

The Americans with Disabilities Act and Accessible Transportation:  
Challenges and Opportunities

U.S. Senate Committee on Health, Education, Labor and Pensions

David M. Capozzi

Executive Director, U.S. Access Board

November 17, 2011

Thank you for the opportunity to testify today on the topic of accessible transportation. My name is David Capozzi and I am the Executive Director of the U.S. Access Board. The Access Board is the only Federal agency whose sole mission is accessibility for people with disabilities. Our agency develops accessibility guidelines for the Americans with Disabilities Act, the Architectural Barriers Act, the Telecommunications Act, and accessibility standards for electronic and information technology and medical diagnostic equipment under the Rehabilitation Act. We also enforce the Architectural Barriers Act and provide training, technical assistance, and research on accessibility issues.

Prior to joining the Access Board in 1992, I was Vice President of Advocacy for the National Easter Seal Society and managed Project ACTION (Accessible Community Transportation In Our Nation), a congressionally created program to promote cooperation between the disability community and the transportation industry to improve access to transportation for people with disabilities.

Prior to working at Easter Seals, I was the National Advocacy Director for the Paralyzed Veterans of America. I worked with Federal agencies and the U.S. Congress to promote the rights of individuals with disabilities including the Fair Housing Act Amendments, the Air Carrier Access Act, the Civil Rights Restoration Act, and the Uniform System for Handicapped Parking Act. I served as the lead negotiator on the Department of Transportation's (DOT) Federal Advisory Committee that negotiated regulations to implement the Air Carrier Access Act.

While in the private sector, I testified in support of the Americans with Disabilities Act (ADA) before the House Committee on Public Works and Transportation, was a member of the nine-person ADA "legal team" for the disability community that helped Congress craft the legislation and then served as Chairman of DOT's ADA Federal Advisory Committee that developed the 1991 regulations implementing the transportation provisions of the ADA.

I have made over 300 presentations during my career including keynote addresses, was a guest lecturer at Georgetown University Law Center, and provided international presentations in Prague, Czech Republic; Toronto and Montreal, Canada; Kobe City, Japan; Madrid, Spain; Vienna, Austria; Dublin, Ireland; Rio de Janeiro, Brazil; Kranjska Gora, Slovenia; and Brussels, Belgium. I have been a wheelchair user since 1977.

### **Access Board activities**

For a small agency (29 staff, a Board of 25, and a budget of \$7.4 million) the Access Board has a very ambitious rulemaking agenda. We are developing new accessibility guidelines for outdoor developed areas, shared use paths, passenger vessels, public rights-of-way, self-service transaction machines, emergency transportable housing, classroom acoustics, and medical diagnostic equipment. We are updating existing requirements for information and communication technology and transportation vehicles. Below is a summary of our current transportation related rulemaking activities.

### *Shared Use Paths*

When the Board approved draft final accessibility guidelines for trails, coverage of shared use paths was deferred to a future rulemaking. Commenters on our outdoor developed areas rule had raised concerns about the need for differing guidelines for shared use paths (commonly called hiker-biker or multi-use trails). Commenters noted that shared use paths differ from trails and typically are located in more developed outdoor areas, as opposed to more primitive trail settings. Unlike trails, shared use paths are designed to serve both bicyclists and pedestrians and are used for transportation and recreation purposes. As a result, the Board has initiated a separate rulemaking to cover shared use paths. In March 2011, the Board published an advance notice of proposed rulemaking on this topic.

### *Passenger Vessels*

The Board's guidelines will apply to passenger vessels that are permitted to carry more than 150 passengers or more than 49 overnight passengers, all ferries, and certain tenders that carry 60 or more passengers. In June 2008, we published revised draft guidelines for the purpose of holding information meetings to collect data necessary for a regulatory assessment. Meetings were held in August 2008 to collect this data. In 2009, we contracted with the Volpe National Transportation Systems Center to assist the Board in finalizing the regulatory assessment. The Board intends to vote to approve a notice of proposed rulemaking at its January 2012 meeting and then submit the rulemaking to the Office of Management and Budget for review.

### *Public Rights-of-Way*

In 2009, we contracted with the Volpe Center to assist the Board in finalizing a regulatory assessment for this rulemaking. The guidelines provide design criteria for accessible public streets and sidewalks, including pedestrian access routes, street crossings, curb ramps and blended transitions, on-street parking, street furniture, and other elements. The Board published a notice of proposed rulemaking for public comment in July 2011. We have held two public hearings on the proposed rule; the comment period ends on November 23, 2011.

### *Self-Service Transaction Machines*

The Access Board and the Departments of Transportation and Justice are undertaking related rulemakings on self-service transaction machines. In September 2011, DOT published a proposed rule under the Air Carrier Access Act to address accessibility issues relating to airline check-in kiosk machines used in airports. The Board will issue a proposed rule in 2012 for machines covered by the ADA. These rulemakings present an opportunity to work collaboratively to develop a single set of technical requirements that would be referenced and scoped by each participating agency.

## *Transportation Vehicles Guidelines Update*

In November 2008, the Board released for public comment a second draft of revisions updating its accessibility guidelines for buses and vans covered by the ADA. The second draft was issued because the format changed significantly, provisions for over-the-road buses were added, and changes were made in response to comments on a first draft that was published in April 2007. The proposed updates address new types of systems, such as bus rapid transit and low floor buses, and advances in technology, including automation of announcements. In addition the proposed guidelines revise specifications for vehicle ramps, circulation routes, wheelchair spaces, and securement systems. In 2009, we contracted with the Volpe Center to assist the Board in finalizing the regulatory assessment for this rulemaking. In July 2010, we published a proposed rule to revise and update the accessibility guidelines for buses, over-the-road buses, and vans. Two public hearings were held. The comment period closed in November 2010. A final rule is planned for early 2012.

Our new guidelines and the update of existing provisions will certainly improve the transportation landscape in America. However, I would like to talk about challenges that remain in spite of legislation, regulations, and guidelines. Laws, regulations, and guidelines are important ingredients in establishing the legal basis to ensure nondiscrimination on the basis of disability – but when those exist and barriers still remain – we need to look for more answers.

### **Air transportation issues**

Last Wednesday the Department of Transportation held a celebration to mark the 25<sup>th</sup> anniversary of the signing of the Air Carrier Access Act. The 1986 law was enacted to ensure that people with disabilities would receive consistent and nondiscriminatory treatment when traveling by air. In 1990, DOT first issued regulations to enforce the law and those initial regulations have been enhanced over the years through many amendments. While some provisions of these regulations require the design of aircraft to be more accessible, most require airlines to modify their practices and to provide training to their employees to ensure that passengers with disabilities do not face discrimination.

However, inconsistencies still remain. By way of example, one of the provisions in the regulations is to require carriers to stow at least one passenger's personal folding wheelchair in the aircraft cabin. The regulations require carriers to "ensure that there is a priority space in the cabin of sufficient size to stow at least one typical adult-sized folding, collapsible, or break-down manual passenger wheelchair, the dimensions of which are within a space of 13 inches by 36 inches by 42 inches without having to remove the wheels or otherwise disassemble it. This requirement applies to any aircraft with 100 or more passenger seats and this space must be other than the overhead compartments and under-seat spaces routinely used for passengers' carry-on items." 14 CFR 382.67 (a) and (b). The regulations also provide that carriers "must ensure that a passenger with a disability who uses a wheelchair and takes advantage of the opportunity to preboard the aircraft can stow his or her wheelchair with priority over other items brought onto the aircraft by other passengers or crew enplaning at the same airport; items must be moved that crew have placed in the priority stowage area (e.g., crew luggage, an on-board wheelchair) to

make room for the passenger's wheelchair, even if those items were stowed in the priority stowage area before the passenger seeking to stow a wheelchair boarded the aircraft. 14 CFR 382.123 (a) (1).

As most frequent travelers know, coat closets are disappearing in favor of creating more space for passenger seats. Additionally, based on my travel experiences and those of our staff and Board members who travel frequently, airline personnel still are largely unaware about the requirement for on-board storage of personal wheelchairs. Since the regulations were first issued in 1990, I have made it a practice to carry the regulations with me with the relevant provisions highlighted so that they can be shown to the crew. What other minority group has to carry regulations with them? Even with the regulations in hand I often find it necessary to argue for the right to stow my wheelchair on-board the aircraft. In June 2011, DOT issued a proposed rule (the so-called "seat-strapping" rule) that would require alternative means of securing wheelchairs in the cabin where there are no closets. It is an attempt on DOT's part to ensure wheelchair access in the cabin.

Airline personnel who deal with the traveling public are also required to be trained to proficiency on the Air Carrier Access Act regulations concerning the requirements of the regulations; airline procedures including the proper and safe operation of any equipment used to accommodate passengers with a disability; and for those personnel involved in providing boarding and deplaning assistance, the use of the boarding and deplaning assistance equipment used by the carrier and appropriate boarding and deplaning assistance procedures that safeguard the safety and dignity of passengers. 14 CFR 382.141 (a). It is not the responsibility of the passenger to train airline personnel. Yet, in order to ensure compliance, we still carry the regulations with us and have to convince airline personnel of their obligations.

At our November 2011 Board meeting we welcomed two new Presidential appointees on the Board. Both use power wheelchairs. Our member from Texas was dropped by the airport staff not once but on both legs of her trip; her wheelchair was damaged as well after being stowed in the aircraft's baggage compartment. Unfortunately, these problems are not infrequent.

DOT has made significant outreach efforts to the industry and the disability community, through direct oversight as well as public forums. DOT also has taken enforcement action against airlines for violations of its regulations, with its February 2011 consent order assessing a \$2 million civil penalty against a major carrier for, among other things, failing to provide proper enplaning and deplaning assistance.

However, further outreach, particularly between the airline industry and disability community, should be undertaken. In the mid-1980's the Paralyzed Veterans of America had a program called "Access to the Skies". Like Project ACTION after it, Access to the Skies was founded on the principle of cooperation between the disability community and the airline industry to improve access to air transportation for people with disabilities. The program ended in the early 1990's because of a lack of funding. But, we could benefit from a program like that today to provide technical assistance, training, publications development, and research on airline accessibility issues. The law and regulations are in place. What is needed is a sustained and concentrated program to implement these requirements.

## **Mass transit issues**

Mass transit accessibility has been one of the greatest success stories of the ADA. Before passage of the ADA in 1989, 36 percent of fixed route buses were accessible to wheelchair users. Today, 98 percent of fixed route buses are accessible as new, accessible vehicles replace older inaccessible ones. When independent accessibility is achieved it can be quite liberating. I remember around 10 years ago when the Washington Metropolitan Area Transit Authority (Metro) added accessible faregates to its stations. Previously, the faregates were too narrow for a wheelchair to pass through so I had to hand my farecard to a station attendant, have them process it, and then go through a separate gate that was wide enough to pass through. When the first accessible faregates were installed, going through one by myself was a liberating experience. I can still remember the feeling 10 years later. It is that independent travel and liberating experiences that we should be striving for.

Accessibility is also about dignity. Dignity means being able to access vehicles and facilities like anyone else. No more having to depend on a station attendant for assistance -- or going through the kitchen to get to the restaurant. After my injury in the late 1970's I would call ahead to a restaurant or other place of business to determine if it was accessible before I left home. Today, I expect them to be accessible and in large part they are. The ADA, its regulations, and advocacy efforts are largely responsible for that success.

Even with the success of mass transit accessibility, problems persist in compliance with other ADA requirements, such as maintaining lifts and ramps, announcing transit stops, ensuring access to visual information by people with vision impairments and audio information for people with hearing impairments, and gaining independent access to intercity (Amtrak) rail stations.

The ADA required that all stations in the intercity rail transportation system be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of the ADA. Twenty years have now passed since the ADA was signed into law. According to an August 2011 report, entitled "Intercity Rail Stations Served by Amtrak: A Report on Accessibility and Compliance with the Americans with Disabilities Act of 1990" Amtrak serves more than 500 stations in the United States and Canada. Of these, 481 stations come with an ADA obligation. Amtrak has determined that responsibility at 84 of the Amtrak-served stations lies with other entities. Amtrak will address compliance needs at the remaining 398 stations. By December 31, 2011, according to the report, 90% of Amtrak stations will have barrier-free access between the train and the station platform -- but much of this access will depend on mobile lifts that are not independently operable by people with disabilities. Station based mobile lifts require Amtrak staff to operate and take more time for boarding than would independent access. In September 2011, DOT issued a final rule requiring nondiscriminatory access to require intercity, commuter, and high-speed passenger railroads to ensure, at new and altered station platforms, that passengers with disabilities can get on and off any accessible car of the train. Congress and the Federal Railroad Administration need to maintain a vigorous oversight role regarding station accessibility.

## **Taxicab accessibility issues**

We have not progressed much in twenty years in terms of providing accessible taxis. As much as 10 percent of the customer base for taxi service consists of people with disabilities. And we have the same needs and interests as everybody else. We have jobs, families, classes, meetings, travel plans, and other activities to keep us on the move, and we need transportation, including taxicabs, to help us get where we are going. But, people with disabilities still need to call in advance for the few accessible taxis that might exist. Going outside and expecting to hail an accessible taxi in most cities in this country is simply not possible. In Washington, DC (through a new program began in 2011) there are only 20 wheelchair accessible taxis; in New York City there are about 230 accessible taxis. In London, England metropolitan legislation has required all new taxis to be wheelchair accessible since 1989 (most are manufactured by The London Taxi Company). The London Taxis feature integral ramps and securement mechanisms; a swivel seat used in conjunction with an intermediate step for easier access for passengers with limited mobility; large colored grab handles for people with low vision; and an induction loop for people with hearing impairments.

Under the ADA, private entities primarily engaged in the business of transporting people and providing demand responsive service (the category that includes taxis) are not required to buy accessible new sedan-type automobiles. Such entities are required to purchase new accessible vans – when they buy new vans, unless the entity can demonstrate that it provides equivalent service. Equivalent service is determined based on response time, fares, geographic area of service, hours and days of service, availability of information, reservations capability, any constraints on capacity or service availability, and restrictions priorities based on trip purpose. 49 CFR 37.103 (c).

If a private taxi company purchases or leases a new van with a seating capacity of fewer than eight persons (including the driver), the acquired vehicle must be accessible, unless the company is already providing “equivalent service”. The Access Board’s ADA accessibility guidelines for transportation vehicles specify that for new vehicles 22 feet in length or less to be considered accessible, the overhead clearance between the top of the door opening and the raised lift platform or highest point of a ramp must be a minimum of 56 inches. These vehicles must have a two-part securement system to secure a wheelchair and a seatbelt and shoulder harness for the customer using a wheelchair. There must be enough room inside the vehicle so the customer using a mobility aid can reach the securement location. Lifts or ramps must be 30 inches wide minimum and hold a capacity of at least 600 lbs. Lift or ramp surfaces, securement locations, and all places where people walk must have continuous and slip-resistant surfaces. Ramp slopes shall not exceed 1:4 when deployed to ground level (although the Board’s proposed rule to amend the ADA accessibility guidelines for transportation vehicles would modify this).

But nothing in the statute requires a private entity to acquire a van; if a private taxi company acquires only automobiles, it need never obtain an accessible vehicle. According to DOT’s preamble to its 1991 regulations, “given the absence of specific statutory language requiring a mix of accessible vehicles in taxi fleets, we believe that to impose such a requirement based only on a general concept of “accessible in its entirety” would be inappropriate.” (See DOT’s ADA final rule issued on September 6, 1991 “Transportation for Individuals with Disabilities”

preamble at 49 CFR 37.29 “Private providers of taxi service”.) Publicly controlled taxi companies on the other hand have to meet a higher standard and this issue is presently in litigation in New York.

Project ACTION has developed materials about taxicab accessibility. These include: Moving Forward Together: A Workbook for Initiating and Increasing Accessible Taxi Services (2005), The Americans with Disabilities Act and You: Frequently Asked Questions on Taxicab Service (2005 with the Taxicab, Limousine & Paratransit Association), and The Taxicab Pocket Guide (2006). The Taxicab, Limousine & Paratransit Association recently developed a new publication entitled, “Assessing the Full Cost of Implementing An Accessible Taxicab Program (March 1, 2010). However, much more needs to be done to promote good practices and develop incentives for taxicab accessibility nationwide.

## **Conclusion**

My experience has shown me that over the past twenty five years after passage of the Air Carrier Access Act and twenty years after passage of the ADA, that many other countries are closely watching our progress. Countries have modeled their own legislation on ours. Standards development efforts around the globe are informed by what we do here in the United States. Many want to learn from our successes and challenges. Implementation of the Convention on the Rights of Persons with Disabilities will further this desire. Just last week the Access Board sponsored an information exchange with the government of Ontario, Canada and representatives from the European Commission. Both are developing accessibility provisions that will be greatly informed by what we have done here. We can certainly learn from other countries and their experiences with accessibility – but it is clear that the United States still serves as a model of inclusion and accessibility. The Access Board’s new guidelines and the update of existing provisions will certainly improve the transportation landscape in America. But, issues remain in implementing the laws and regulations that are in effect today. We have many successes that we can be proud of but we can still do better.

Thank you for the opportunity to testify today on the topic of accessible transportation. I would be happy to answer any questions.