



U.S. Department of Justice

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February 10, 2022

Marie Breen
General Counsel
MassDOT/Massachusetts Bay Transit Authority
Ten Park Plaza
Boston, MA 02116
[REDACTED]

Re: Resolving the U.S Attorney's Office Investigation of the Massachusetts Bay Transit Authority's Use of TNCs to Provide Paratransit Rides

Dear Ms. Breen:

In 2017, the Department of Justice, Civil Rights Unit (the "Department") opened an investigation into the Massachusetts Bay Transit Authority ("MBTA") under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-12165, and Title II's implementing regulation relating to public transportation provided by public entities, 49 C.F.R. pt. 37. The investigation concerned the MBTA's use of Transportation Network Companies ("TNCs") Uber Technologies, Inc. ("Uber") and Lyft, Inc. ("Lyft") to provide alternate subsidized transportation for clients of the MBTA paratransit service, "the RIDE." The subsidized transportation is part of a pilot program, launched in October 2016, within the paratransit system (the "Pilot Program") that allows those otherwise eligible for the RIDE to use Uber and Lyft.¹ In particular, the Department's investigation focused on the Pilot Program's availability of wheelchair-accessible vehicles ("WAVs") for those paratransit riders who use wheelchairs. In light of significant improvements in WAV availability and the MBTA's commitment to continue to work to improve WAV availability, the Department is now closing its investigation.

¹ This investigation focused solely on the Pilot Program, and was not a review of the RIDE's overall compliance with the Department of Transportation's regulatory obligations for paratransit operations, articulated at 49 C.F.R. pt. 37, subpart F.

The Department is responsible for enforcing Title II of the ADA, 42 U.S.C. §§12131-12165, and the relevant regulations relating to public transportation provided by public entities, 49 C.F.R. pt. 37. No entity shall discriminate against an individual with a disability in connection with the provision of transportation service. 49 C.F.R. §37.5. It is the Department's position that ride subsidy programs administered by transit agencies must be operated in a way that provides equivalent service to individuals with disabilities, including those who use wheelchairs. FTA Circular 4710.1, 1.3.2, 7.5.2. The MBTA is a "public entity" within the meaning of the ADA 42 U.S.C. §§12131(1) and 49 C.F.R. §37.3, and is, therefore, subject to Title II of the ADA, 42 U.S.C. §§12131-12160, and its implementing regulation relating to public transportation provided by public entities, 49 C.F.R. pt. 37.

Following the Department's 2017 investigation, which was prompted by complaints from Pilot Program participants who use wheelchairs regarding WAV availability and wait times, we found that, due to WAV unavailability or WAV wait times, paratransit wheelchair users could not benefit from the Pilot Program in the same manner as an ambulatory user.

Although the MBTA denies that the Pilot Program discriminates against any individual with disabilities, you have represented that the MBTA wants to improve, and has improved, the services available under the RIDE and the transportation options available to the paratransit community. As such, the MBTA has improved, and further agrees to work to continuously improve and increase, WAV access for paratransit passengers relying on TNC's. Specifically, in April 2019, the MBTA and MassDOT implemented a fixed per-hour subsidy to mitigate the costs associated with operating WAVs. Pursuant to this policy, the MBTA reimbursed the TNCs according to the number of "WAV Supply Hours" provided, to incentivize WAV supply (the "subsidy policy").²

According to the MBTA, after implementation of the subsidy policy, in November 2019, there were 1,280 WAV trips through the Pilot Program. This was, approximately, a 265% increase of on-demand pilot WAV trips from the previous year. In addition, the Pilot Program and its incentives for WAV Supply Hours helped provide more WAV availability for the public at large. For example, in addition to the 1,280 WAV trips provided through the Pilot Program in November 2019, there were an additional 1,419 WAV trips provided that same month within Greater Boston by Uber and Lyft outside the Pilot Program, from 2,965 WAV Supply Hours per week. Wait times for WAV rides dropped significantly, with a 13-minute average estimated wait time for a WAV to arrive to the customer (ETA). These numbers demonstrate that the MBTA's targeted program to increase WAV access worked for both paratransit eligible MBTA riders and for others in the Commonwealth who need WAV availability. More recently, the MBTA contracted with the rideshare companies to require them to provide WAVs throughout the RIDE service area in the Commonwealth. The MBTA has agreed to pay a fee as consideration for this commitment.

² Under this policy, the MBTA paid the TNCs for the number of hours WAV vehicles were on the road and providing service, or available to provide, to non-ambulatory customers. Every WAV vehicle that spent an hour on the road contributed one WAV Supply Hour. Thus, by way of example, if in a given hour, eight WAV vehicles were on the road, eight WAV Supply Hours were logged.

The Department's decision to close its investigation of this matter is conditioned upon a number of factors, including but not limited to:

(1) the Parties agree that it is in their best interest and the public interest to move forward without engaging in litigation;

(2) the MBTA's efforts have increased WAV access for paratransit riders using the Pilot Program;

(3) the MBTA agrees not to discriminate against any qualified individuals with a disability, by reason of such disability, by excluding such individuals from participating in the Pilot Program;

(4) the MBTA will operate a policy to ensure that both the average ETA for filling a WAV request and WAV request reliability reflect a reasonably comparable service. The MBTA previously met this obligation by maintaining its subsidy policy. The MBTA will meet this 18-month obligation through its current contracts with both Uber and Lyft and any future applicable contracts with other third parties during the 18-month obligation, all of which require or will require the MBTA to pay the rideshare companies to provide WAVs for the RIDE service area. If these contracts are terminated or they no longer meet the goals of improving both the ETA for filling a WAV request and WAV request reliability, then the MBTA will report to the Department and the Parties will discuss any necessary further action;

(5) the MBTA will monitor and report TNC supply hours, average ETA and WAV request reliability to the Department on a quarterly basis for the next 18 months;

(6) the MBTA will notify the Department of any material alterations to the rideshare contracts for the next 18 months; and

(7) the MBTA will provide notice to the RIDE users that the Pilot Program has increased accessibility to individuals with mobility disabilities, including those who use wheelchairs, by telephone, mail, e-mail, and the RIDE website.

Going forward, the Department will refrain from undertaking any enforcement action relating to this investigation of the Pilot Program or from filing a civil action alleging discrimination based on the allegations set forth above. The Department is confident that, through the reforms that the MBTA has initiated and with its commitment to servicing the paratransit community, WAV riders will experience improvements in their use of the Pilot Program.

Although the Department is closing its investigation, the Department reserves the right to receive and review any complaints regarding the Pilot Program and it will closely scrutinize allegations relating to WAV accessibility. If the Department believes that the MBTA fails to comply with its obligations outlined in this letter, the Department will notify the MBTA in writing and will attempt to resolve this issue in good faith. If the Parties are unable to reach a

satisfactory resolution within 30 days of notice, the Department has the authority to reopen its investigation into the Pilot Program.

Sincerely,

/s/ Gregory J. Dorchak

Gregory J. Dorchak
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MBTA ACKNOWLEDGMENT & AGREEMENT

The MBTA hereby acknowledges receipt of this closing letter and agrees to comply with the obligations outlined in paragraphs (3) to (7) above.

Marie Breen

Marie Breen
General Counsel
MassDOT/MBTA