

The Americans with Disabilities Act and Accessible Transportation: Challenges and
Opportunities
U.S. Committee on Health, Education, Labor and Pensions
November 17, 2011

Testimony of Marca Bristo
President and CEO, Access Living
Chicago, Illinois

My name is Marca Bristo and I am President and CEO of Access Living in Metropolitan Chicago – Chicago’s Center for Independent Living. I am also currently the President of the US International Council on Disability. As a person with a disability, a mother, and as an employer I know firsthand the importance of transportation to the employment, health, and quality of life of people with disabilities. When I broke my neck in 1977, I was a public transit user – never having learned to drive. Suddenly my ability to move about the city came to a screeching halt. There was no accessible transportation in Chicago in 1977. Fortunately for me, a loan from my grandmother to purchase a car with hand controls enabled me to go back to work and maintain my social life. But the experience of being denied access to transit and other things people take for granted led to the movement which gave us the ADA. This testimony is intended to highlight the advances and remaining challenges in meeting the transportation needs of the Nation’s growing disability community.

The basic mandates of the Americans with Disabilities Act (ADA) are that all new vehicles for use in mass transit, which include buses, rail cars and vans, have to be accessible; that key rail stations on both rapid rail systems and commuter rail systems had to be made accessible; that a paratransit system be established by operators of rapid rail and bus systems to ensure that transportation is provided to those who cannot use mass transit; and that all new rail systems and facilities such as stations have to be built accessibly; that private taxi companies comply with service requirements of the ADA and provide accessible cabs when purchasing vans unless the company is already providing equivalent service.

The statute, and USDOT’s implementing regulations, provided operational mandates for paratransit systems. Years of experience with ineffective paratransit, which operated prior to the ADA’s passage, made disability advocates fear that paratransit would always be of secondary importance to mass transit operators, so minimum service criteria were established. No artificial restraints on paratransit demand were permitted. To be eligible for ADA complimentary paratransit service, a person with a disability must be unable to use mass transit for the trip requested and must live within the paratransit catchment area (i.e. within $\frac{3}{4}$ mile from a fixed bus route or rapid or light rail station). Transit operators were prohibited from placing priorities or restrictions on trip purposes, and the hours of operation of paratransit must be identical to those of mass transit. Unconscionably, the regulation allows paratransit fares to be double mass transit fares, despite the fact that only those who cannot use mass transit are eligible for paratransit, and they are by and large low income.

Paratransit has become an essential part of the lives of people with disabilities who cannot use mass transit. Since transit providers cannot lawfully suppress demand, and people with disabilities increasingly reside in their home communities and need transportation for work and recreational purposes, the cost of paratransit has skyrocketed. Life expectancies continue to increase, and the coincidence of aging and mobility impairment has increased the demand for paratransit. New York City Transit (NYCT) spent over \$500 million on paratransit this year, which is about as much as it costs to run the Metro North Railroad that operates between Westchester, Connecticut and New York City.

The rationale of disability advocates who promoted minimum service criteria for paratransit was twofold: (1) prevent abuse by transit operators and (2) encourage transit operators to make their mass transit systems as accessible and user friendly to people with disabilities as possible, so they would begin to see themselves as mass transit users rather than paratransit dependents. This approach did not achieve the desired result.

Unfortunately, ADA paratransit systems continue to be plagued by many problems. They often fail to comply with important ADA requirements through failing to provide on-time performance, failing to provide telephone access for call requests that do not require inordinate waiting on hold, driver failure to assist from the door of the origin or destination to the vehicle if needed, failing to base eligibility on an individual's functional ability rather than relying on blanket denials based on type of disability, and limiting penalties for no-shows to situations within the rider's control.

Paratransit fare increases (i.e., in Chicago from \$2.25 to \$3.00 one way) have made transportation too expensive for many, particularly those living on fixed incomes. Further, as budget pressures cause elimination of some bus routes in the mainline system, riders of paratransit are having service totally eliminated leaving them stranded altogether because they are now outside the catchment areas.

On the positive side, ADA paratransit systems were created faster than, for example, accessible rail systems. Obviously, making only key stations accessible, rather than making all stations accessible, which is all that the ADA mandates of existing rail systems, builds in significant obstacles to mass transit use and keeps people paratransit dependent. Mass transit systems set up paratransit programs that operate independently and do not interface with mass transit. Transit operators do not encourage the use of mass transit or transit training for people with disabilities, although some have created incentives to get people off of their paratransit systems and onto their bus and rail systems, including free or discounted rides for paratransit to mass transit switchers. Training programs, where they do exist, are inconsistent and inefficient. In Chicago, the demand for training far outstrips the trainers' capacity to train, especially for young people with disabilities graduating high school and people who are newly disabled.

Lift equipped buses have been in use since the late 70's in the United States. Operating personnel in some cities are currently familiar and proficient at lift operation and maintenance, but in some locations, there are still unnecessary breakdowns (due to poor maintenance programs) and failure to provide the required alternative service. But despite those problems, the word "bus" in the United States has come to mean accessible bus, as passengers with and without disabilities expect buses to be accessible, and people using wheelchairs and scooters to board. Some transit systems (such as Chicago) have responded to advocacy by disabled riders by adding scrolling visual marquees and automated stop voice call-outs on buses to improve communications access for deaf and blind individuals.

Large “over-the-road” style buses, operated privately, in intercity travel and on tours, and publicly and privately as commuter buses, became accessible slowly. Because of lobbying by intercity carriers, over-the-road style buses were exempt from access requirements until 1998. Larger private companies operate accessible over-the-road buses adequately, for the most part. However, smaller carriers and charters continue to operate inaccessible vehicles and have no ability to make arrangements for alternate transportation for wheelchair and scooter users. Federal enforcement for scofflaw companies has come slowly, but has improved markedly in the last year or two.

Gap problems continue to deter people using wheeled mobility aids from accessing rail systems. The gap is the distance between the platform and the rail car and is both horizontal and vertical. New rail systems have minimal gaps, but older rail systems contain gaps of 4” or more and are a significant disincentive to use. In Chicago after litigation against the CTA to require improved maintenance and service, access to rail service has greatly improved through the improved use of “gap fillers.

Issues concerning rail platform heights and lengths have surfaced as ADA has been implemented. A low-level platform at a commuter train which must be boarded by climbing car-borne steps makes it impossible for people using mobility aids to board. Transit systems have proposed alternatives to raising the entire platform, which do not work. The construction of a mini high-level platform on top of a low-level platform which is accessed by ramps provides access to only one rail car. All cars must be accessible, according to ADA, so mini high-level platforms are not a solution, although they exist on some systems (for example, Niagara Frontier Transit Authority light rail system in Buffalo, New York).

Elevator installation at key stations, mandated by ADA, has just not provided meaningful access on older rail systems, as they have been installed slowly because of expense and difficulty, and are few and far between. In Chicago, this problem is exacerbated by lack of urban space for expansion along the sides of the stations during renovation and installation of elevators or large ramps.

Perhaps the worst example of ADA compliance on rail systems is the Amtrak system. On the 20th anniversary of the Americans with Disabilities Act, the statutory deadline for 100% of Amtrak’s stations to be ADA compliant, Amtrak had only 20% of its stations in compliance. Moreover, Amtrak “discovered” at approximately the same time that it did not own most of the stations at which it operates and therefore must persuade entities of local government to assist in making facilities accessible. Complicating this problem is the fact that most of Amtrak’s tracks are owned by freight railroads. These railroads do not want high-level boarding platforms built next to their tracks because of what appears to be a historical resistance to improving passenger service. Many of the Amtrak platforms that must be made accessible are just concrete slabs which are currently in disrepair and need to be rebuilt. The US Department of Transportation (DOT) recently issued a disappointingly weak regulation requiring only a performance standard for equal boarding access if there is freight traffic in a location as well,

which there usually is. This rule unfortunately allows solutions I've already mentioned, as well as others, that have proven ineffective in the past.

In Chicago, we have been extremely frustrated by the fact that we know that the trains can handle three wheelchairs per car; however, we are only allowed to reserve three wheelchair spots per train. Amtrak says this is due to an outdated online reservation schedule. However, when we have simply showed up with a group of wheelchair users for travel, we have been subjected to poor customer service and a negative attitude because our needs were not outlined in the passenger manifest.

A significant transportation alternative has been largely unused by transit operators to reduce costs of paratransit. If taxis were accessible, paratransit costs would be reduced for several reasons. First, taxis are privately operated and purchased. Many people with disabilities would choose the taxi, which permits spontaneous travel, rather than deal with a demand-response, advanced reservation paratransit system. Transit operators themselves might employ private taxi services to reduce paratransit costs as invariably taxi fares are lower than the average cost of a paratransit ride. In New York City, for example, paratransit rides cost the transit system about \$60 per ride, far more than the cost of a taxi ride. Nevertheless, New York City's Taxi of Tomorrow program shockingly chose an inaccessible vehicle to be New York City's taxi for the next 10 years. Mayor Bloomberg, in commenting on the situation stated accessible taxis cost \$16,000 more than inaccessible taxis; that it is dangerous for wheelchair users to hail a taxi; that wheelchair users will not "establish a dialogue" with the driver and therefore would be bad tippers; and that "normal" riders will complain about the suspension in accessible cabs. The Mayor has repeated his offensive remarks, despite being wrong on the facts. He is a champion of some civil rights but has overlooked the needs and rights of disabled passengers. Unforgivably, New York City Transit has not opposed the Mayor despite the fact that if cabs were accessible their paratransit expenses would be dramatically reduced.

If taxis were accessible, dollars spent on ambulettes to bring Medicaid patients using wheelchairs and scooters to doctor appointments can be spent on healthcare instead of transportation, as taxis would be a cheaper alternative. All "benefits related travel" by wheelchair users, such as trips to Department of Veterans Affairs' clinics and medical centers and vocational rehabilitation, and even some special education trips, could be made cheaper and more efficiently by accessible taxis than by privately operated ambulettes or public paratransit systems.

A small percentage of taxis are accessible nationally, though some cities such as Washington, Boston, Las Vegas, San Francisco, Chicago, and others have begun programs in earnest. I'm proud to say that, in my home town, Chicago's program of accessible taxis is a particularly outstanding model for many reasons, but chiefly because the rules are actually enforced, something that should be true everywhere, but is not. Chicago has used various incentives to increase the number and quality of accessible cabs. Currently there are approximately 100 accessible cabs with many more to be added this year. The new MVI is the first cab designed to be accessible and the Chicago disability community played a part in assuring that it will go

beyond ADA requirements. It will also use Natural Gas and the City has incentivized the purchase of such environmental friendly vehicles with a fund to defray the costs of acquisition. We hope this will add even more accessible cabs to our fleet.

The only gatekeeper for paratransit eligibility, however, correctly remains the physical or intellectual inability to use mass transit. Transit could create incentives for mass transit use, such as reduced or free fares for those who are eligible for paratransit, providing accessible streets and sidewalks including bus stops, complying with the ADA's rules for calling out the stops, and transportation training in schools and vocational rehabilitation programs.

There is one more very significant problem and we look to the Department of Transportation to resolve it. Several federal courts have misunderstood the intended relationship between the Department of Justice and Department of Transportation ADA regulations, with the resulting catch-22 that, unlike hotels, libraries, and every other type of organization covered by the ADA, public transit agencies are arguably not required to make reasonable modifications of their policies, practices, and procedures when necessary to avoid discriminating against a person with a disability. Something as simple as the right of a person with diabetes to eat food when medically necessary while on the train, even though there is a no-eating policy, is not guaranteed under the ADA until DOT acts. DOT made an excellent proposal in 2006 to add this provision to its regulation, but has neglected to finalize it. We urge rapid action that maintains full consistency with the excellent proposed rule.

The ADA does not address air transportation since the Air Carrier Access Act (ACAA) was passed in 1986, four years prior to the enactment of the ADA; however, the ACAA does cover access to the airport structure and grounds. The ACAA prevents both domestic and foreign airlines operating in the US, from discriminating against passengers with disabilities. The nondiscrimination mandate covers all aspects of air transportation including reservations, boarding, deplaning, handling of mobility devices, and connecting service. Twenty-five years after the passage of the ACAA, complaints stemming from lack of training of airline personnel and personnel of airline contractors are still prevalent. Also, in the past 25 years little has been done to improve the access of airplanes as the ACAA mandate for accessible aircraft is minimal. Without firm mandates, the industry has not voluntarily made airplanes wheelchair accessible.

In summary, twenty-one years after ADA's passage, transportation alternatives for people with disabilities are still extremely limited. While Amtrak cars are largely accessible, stations are difficult or impossible to access in many locales. The reservation system creates a vortex of discrimination and poor customer service. A clear success is that virtually 100% of mass transit buses are accessible in the United States, and all newer rail systems are accessible and used by people with disabilities. Rail systems that pre-existed the ADA have until 2020 for key stations access and are not heavily used by people with disabilities, because so little of each system is required to be accessible. Paratransit, while a life-style changer for people with disabilities, as it permits us to work, shop and socialize, even if we're unable to use the bus or train, is always at risk of budget problems. Transit should take meaningful, effective steps to make more rail

stations accessible and encourage the switch from paratransit to bus and rail service. And in 2011, there should be no more failures to comply fully with the letter and spirit of the ADA.

The progress we have made here in the US is being closely watched and has great potential to open transportation options for people with disabilities worldwide. The UN Convention on the Rights of People with Disabilities calls upon countries who ratify to improve transportation options for people with disabilities. Some countries have already made these changes, such as Seoul, South Korea and Rio de Janeiro, Brazil. We hope that the US ratification of the CRPD will position the US to further assist countries to open up transit to the 1 billion disabled people worldwide.

In closing, we have come a long way in opening transportation to people with disabilities but there is still so much more to do. Some will say we've done enough. In the period of tight budgets, we cannot do more. That is short sighted and fails to take into account the growing population of people with disabilities who will be aging into their disabilities. They will be working longer and unlike their predecessors they will live in the community rather than in institutions. Improved accessibility in the taxi and mainline systems can take some pressure off of more expensive publicly funded transportation, like school buses and medical transportation.

Finally, if we are ever to reverse the terrible unemployment of people with disabilities transportation is the key.

Thank you for giving me the opportunity to provide this testimony. I can be reached at mbristo@aol.com or (312)640-2104 for further information.