding and inadequate funds for transit operations has led to a crisis for many transit agencies. Politicians may be reluctant to impose taxes or divert state or local resources. In Washington, DC, a multi-jurisdictional, a closed door meeting was necessary to debate and search for solutions despite cuts to service hours, routes, and increased fares earlier this year.
- **Federal Grant Programs.** State and local projects and services have relied on federal grants that are vulnerable to budget cuts. The popular Transportation Investment Generating Economic Recovery (TIGER) program provides funds for infrastructure investments, often multimodal and multi-jurisdictional. FY 2017 grants will give special consideration to improved access to reliable, safe and affordable transportation in rural areas. Grants can be used to fund complete streets programs. Some see TIGER as one of the most successful transit funding mechanisms.
- **Bicycle and Pedestrian Project Funding.** Funding for bicycle and pedestrian projects can be used to install or maintain sidewalks, and install curb ramps. TIGER; the Safe Routes to School Program; the Transportation Alternatives Set Aside, and Federal Lands and Tribal Transportation Programs, which can also be used toward establishing an ADA transition plan, are just a few that can be utilized.
- **Accessible Transit Funds.** Section 5310 and 5311 program funds are crucial for accessible transit and rural services respectively. Section 5310 funds are often used by non-profits or taxi companies to purchase wheelchair accessible vehicles (WAVs). New Freedom grants used for operations and services above and beyond ADA requirements were folded into Section 5310. The Job Access Reverse Commute (JARC) grant program, which sought to provide transportation to jobs for low-income individuals, was folded into Section 5311 and the Urbanized Area Formula Grants (Section 5307).
- **Rural Program Funding Threatened.** Funding for the Section 5311 rural programs is also under threat, as is Tribal and Appalachian Program funding which remains stagnant. Rural and Tribal Areas without public transit provision (and without ADA paratransit as a result) rely heavily on transportation provided through human services providers. These services and vehicles are funded through Section 5310 and 5311. Services may also be provided through other agencies, including the Veterans Administration, Vocational Rehabilitation, or the Department of Education.
- **Car Ownership.** In rural and Tribal Areas with little or no public transit, car ownership remains the most reasonable solution, yet remains out of reach for many. According

to the 2011 American Housing Survey, 32% of rental households with a wheelchair user in rural areas lack access to a personal car. In urban and rural areas combined, 45% of mobility device users lack access to a personal vehicle.

- Siloed Programs. Many transportation services offered through human services agencies or nonprofits are geared to specific populations, e.g. veterans, residents over 65, or low-income. When riders are travelling to the same destinations an opportunity to provide more efficient and lower-cost service is lost. The Coordinating Council on Access and Mobility (CCAM) is comprised of 11 federal agencies and works to issue policy recommendations and implement activities that improve availability and increase access. Greater coordination at the federal, state and local level remains a priority.
- Funding for Transit Infrastructure. Many barriers remain in transit infrastructure programs, such as older commuter and rapid rail systems as well as Amtrak. Transit agencies often struggle to find ways to finance full improvements. Congress should require accessibility for all rail stations and fund these programs. Such ADA requirements are already in place for Amtrak but implementation has lagged.
- Implementation of ADA Paratransit. Many transit agencies focus on minimal compliance with ADA requirements, providing only the barest minimum at best, rather than implementing existing FTA policies that would provide fully-realized ADA paratransit services that meet the full intent of the ADA, or even better, prioritizing projects that would increase accessibility above and beyond what is required.
- Privatization / Partnerships. The current Administration proposed an infrastructure program that encourages and requires private investment for projects going forward, using \$200 billion in federal dollars to leverage \$800 billion in private funds. Respected consultant agencies and researchers like KPMG and the National Bureau of Economic Research have recommended outsourcing and privatization of some services, with unclear or detrimental impacts.
- Infrastructure Stratification. There is concern that infrastructure will become increasingly privatized and that only those portions that can turn a profit will receive attention. In addition, as services are privatized, advocates and community members may have less influence over accessible design and implementation of systems. The needs of typically underserved riders, including low-income, communities of color, and people with disabilities, are often not considered or addressed.
- Limited Data. Data that could point to accessibility needs is largely missing, e.g., identified inaccessible bus stops and sidewalks; riders and potential riders with disabilities. Properly funding projects to increase access can be challenging when the needs have not been identified.

#### *Additional Equity Funding issues*

- Ridership vs. Coverage. As transit agencies face a decline in ridership, they must decide whether to divert funding to increasing ridership or growing service coverage.
- Displaced Communities. Inadequate funding and planning goals favoring white and lower-to-middle income neighborhoods has resulted in inequitable service provision and displaced communities. Car-centric planning allowed highways to divide neighborhoods and create literal barriers to grocery stores, jobs, medical services,

and transit stops. There are fewer sidewalks in lower income and African American neighborhoods. A University of North Carolina study found that traffic related deaths were 88.2 percent lower at a site with a paved sidewalk than without.<sup>38</sup> USDOT has begun to address these and other equity challenges through Ladders of Opportunity policies and the Beyond Traffic 2045 report.

- Natural Disasters. Hurricanes, blizzards, earthquakes and damaging snow and rain storms are more prevalent in recent years due to climate change. Each of these events can cause significant damage to Public Rights-of -of-Way (PROW), traffic signals, and transit and rail lines. The hardest hit can be in low-income neighborhoods where riders may lack access to a personal vehicle or alternative transportation. Environmental and climate justice groups may be natural allies.

### *Current and Potential Gains*

- Alternative Funding Streams. In 2016, communities and states around the country successfully passed 70% of the proposed transportation ballot measures. Initiatives that are limited to single issues are more successful. In Kansas City a coalition led by active transportation advocates, along with the local Center for Independent Living and other stakeholders lobbied for a ballot initiative to address the sidewalk repair backlog. In April 2017 a package of \$9800M in obligation bonds was passed with \$150M over the next 20 years to fix sidewalks.
- Lawsuits. Lawsuits filed in NYC and other cities around the country led to the first curb ramps and lifts. In 2015, Los Angeles agreed to spend \$1.3B over the next three decades to fix a massive backlog of broken sidewalks, and make other improvements, as part of a settlement agreement.
- State Budgets & Coalitions. Advocates have also had luck advocating for additional funding from state legislatures. The Ohio State Independent Living Center held a state forum with the local protection and advocacy agency and other stakeholders. Participants included riders with disabilities, the aging community, public and private transportation providers, social service agencies, legislators and government staff. A statewide Disability Transportation Coalition was formed and successfully lobbied for additional funds in the state budget.
- Older Americans Act (OAA). The OAA requires accessible facilities for seniors. Efforts to ensure accessible PROW and transportation services can be in line with the OAA. The Area Agencies on Aging may provide useful coalition partners on projects, and 5310 funds can be matched with programs designed to support the OAA.
- Transit Oriented Development (TOD) and Public Private Partnerships (PPPs). Active transportation, urbanists, and civil rights advocates have identified a need to ensure equitable development at, or surrounding, transit stops. Development often increases property values, and draws in additional business. Civil rights advocates have identified measures that can be taken to ensure equitable development through community benefit agreements (CBAs), including requiring affordable housing and local hire provisions. These same agreements could include accessible PROW, as well as upgraded audible pedestrian signals, among other things.

Requests could be made for developers to pay for accessibility at a station from which they will benefit. (See more under PROW chapter below)

- Collaboration & Coordination. Transportation advocates have lobbied for increased coordination amongst agencies and with the private sector. Rides to Wellness Innovative Coordinated Access and Mobility Grants and Healthcare Challenge Grants are two CCAM initiatives. The Rides to Wellness program encourages partnerships between health and transportation providers, with a goal to increase access to care, improve health outcomes, and reduce healthcare costs. An estimated 3.6 million Americans miss or delay non-emergency medical care each year because of transportation issues, which can lead to costly admissions or readmissions to hospitals. Medicare spends \$15 billion annually on readmissions.

### ***Recommendations of Forum Participants***

#### *Funding*

1. Tie federal funds to establishing a 20-year plan for achieving full accessibility.
2. Incentivize local and state agencies to extract funding for accessibility infrastructure and general transit operations from new development.
3. Integrate accessibility demands into local funding initiatives, e.g. sidewalks and curb ramps to bus corridor improvements.
4. Prioritize funding (and saving) access to NEMT and rural transportation options.
5. Consider Title VI impact when services are being cut to save money. How are service cuts affecting communities of color? Title VI impact is based upon the racial/ethnic composition of the community served (not the riders)...so it's considered acceptable to cut service to a mostly white community even though the lions' share of the riders are people of color

#### *Infrastructure*

6. Invest in better asset management, e.g. MTA can't decide on how many stations have elevators. Utilize GIS data to capture curb ramp and accessibility infrastructure needs.
7. Develop clear, standard operational measurements to compare accessibility performance agency to agency.
8. Interweave accessibility with resiliency and climate change, e.g., during an emergency, one can't rely on one elevator; multiple redundant elevators are needed for mobility and resiliency.
9. Develop a detailed ADA chapter for Access Board guidelines, tied in to National Fire Protection Association (NFPA) 130 compliance.<sup>39</sup>
10. Develop a set of clear recommendations around accessible infrastructure as infrastructure is revamped to accommodate autonomous vehicles.
11. Urge policymakers and boards to make hard funding decisions. Ask decision makers to decide to put their statement of values into policy.

## Advocacy

12. Local Organizing. Organize in local areas to continue building a base of advocates specifically targeting infrastructure and planning. Include as a goal identifying and training people with disabilities who could be nominated to serve on existing commissions, committees, etc. Avoid tokenism. Emphasize incorporating intersectional concerns such as highway construction that has segregated communities of color, and increasing police funding to enforce vision zero policies in majority African-American communities with high rates of police violence.<sup>vii</sup>
13. Identify State and Local Services. Begin Coordinating. Every community is different. Identify, join and build coalitions with existing advocacy groups to secure inclusion of accessibility concerns in their policy agendas. Veterans groups, parents groups, and AARP chapters may also be useful coalition partners.
14. Campaign for state and local ballot measures. Look to the Center for Transportation Excellence [Campaign Toolkit](#).
15. Develop local talking points that can be leveraged nationally.

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<sup>vii</sup> Refer to the recent [Slow Roll Chicago](#) call for involvement, and leadership of people of color, low-to-moderate income (LMI) individuals, and other stakeholders from communities that are often targeted in vision zero planning.

## **Public Rights-of-Way**

### ***Work Group Members***

Gina Hilberry, Kathy Foley, Scott Crawford, Richard Petty, Marie Bryant

### ***Overview***

#### *Federal Standards for Public Rights-of-Way*

Sidewalks, street crossings, and other elements in the public right-of-way can pose access barriers for persons with disabilities.<sup>40</sup> Accessibility of public rights-of-way is addressed in the Public Rights-of-way-of-Way Accessibility Guidelines (PROWAG) issued in 2011 in draft form by the United States Access Board. The Access Board website states:

“The Board is developing new guidelines for public rights-of-way that will address various issues, including access for blind pedestrians at street crossings, wheelchair access to on-street parking, and various constraints posed by space limitations, roadway design practices, slope, and terrain. The new guidelines will cover pedestrian access to sidewalks and streets, including crosswalks, curb ramps, street furnishings, pedestrian signals, parking, and other components of public rights-of-way. The Board’s aim in developing these guidelines is to ensure that access for persons with disabilities is provided wherever a pedestrian way is newly built or altered, and that the same degree of convenience, connection, and safety afforded the public generally is available to pedestrians with disabilities. Once these guidelines are adopted by the Department of Justice, they will become enforceable standards under title II of the ADA.”<sup>41</sup>

The Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines do address curb ramps and other features common to public sidewalks, although guidance is needed to address “conditions and constraints unique to public rights-of-way.”

#### *PROWAG Has Remained in Draft Since 2011*

The PROWAG has been in draft form since 2011. Although considered best practice, as a draft, the standards are unenforceable. It is unclear why the PROWAG has not been issued as a final rule. There is reason to believe the PROWAG has the support of the Federal Highway Administration, an agency that has an important role in overseeing state and local initiatives.

Beginning in 2017, a federal government plan was announced which required the elimination of two existing regulations for every new regulation implemented. It appears this requirement is applied by each federal agency to the regulations issued by that agency. Accordingly, to finalize a new regulation, the Access Board would need to eliminate two existing regulations. The board is an independent federal agency with a limited portfolio of regulations and few, if any, should be eliminated. It is likely the board

would need to appeal the new rule to issue any new regulation, or wait until this policy is changed.

To become a final rule, the draft must go through review by the federal Office of Management and Budget, including a public review process. This process may be so challenging that it will be difficult to advance the draft into a final regulation.

### ***Current and Emerging Issues***

- **Lack of Enforceable Standards.** There are no enforceable standards for public rights-of-way. The PROWAG have been in draft since 2011. Even though guidelines are considered best practice, they are not a final rule and officials are often reluctant to apply the guidelines. There is some evidence the Access Board is reluctant to push the draft through the OMB review process. This problem is exacerbated by the new administration's intent to remove two regulations for every new one implemented.
- **Community Engagement.** Pressure from the community is a missing component. The community needs to understand issues and embrace solutions, including intricacies of accessibility design.
- **Transition Plans.** States and local entities are required to prepare and maintain transition plans to show how they will achieve and ensure program access requirements for Title II of the Americans with Disabilities Act. Many entities have not maintained plans—they are no more than “doorstops”—and this is a factor in their lack of progress in making public rights-of-way accessible. Communities are not engaged in monitoring plan implementation. There must be timely completion of transition plans.
- **Poor Communication in Implementing Plans.** Communication between design teams and contractors is missing, resulting in less than desirable products. Changes are made to plans without sharing with originators and not understanding impact.
- **Cultivating Disability Community Leadership.** Persons with disabilities—a chorus of disability voices—are needed to sit on systems change committees/boards. Leadership academies have been held in Cleveland, California, and in the Carolinas. Effective communication is an issue. If a model such as the leadership academy is not possible, how do we coordinate advocacy efforts? What can we learn from the bike/ped advocates who are effective in their efforts? How do we cultivate these new advocates?
- **Enforcement.** There often seems to be an almost willful disregard for accessibility. A key strategy is to use leverage of the funding source. Advocate that funds will not be paid if accessibility is not achieved, whether by inaction or failure to comply with guidelines in construction.
- **Lessons Learned.** A central location or mechanism for sharing best practices is needed.
- **Emphasize Harm of Inaccessibility.** People are being forced onto ADA paratransit due to lack of access—bus stops isolated from sidewalks; sidewalks that don't go anywhere, connect to anything or only go partway; poor installation of crosswalk safety technology.

- Education. There is a need to incorporate access guidelines into coursework for architects, engineers, and contractors regarding the impact of design features.

### ***Recommendations of Forum Participants***

1. Explore Failure to Make PROWAG a Final Rule. Identify why the guidelines have not been moved into a final rule. Use freedom of information requests if necessary.
2. Explore Other Standards. As an alternative, what is now in draft in the PROWAG could be incorporated and codified in the American National Standards Institutes (ANSI), to include the technical standards for accommodations under the 2010 ADA regulations. For engineering, the “Green Book” could incorporate these guidelines.
3. Eliminate Other Regulations so PROWAG can be Implemented. Encourage the Access Board to explore whether regulations eliminated by other agencies could be counted as “regulations removed” in order for the Access Board to add a new regulation.
4. Implement PROWAG in Statewide Regulation. Explore whether some or all of the PROWAG could be accomplished at the state level.
5. Engage in Litigation. Explore litigation to force the Access Board to move draft PROWAG to a final rule.
6. Identify Allies. The American Public Transit Association, the Amalgamated Transit Union, and Transportation 4 America may be natural allies. (T4A is a sub-group of Smart Growth America.) Also explore support from other public works entities: APA, Federal Highway Administration, and others.
7. Explore Feedback Mechanisms. Investigate approaches for public entities, their designers and contractors to receive feedback from the community. Consider online apps such as AXSmap.
8. Initiate Leadership Academies. Help the community prepare to take leadership roles on boards, review panels, and advisory bodies in order to advance access.
9. Garner Support from Potential Allies. Have a systemic approach to being prepared to work with others who can support our issues. Get onto planning commissions, and so forth.
10. Incorporate PROWAG into Education. Educate planners, architects, and contractors regarding the reality of accessibility features and **why** the regulations are in place and truly **matter**. Consider hands-on training (i.e., “...putting them in a chair and showing them the difference between different grades/angles etc. Show them the positive or negative impact of their work.”)
11. Ensure design and construction contracts have “ADA Compliance” clauses. If the design and/or finished product do not meet ADA standards, the contractor/designer will be held liable to repair/reconstruct the problem.

## **Appendix A: Day One Greeting from Maria Town, Director, Houston Mayor's Office for People with Disabilities**

The transportation industry is rapidly changing, and the systems that fund and regulate transit are full of uncertainty and change as well. Today's forum focuses on autonomous vehicles, public -rights-of-way, transit network companies and infrastructure and right now Houston is a hot bed for these issues. And with today's 94-degree forecast, I mean that both literally and figuratively.

The past three months alone, the time I've been in Houston, I've seen a great deal of momentum in changing the landscape. I said change, not improving. One, the Houston city council passed a comprehensive bicycle plan. Two, the mayor has publicly announced his support for autonomous vehicles and creating an autonomous vehicle policy. Three, the Houston METRO board is invested in doing public outreach for the expansion of their system and centering communities in that dialogue. And as a part of this, they have prioritized universal design and accessibility for all users. Four, the Texas state governor, Governor Abbott signed into law legislation that prohibits cities from regulating transit network companies. All the progress that Houston had made on requiring accessible service for TNC's hangs in the balance.

So that's just the three months that I've been here. Additionally, this city is home to longer term projects such as Bayou Greenways 2020 which when completed will fulfill a vision to create continuous parks and trails along the major bayous within the city. So our whole downtown is outlined by bayous, all of which are turning into accessible greenway.

But like the transportation industry itself, the demographics of our country are also changing rapidly in terms of race, ethnicity, age, economic mobility and other factors and, although I've discussed Houston's transit changes as standalone pieces, they exist within a very vibrant context of a city that two and a half million people call home--that six and a half million people call home in the METRO area. And by 2014 the Houston-Galveston Area Council, an organization that we lovingly call HGAC, forecasts that the Houston METRO area will be home to more than 10 million residents. That's 66 percent growth in the next two decades.

In his state of the mobility address, which occurred a week and a half ago, Mayor Turner said growth in our region is important, but it's also important how we grow. And he discussed that traditional solutions to transit problems were no longer serving our region. Our traditional solutions to transit problems encouraged sprawl, encouraged pollution, encouraged climate change, encouraged lower health outcomes for our communities, and encouraged segregation.

He said that our growth must be forward looking and sustainable, and I couldn't agree with Mayor Turner more. I'll add that in addition to forward looking and sustainable, it must be intersectional and must be inclusive and it's going to take collaboration from cities with our departments, with states, and with advocates like all of you building intentional intersectional kind of radical agendas to make that possible.

Since these projections have given us an idea what America in 2050 will look like, and sociologists say it looks like Houston now. Houston is the most diverse city in the country. In the past 40 years, our white population, for example, has gone from 40 percent to 25 percent; and our Latino population has gone from 10 percent to 44 percent. That's just one example. Despite Houston's growth and diversity, its residents still live within neighborhoods defined by manmade divides that reflect discrimination, racism, structural able-ism and the power of infrastructure itself to segregate communities. We cannot have new infrastructure and new innovation to create old barriers for people with disabilities, for communities of color and for low income communities.

With this I know that we're all going to ask a lot of hard questions throughout our forum, but I'm going to add to our list. I ask myself and I ask all of you how can our transportation agenda, as a disability community; connect transportation access to other social justice and disability community fights like the fight to maintain existing home and community-based services or the fight for disability employment. How can we support other marginalized communities like native communities, low wage workers in their transit advocacy work and build coalitions with them to provide solutions that reflect the diversity of the disability community. And finally, who else can each of us bring to the table?

I wouldn't be sitting here today if it weren't for Jim Weisman or Susan Henderson taking me aside so many times when I was at the White House saying "Maria, here is what's at stake. Let me tell you how to deal with all these folks." But the truth is pushing forward this agenda that we will create in the next two days is going to take a whole lot more than all of us in the room. And so I commit to myself in advancing these conversations and identifying folks within Houston that can be partners in this fight. And I hope that all of you will, too. So with that, again, I want to welcome you to Houston. I really look forward to our conversations and from learning from you. And I personally commit to briefing Mayor Turner on our agenda after it is done in the hopes that Houston will become one of the first cities to embrace its tenets. So thank you all very much and, Marilyn, I will turn it over to you.

## **Appendix B Case Studies on Key Issues**

## **Chicago, Illinois Case Study: Campaign for Accessible TNP\* Service**

*Submitted by Charles Petrof, Access Living, May 23, 2017  
For the Forum on Disability Transportation, June 20-22, 2017, Houston,  
Texas*

*\*Uber, Lyft, and similar companies are known in Chicago  
as Transportation Network Providers (TNPs).\**

This case study is intended to be shared among disability advocates as one community's efforts to obtain accessible TNP service.

### **Campaign for Accessible Taxicabs**

Uber, followed shortly by Sidecar and Lyft, entered Chicago's on demand transportation market in 2011. However, at that time, disability advocates paid these companies little attention. Instead, local advocates were focused on a campaign for accessible taxicab service. On January 18, 2012, that campaign won passage of a Chicago ordinance requiring that wheelchair accessible vehicles (WAVs) constitute approximately 5% of the taxicab fleet. After several amendments, the ordinance went on to require 10% WAV by January 1, 2018, with further increases until the fleet reached 50% by 2030. To help pay the additional acquisition costs associated with WAV vehicles, the City also established a Cab Accessibility Fund. Around this time, the City organized an Accessible Taxicab Advisory Committee made up of individuals with interests in the WAV taxi fleet.

In 2013, the Chicago taxicab fleet grew to its largest size with 6,899 vehicles. In 2014, each vehicle was providing an average of 20 trips per day, with the industry providing about 4 million rides a month.

### **Initial Discussions with TNPs**

At about that same time, early 2014, Uber began promising Access Living staff that its service would provide wheelchair accessible rides. On May 28, 2014, the Chicago City Council enacted a local ordinance to regulate TNP companies such as Uber and Lyft separately from taxis. That Ordinance, unlike the taxi ordinance, had no requirement that TNPs provide WAVs. Instead, it only required TNPs to enter into a service agreement with an entity that could dispatch its own WAVs. TNPs had not previously been regulated in Chicago, operating outside of existing taxicab regulations. By the middle of 2015, Uber had grown to provide about 2 million rides per month in Chicago.

Despite Uber's initial and ongoing promises, neither Uber nor other TNPs offered a viable service to wheelchair users. As of January of 2016, the date for which we have the most recent data available, Uber—over its entire history of operation in Chicago—had provided 14 rides to users who required accessible vehicles. Lyft had provided none, and Sidecar had stopped operating in its entirety.

Concurrently, the taxi industry shrunk. As of January of 2016, there were 97 medallions in foreclosure and 524 medallions surrendered. The local taxi companies reported that the decline in medallion value made it difficult to secure funding to purchase new cabs. By the end of 2015, Uber and Lyft were providing 3 million rides a month in Chicago. Despite these pressures, the WAV taxicab fleet grew to 167 vehicles with an average wait time of 10 minutes.

### **Campaign for TNP Accessibility City Ordinance**

Concerned that a declining taxi fleet would lead to a loss of WAV taxis, in early 2016 Access Living joined a coalition with the taxi owners association (ITTA) and the union representing taxi drivers (AFSCME) to push an amendment to the Chicago ordinance on TNPs that would require TNPs to provide accessible rides, with response times and fares equivalent to the rest of its services. The proposal would have set a floor of 5% of the ride share fleet to be accessible, a disability specific complaint and response system, and a requirement that the driver's background check include fingerprint identification.

The Amendment had enough aldermanic support to pass, and it made it out of committee without changes. Before the measure came before City Council, the Mayor asked the sponsor to meet with the Business Affairs and Consumer Protection (BACP) Commissioner and TNP executives in a series of marathon meetings. Access Living's requests to be present at these meetings were denied. From the coalition, only the head of the ITTA and his attorney were allowed to attend. The sponsor showed no sign of backing down until the morning the ordinance was scheduled for the City Council's vote. However, that morning, the sponsor introduced a substitute ordinance yielding to pressure from the Mayor and the TNPs. With the sponsor's support and no time to read the Substitute, it passed a divided City Council.

The Substitute lacked our proposed accessibility provisions and eliminated fingerprint identity verification. In their place, the City gave much of its oversight authority back to the TNPs. On the accessibility front, the Substitute did require that TNPs announce an accessibility plan by January of 2017 and implement that plan in the following six months. However, there were no targets or goals required to be met by these plans. These plans could be nothing more than entering a service agreement with Central Dispatch, as was already required in the 2014 Ordinance.

### **City Accessibility Plans. Initial Discussions**

Following passage of this Substitute, after choosing to shut it out of the legislative process, the City reconvened the Accessible Taxicab Advisory Committee. That committee received presentations from both Uber and Lyft. Uber also separately met with Access Living staff. Uber representatives claimed in this meeting that they presently had 12 WAV vehicles operating in the City at any given moment. Uber's phone app demonstration during the meeting showed no available WAV vehicles. They discussed their plan to provide some level of service through a combination of enlisting drivers who owned WAVs, contracting with rental fleets to lease other WAVs to

interested drivers, contracting with limousine services that operated WAV fleets, and using the WAVs currently in the taxi system. They also disclosed that they wanted to use the Accessible Cab Fund to pay their expenses for contracting with third party accessible vehicle services to provide WAVs for their system. They refused to answer most of our questions, claiming that information about their volume and location of service was proprietary. The TNPs' refusal to provide information has made these negotiations ineffective. Without their trip volume and response time information, there was no way the Accessible Taxicab Advisory Committee could negotiate an accessibility plan that would provide equivalent service to wheelchair users.

## **Litigation**

On October 13, 2016, Access Living and three individuals who use wheelchairs sued Uber alleging a violation of the Americans with Disabilities Act (ADA). The suit alleges that Uber operates either a travel service, or a demand responsive system, or a specified public transportation service, but whichever definition is appropriate, it must provide equivalent service under the ADA to individuals who require WAVs.

By early 2017, the Chicago taxicab fleet had shrunk to about 3,600 vehicles providing only about 13 rides per day. Ride volume dropped from about 4 million a month in 2014 to about 1.4 million per month in 2017. However, the City has been aggressively pursuing expansion of the WAV cab fleet, growing from 167 vehicles at the beginning of 2016 to almost 400 vehicles today.

## **City Accessibility Plans. Final**

In January 2017, the City announced that it had received draft accessibility plans from Uber and Lyft. We attempted to FOIA these plans, but the City alleged that they were not reduced to writing, and were, accordingly, not subject to FOIA. The plans were orally presented to the Accessible Taxicab Advisory Committee, and after receiving their comments, the City announced that the draft plans were insufficient and that it awaited amended proposals.

In May of 2017, the City announced that it had accepted amended plans from Uber and Lyft. For its part, Uber's plan was to continue to operate the 40 WAV vehicles it claimed were already registered with its application and to expand that fleet to 53 vehicles over the next six months. No minimum number of hours per week of operation were promised. For its part, Lyft promised to coordinate with 18 vehicles from the WAV taxi fleet. It is unclear how that exceeds the requirements in the original 2014 ordinance.

## **Current Situation**

The litigation against Uber remains in the discovery phase. Uber chose not to file a motion to dismiss at the start of the litigation. That means that questions about whether Uber is a travel service, a demand responsive system, or a specified public transportation service will not be decided until early in 2018.

The airports have become a flashpoint for tension between sedan style taxicab drivers and WAV taxicab drivers. For trips provided to wheelchair users, WAV taxi drivers earn vouchers to skip the pick-up line at the airports. With pick-up line wait times often around 4 hours long, some drivers have alleged that fraudulently made vouchers are in use and that other vouchers are being inappropriately distributed. One meeting between the operator of the WAV taxicab dispatch service and sedan type taxi drivers experienced minor physical violence.

## Transportation Equity in Cleveland, Ohio region

*(Including important effects state-wide)  
Submitted by Services for Independent Living, May 23, 2017  
For the Forum on Disability Transportation,  
June 20-22, 2017, Houston, Texas*

Services for Independent Living (SIL) is one of twelve Centers for Independent Living in Ohio and covers both urban and rural areas. SIL recognizes there are many barriers to full participation in the community however, transportation cuts across all issues. Without affordable and at times, accessible transportation options, including safe/complete streets, persons with disabilities are unable to maintain employment, go to medical appointments, church, community recreation, family events and volunteer opportunities. As one self-advocate tells us **“many people with disabilities don’t have that option. It’s not a matter of choice if we take the bus to work or not. We have no other option and if the bus doesn’t go there.....we don’t go.”**

Two years ago, SIL made a conscious decision to try to address transportation barriers impacting persons with disabilities in the Cleveland, OH area. We began looking at barriers on several levels: service delivery, community education and system change. As a result, SIL now has eight vans, four of which are accessible to provide transportation in a three county area. We are able to cross county lines and are beginning to offer weekend hours.

We found the more we looked into transportation issues, the more we realized how complicated the transportation field is. It is an identified barrier in every discussion regarding barriers to service delivery and inclusion, yet was not being addressed. As we began talking to stakeholders it became clear that they knew their own “piece of the transportation pie” but were unaware of the depth and breadth of the transportation story.

To begin the process of increasing community knowledge and building advocacy skills SIL partnered with Disability Rights Ohio to host a Transportation Equity Forum for stakeholders. Participants included riders with disabilities, the aging community, public and private transportation providers, social service agencies, legislators and government staff. The Forum was funded by the Transportation Equity Caucus. As a result of the forum, we were able to develop a local Disability Transportation Coalition which now meets monthly. The 50+ member Coalition is made up of stakeholders representing disability and aging service agencies, riders with disabilities, transportation providers, mobility managers, city and county government. SIL has since hosted a 2nd Forum and is in the process of planning another in the fall of 2017.

The local Coalition has prioritized issues and recently presented the following concerns to the newly appointed Cuyahoga County Transportation Taskforce (charged with identifying transportation barriers and explore means to address community need):

1. We would like to see more coordination among transportation providers. A robust public transportation system is vital, however cannot meet all the needs. How do we augment services? How do we make them cost effective for both rider and provider?
2. We would like to see a more regional approach to transportation and the ability to cross county lines.
3. All modes of transportation should have accessibility options such as accessible bikes for Bike Share Programs. We encourage agencies such as Uber/Lyft to provide accessible transportation or at a minimum, not drive away when they see that the rider has a wheelchair or service animal.
4. We would encourage RTA to relook at the issue of who are authorized signers for the ADA Paratransit and discount fare card applications. RTA uses the same form for both and a few years ago, eliminated Social Workers and Independent Living Specialists as authorized signers. RTA cited fraud as the reason. As a result of moving to a more medical model (physician signatures) individuals are not able to be approved for RTA's Paratransit or discount fare programs as readily as before. We have identified action steps and made recommendations to RTA on this issue that would address fraud concerns.
5. Working with Emergency Planning initiatives to address transportation issues in the event of an evacuation.
6. Ensure safe streets where lights are timed so people are able to cross streets at crosswalks without fear of getting hit by a car, smooth sidewalks are available and access to bus stops is cleared of snow.

SIL's work garnered much attention statewide and we quickly realized there were many pockets of transportation advocacy efforts around the state. This issue was that these groups were siloed. People with similar interests were talking with each other rather than expanding their circles and talking to others interested in transportation.

SIL, working with Disability Rights Ohio, the Ohio Developmental Disabilities Council and the Leadership Conference Education Fund hosted a Transportation Equity Summit October 2016 with the purpose of bring together a diverse group of transportation stakeholders to find common ground. National disability transportation advocates brought in as key speakers were able to set the tone of the meeting as one of transportation equity. Staff from the Leadership Conference Education Fund helped the group identify how we would work together in the future.

The initial goal was to attempt to impact the state budget process. As of this writing, we have an increase of 30 million and are working to keep this in the budget as the process moves forward. The group's initial action was to send a letter to Ohio Governor Kasich which served as an announcement that the Coalition has formed and to outline initial requests which were in-line with the state transportation study. An issue we experienced was that the budget process was faster than anticipated. As a result, we are not as fully coalesced as we would like to be however, the group is not going away and will continue to work together. What is exciting is that we now have aging and disability advocates working alongside transportation union members, environmentalists, state agencies, the Ohio Olmstead Taskforce, social service organizations, mobility

managers and a myriad of other stakeholders. We will be hosting a 2nd Transportation Equity Summit later this year.

A lesson learned during coalition development was that members do not have to agree on everything to be effective. This was counterintuitive to many of us. Instead, we now know that there are issues where particular members are more passionate about and others can support them in their efforts. Examples of this include:

1. HB 195: which eliminates unnecessary training and certification requirements for non-medical transportation providers. As it stands now, vehicles and drivers must carry the same certifications as ambulate providers. This makes no sense when a rider is asking for no more than an accessible ride.
2. Access Center for Independent Living, Inc. v. W.P. Glimcher, Inc., et al. Case No. 3:15-cv-444: the Dayton Mall moved the public bus stop from in front of a mall entrance to the other side of the parking lot and limited buses in the parking lot to only a few less utilized suburban circulator routes. Plaintiffs in that case are individuals and organizations representing people with mobility and sight impairment. They are seeking to move the bus stop back to the front of the parking lot and reinstate the routes, which provided public transportation to thousands of riders with disabilities.

# **Advocating for Transportation Network Company (TNC) Access in Houston, Texas**

*A Case Study*

*George Powers, J.D., And Richard Petty, M.B.A.*

*June 4, 2017*

*Prepared for the Forum on Disability and Transportation*

*Conducted in Houston, Texas, June 20—22, 2017*

Beginning in 2014, the Houston disability community engaged in advocacy around the entry of transportation network companies (TNCs) into the Houston demand responsive (vehicle-for-hire) transportation market. Two companies, Lyft and Uber, began operating illegally in Houston in February of 2014. These TNCs used a smart phone app to dispatch drivers who use their personal vehicles to provide transportation services. TNCs maintained they had no obligation to provide equivalent service to persons with disabilities: They held they were not transportation companies, rather they were technology companies that offered a smart phone app for arranging rides between drivers and passengers.

Existing vehicle for hire (taxi and limousine) services resisted entry of transportation network companies (TNCs) into the Houston market. These traditional companies sought to ally with the disability community to support their efforts. The initial strategy of the disability community was to resist TNCs, although without an alliance with traditional vehicle-for-hire (VFH) companies. As the disability community gained a greater understanding that the technology-driven services already had a strong toehold across the nation, community leaders chose to focus their efforts on ensuring full access of all VFH services, taxis and TNCs included.

With effective advocacy and negotiation over an 18-month period, Houston's disability advocates secured significant advances in accessibility across all services for all persons with disabilities. The agreements reached in negotiations among the key entities involved were then used by the City of Houston to develop regulations governing performance.

The Houston approach operated successfully until May 2017 when local control of TNCs was eliminated with the passage of HB100 in the Texas legislature. Cities lost all regulatory authority over TNCs, the more stringent local background checks mandated in Houston and other cities were scaled back, and local requirements for wheelchair-accessible service were preempted. As this case study is written, negotiations are underway to secure voluntary continuation by TNCs of many of the features of the program implemented in Houston as a result of advocates' work.

## **Initial Advocacy Efforts**

Houston advocates determined through contacts with other disability leaders across the nation that TNCs had already negatively impacted taxi service for members of the disability and aging community, particularly wheelchair users. People with disabilities in

cities where TNCs operated experienced denial of service because of their disability, including refusals to transport passengers with dog guides and service animals and refusals to stow collapsible wheelchairs and other mobility devices in the trunks of vehicles. The TNCs entering the Houston market did not offer wheelchair accessible vehicles. With this knowledge, advocates began contacting Houston City Council members to express their concerns.

Despite community and VFH resistance, the Houston City Council was poised to acquiesce to the TNCs. In April 2014, Houston's Department of Administrative and Regulatory Affairs proposed an ordinance that would permit Uber, Lyft and other online ride-sharing (TNC) services to operate as long as drivers met the same permitting and safety requirements as taxicab and limousine drivers. Disability advocates supported standardized permitting and safety requirements, but found it untenable that TNCs would enter the market without providing equal access. Advocates attended council meetings in large numbers and contacted council members; this, in combination with a strongly-worded resolution from the Houston Commission on Disabilities and resistance from taxi and limo operators, caused the council to delay its vote.

### **Houston Commission on Disabilities Resolution on TNCs**

As advocates were making their concerns known about the lack of TNC access, in May 2014, the Houston Commission on Disabilities passed a resolution calling on Houston's mayor and city council to ensure the needs of persons with disabilities were addressed if TNCs were to enter the Houston market legally. The resolution (2014-5-1 passed by the commission on May 8, 2014) included the following language:

- NOW, THEREFORE, BE IT RESOLVED, that the Houston Commission on Disabilities strongly encourages the Mayor, city council and other officials of the City of Houston to adopt an ordinance which ensures all people with disabilities receive equal access to demand responsive transportation, including transportation services offered through or facilitated by technology driven taxi services (transportation network companies) such as Uber and Lyft, without regard to disability, and that equal access includes prohibitions against denial of service based on disability, or based on the use of dog guides or service dogs, or based on the use of adaptive devices such as wheelchairs or other equipment.
- BE IT FURTHER RESOLVED, that the Houston Commission on Disabilities strongly encourages the Mayor, city council and other officials of the City of Houston to adopt ordinance language which ensures that wheelchair accessible vehicles will comprise an appropriate portion of any demand responsive fleet, including vehicles operated in association with technology driven taxi services (transportation network companies) such as Uber and Lyft.

Following presentation of the motion to the mayor and council members, city officials scheduled a two-day meeting in July of representatives of the disability community, TNCs, existing traditional vehicle for hire services (taxis and limousines), two city council members and the city's Administration and Regulatory Affairs department. The

meeting set the stage for a task force which began meeting in August of 2014 to address accessible TNC operation.

### **Houston City Ordinance and TNC Task Force**

On August 6, 2014, the Houston City Council approved omnibus changes to Chapter 46 of the City's Code of Ordinances, which regulates vehicles-for-hire. These changes expanded the City's regulatory framework to include TNCs. Although not a complete success for advocates, the council did clearly articulate that each vehicle-for-hire company had the duty to provide consistent and equivalent service to individuals with disabilities.

The City Council also created the Houston Transportation Accessibility Taskforce to advise the council on the implementation of these requirements as well as to provide further recommendations on improving accessible transportation services in Houston. The Taskforce members that represented the disability community were Michelle Colvard, Sharon Ewing, Angela Wrigglesworth, Karen Petty, and Toby Cole. Other members were Chris Nakutis (Uber), Roman Martinez (Greater Houston Transportation Company), Duane Kamins (Houston Transportation Services), David Dillon (Carey of Houston), and Josh Sanders (Lyft). (Toby Cole chaired the task force. Vinh Nguyen and George Powers, from the Southwest ADA Center, were appointed as members of the Taskforce to provide policy guidance. Jay Stiteley, then director of the Mayor's Office for People with Disabilities, met with and served as a resource for the task force. Nakutis of Uber and Martinez of Greater Houston Transportation Company were often represented by staff of their respective companies. During the negotiations, Lyft stopped operating in Houston, but Sanders remained on the Taskforce.)

The task force began its meetings in August 2014 and after meeting for almost one year voted on several resolutions presented to the city council and then used by the city's Administration and Regulatory Affairs department in crafting regulations.

During the Taskforce meetings, parties representing the main competing interests attempted to reach a consensus on the requirements. Although access for persons with disabilities was the intended focus, economic issues dominated the discussions: traditional transportation companies (taxis, limousines, etc.) repeatedly expressed concern with the economic advantage that TNCs would have because TNCs were subject to fewer regulations. Regulatory actions could have important impacts on all of the services.

The task force addressed availability of Wheelchair Accessible Vehicles (WAVs). Disability advocates maintained that TNCs had an obligation to provide services to wheelchair users because the Americans with Disabilities Act requires equivalent service and local ordinances required taxi companies to have WAVs as part of their fleet. They reasoned that TNCs should have the same obligation as taxi companies. Taxi companies noted WAVs were more costly than sedans and inaccessible vans because of higher vehicle purchase cost and lower fuel efficiency because of the weight of lifts and other added equipment. They maintained the insurance for WAVs was far

more expensive. Any entity not providing WAVs had a significant economic advantage over its competitors. The traditional transportation companies argued that TNCs had a duty to provide WAVs to the public and they sought to have the TNCs be burdened by the same operational costs. The task force discussed having the traditional VFH transportation companies lease or rent wheelchair accessible vehicles to the TNCs, but the traditional VFH companies rejected this option, seeing no advantage in supporting their competitors.

Other discussions concerned the TNC's application and its accessibility, the right for passengers to be accompanied by service animals, driver training, accepting cash as a payment method and criminal background checks.

### **Resolutions of Houston Transportation Accessibility Taskforce**

The resolutions passed by the task force are summarized here:

- **Equivalent service:** The task force noted current city ordinance and the Americans with Disabilities Act required equivalent service to the disability community; the task force's resolutions were not to be construed as modifying the definition of equivalent service; and did not in any way modify the transportation industries mandate under Federal or State law to provide services to people with disabilities that are equivalent to those of the general public (Resolution 1).
- **Accessibility:** The task force set two options for VFHs to meet their accessibility requirements. *Option 1:* Companies with at least 20 vehicles were to include at least 3 percent WAVs or at least 1 WAV (whichever was greater) within 12 months of the City's codification of the plan. Each year thereafter for the next five years, the percentage would increase by an additional 1 percent until 8 percent of the fleets were wheelchair accessible. *Option 2:* Companies would be evaluated by outcome-based performance standards rather than a vehicle percentage mandate. TNCs could select this option to connect riders to a WAV option despite not owning vehicles or operating a fleet. Equivalent pricing was required. Response time would improve during each year of operation: an average pickup time of 40 minutes or less for completed WAV trips in year one; 30 minutes or less in year two; 20 minutes or less in year three. (Resolution 1)<sup>1</sup>
- **Prohibition of Segregation:** VFH companies were prohibited from segregating accessible services (e.g., use of a promotional code or special phone number) (Resolution 3).
- **Addition of New Vehicles:** All new vehicles added in 2018 or later by VFH companies with only one vehicle must be wheelchair accessible vehicles (Resolution 4).

Task force negotiations were primarily concerned with the duty to provide WAVs. Uber consistently took a non-committal position in which Uber representatives held that they either were not bound by the law or they (the representatives present) did not have the power to make the necessary decisions. For instance, on the issue of service animals, Uber initially held it was not responsible for ensuring that the drivers were compliant with the law, since the drivers are independent contractors. Toward the end of the

negotiations Uber agreed to “look into” adopting a training and enforcement mechanism for ride denials to those with service animals. Most of these secondary issues were not discussed in depth. Uber refused to compromise on allowing alternative payment methods.

## **Summary**

In summary the Taskforce negotiations were between three sets of interests. Those that represented the disability community who sought to make the transportation services in the City more accessible. Traditional transportation providers used the accessibility requirements as a means to minimize the competitive advantage TNCs have. TNCs claimed that they were not transportation providers but a technology company; and thus they were not bound by the laws requiring equal access to transportation services. After a year of negotiations, the parties agreed to provide WAVs in each of their fleets and to take steps to make their respective transportation services more accessible. All entities chose to operate with option 2 outlined in Resolution 1<sup>viii</sup>.

## **Lessons Learned**

There are several “lessons learned” from the Houston experience. The general public finds TNCs an improvement for travel and it is difficult to secure their support for accessibility. Similarly, those with disabilities who do not use wheelchairs or service animals are less likely to support access demands. Clearly, transportation network companies have been quite adept at securing the support of local elected officials—and now, elected state officials. Houston advocates had to put forth a concerted effort to overcome TNC resistance to access. They made individual contacts with city council members. They participated in council meetings. The resolution passed by the Houston Commission on Disabilities was crucial. TNCs held that existing ordinances and laws did not bind them. They see existing law (e.g., the ADA) and ordinances as being outdated and not applicable to their new business model. This makes negotiation even more challenging. The Houston success was short-lived. TNCs sought relief by going directly to the State legislature and this will undoubtedly occur in other states.

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<sup>viii</sup> ADA experts participating in the negotiations counseled against these options because they fell short of access mandated in law. Other task force members acknowledged the concern, but chose to proceed with the options from a purely pragmatic perspective.

## Washington, D.C. Case Study

*Submitted by Carol Tyson, May 23, 2017  
For the Forum on Disability Transportation, June 20-22, 2017, Houston,  
Texas*

Over the past 4 years, transit advocates in the nation's capital have been busy. This case study provides summaries of campaigns to ensure full accessibility and equity in: provision of traditional paratransit; a potential subsidized transportation network company (TNC)/transit agency partnership for paratransit eligible riders; and a subsidized accessible taxi program. Summaries of the District's TNC legislative provisions regarding accessibility are also provided.

### **MetroACTION**

From the fall of 2015 to February 2016 the Amalgamated Transit Union ran a radical campaign called MetroACTION (based on the D.C.-area name for its ADA paratransit program, MetroAccess), pulling together paratransit drivers, dispatchers and riders to identify areas of improvement. The recommendations were announced to a packed house at a church, on a Saturday afternoon. A local politician was on hand to respond to the demands and commit his support. Together, drivers and riders identified the need for:

- Living wages and paid sick leave for drivers to address high turnover and increase quality service;
- Ensuring wheelchair lifts are operational;
- Decreased wait times and on board times through improved scheduling systems;
- Ending fare collection outside the vehicle; and
- Requiring disability sensitivity training that includes people with disabilities.

### **TEAM & Abilities-Ride**

In January 2016 rumors began to spread that the District's transit agency, the Washington Metropolitan Area Transit Authority (WMATA), was planning to partner with TNCs to offer subsidized on demand service to paratransit eligible customers in Maryland. A historical coalition of paratransit riders and disability rights advocates, the Amalgamated Transit Union and the AFL-CIO stepped up to highlight their concerns and call for accessibility and equity. Before the initial Request for Information (RFI) was released, the coalition, the Transit Equity and Accessibility Movement (TEAM), presented at a Board Meeting and called for any alternative paratransit service contracts to be awarded to companies that:

1. Prioritize access for all and ensure adequate numbers of wheelchair accessible vehicles are available. TEAM cited concerns that provision of service only to ambulatory passengers would create a two-tiered system.

2. Prioritize working conditions of their drivers and other workers, and prioritize hiring of any paratransit workers displaced by the transfer of work to taxi or TNC-based paratransit programs.
3. Prioritize compliance, and accept their role as a transportation provider under the ADA.
4. Prioritize safety of the passengers and workers, and accept liability.
5. Prioritize accessibility through all of its business lines.
6. Consider the possibility of awarding the contract to more than one company.

TEAM also submitted a formal response to WMATA's RFI for what is now known as Abilities-Ride. Montgomery County, MD Councilmembers sent a letter to the WMATA Board supporting the coalition's demands, but were met with a terse note in response. The District Department of Transportation Director sent his own note of concern to the WMATA General Manager. WMATA's own Accessibility Advisory Committee submitted a letter to the WMATA Board as well, calling for service provision to the unbanked and those without smartphones, and full compliance with the ADA, among other things. The Abilities-Ride RFP was released in September, and a pre-conference was held to answer questions. WMATA staff suggested that the program could be extended into Virginia and D.C. Presumably, providers have been selected for the program, but WMATA has yet to release details other than that they plan to start service in July 2017. According to the RFP:

- Any provider will be required to provide wheelchair accessible service, but there is not a clear requirement for equivalent service in wait times, or adequate training for WAV drivers;
- There is no requirement for a way to access the service for those without a smartphone or the ability to use a smartphone;
- There is no commitment to provide living wages for part time drivers,
- There is no regular review planned of potential performance measures to ensure equivalent service.

## **Transport DC**

The DC Department of For-Hire Vehicles (DFHV) and WMATA collaborate to provide Transport DC (formerly CAPS-DC) service. The program provides an alternative taxi service to MetroAccess eligible passengers. The program provided service 24 hours a day / 7 days a week, initially limited to passengers going to and from dialysis appointments (from October 1, 2014. January 31, 2015), then to passengers going to and from medical appointments (February 1, 2015. April 31, 2015), then to and from any destination within the District (May 1, 2015. July 21, 2016).

In the past, each participating taxi company was required to purchase a new WAV every 3,000 trips, but that requirement was struck in 2016. Traditional MetroAccess trips cost the District an average of \$50 per trip, \$100 roundtrip. According to WMATA's Customer Service and Operations Committee, Transport DC runs at about half the cost of MetroAccess. The District Department of Transportation (DDOT) committed funding for

\$2.8M in FY 2016, and an additional \$1.2M was added during the year, which still proved to be inadequate.

In July 2016, in the midst of a heat wave, the DC government announced, and then quickly implemented, deep cuts to the Transport DC program. Paratransit eligible riders who had been relying on the service to get to the grocery store, visit friends and family, see a movie, attend advocate meetings or respond to an emergency were left stranded and reverted to isolation. The service was cut to daytime hours only for medical and employment trips. Advocates took immediate action, making their presence and anger known at the ribbon cutting for the new Department of Disability Services Building where the Mayor addressed the crowd. That action led to two meetings with Deputy Mayor Donald and other government agency officials where advocates submitted a list of demands and issues were heard. In addition, advocates celebrated the Anniversary of the Americans with Disabilities Act with a lobby day, visiting with councilmembers and staff to make sure they knew how important Transport DC was and remains to the community.

After countless emails, phone calls, support from Councilmembers, a Department of For-Hire Vehicles (DFHV) survey and a great deal of advocacy from riders, the DFHV rolled back the cuts. While we are not back to 100% of the program, the gains are significant. Riders can travel 24/7 anywhere in the District from the 1st-15th of the month, and (as long as there is available funding) 24/7 to employment and medical the remainder. Another survey was sent out, and trip data reviewed to determine whether changes should be made to the program. Advocates have continued to push for the additional funding the community deserves.

## **DC TNC Accessibility Requirements**

**The Vehicle-for-Hire Innovation Amendment Act of 2014** (VFH Amendment Act) requires all private VFH companies (i.e., digital dispatch companies providing private VFH) to submit 1% of all gross receipts to the Office of the Chief Financial Officer (CFO). The revenue collected is transmitted to the DFHV. As of March 10, 2015 (the effective date of the Act ), digital dispatch companies, which include private VFH, are required to train associated operators in how to properly and safely handle mobility devices and equipment, and to treat individuals with disabilities in a respectful and courteous manner.

The VFH Amendment Act requires private VFH to adopt zero-tolerance policies against discrimination, and to post the zero-tolerance policy on their website, along with the procedure for reporting a complaint if a passenger feels that an operator has violated the policy. The zero tolerance policy includes discrimination against any of the protected classes established under the DC Human Rights Act of 1977, including disability. Discrimination could include refusal of service based on a protected characteristic or based on an individual's service animal (unless the operator has a documented serious medical allergy on file); rating a passenger based on disability; or using derogatory language; among other things. (Note that the disability community did not support the "documented allergy" defense, which is not present in the Americans with Disabilities

Act (ADA). If discrimination does occur, the company must suspend an operator, and initiate an investigation once a complaint has been filed. The company must maintain relevant records for the purposes of enforcement.

The VFH Amendment Act also prohibits companies that provide digital dispatch, including public and private VFH, from charging additional or special charges for providing services to individuals with disabilities; and may not require individuals be accompanied by an attendant. Digital dispatch operators must, upon accepting a ride request, stow mobility equipment in the vehicle's trunk if the passenger requests it and the device fits. If the mobility device does not fit, the company is prohibited from charging a cancellation fee, or, if the fee is charged, they must provide the passenger with a refund in a timely manner.

The VFH Amendment Act required that, by January 1, 2016, companies providing digital dispatch: ensure their websites and mobile apps are accessible to people who are blind or have visual impairments, and deaf and hard of hearing people; and provide a report to the Council's Committee on Transportation and the Environment on how the company intends to increase wheelchair-accessible public or private vehicle-for-hire service.

Notwithstanding any other law, the VFH Amendment Act prohibits the DFHV from requiring private VFH to provide a list or inventory of vehicles or operators, including numbers of WAVs. Companies that provide digital dispatch, including companies dispatching private VFH, are exempt from regulations by the DFHV other than the rules required to ensure compliance with the Act. (Note that DC disability advocates did not support these provisions, which fail to hold TNCs accountable, and create a lack of transparency and a double standard with the rest of the for-hire vehicle industry.)

**The Vehicle-for-Hire Accessibility Amendment Act of 2016** creates a wheelchair accessible vehicle tax credit for retrofits or new purchases. The bill, in effect since April 7, 2017, also requires TNCs and digital dispatch taxi companies to refer a customer requesting a WAV to a company that can fulfill their request if the original company is unable. In addition, the bill requires data collection from taxis and TNCs regarding: the total number of fulfilled requests made to the company for wheelchair-accessible service, including the zip code where each request originated and terminated; the manner in which each trip was requested; and the total number of instances in which an individual requested a trip for wheelchair-accessible service and an operator was not able to fulfill the request, including the zip code where each request originated and the manner in which each trip was requested. The data is to be submitted to the DFHV on an annual basis, but will not be available to third parties through FOIA requests.

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