



ADA Considerations for Mobility-on-Demand Arrangements

Legal Issues to Consider

Tony Anderson
November 21, 2019

Current Transit Framework

- ▶ Transit agencies face growing challenges presented by:

Limited budgets and increasing expenses

Inefficient ridership demand patterns

The need for greater flexibility in transit and paratransit services

Shifts in residential or place of work patterns

- ▶ These challenges have increased the tendency to turn to **alternative mobility-on-demand options** for solutions.

Current Framework

- ▶ Ride-sourcing service providers are not new partners to the transit industry.
- ▶ Transit agencies have long worked with taxicab companies to assist in meeting on-demand needs.
- ▶ The introduction of transportation network companies (TNCs) such as **Uber** and **Lyft**, potentially increases available mobility on demand options.
- ▶ Given the model of most private mobility-on-demand providers, potential new relationships with public entities come with some challenges.



Types of Mobility-on-Demand Services

- ▶ Public transit agencies have turned to mobility-on-demand providers to assist in the following types of services:

First Mile/
Last Mile
(from rail or bus)

Replacement for
inefficient fixed
route service

Supplementing
ADA Paratransit

Microtransit

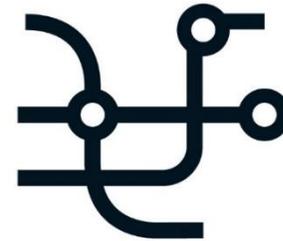
Introduction of
new demand
responsive
service

Potential Federal Legal Issues

- ▶ The federal legal issues that merit consideration include:
 - ▶ Title VI equity issues
 - ▶ Drug and alcohol testing requirements
 - ▶ Accessibility to operations data
 - ▶ Impact on labor
 - ▶ Privacy issues
 - ▶ Preserving eligibility for funding
- ▶ These issues become more challenging as public transit systems move from pilot phases to program implementation.

Potential Federal Legal Issues

- ▶ We will focus on one set of federal requirements: the requirements of the **Americans with Disabilities Act (ADA)**.
- ▶ For today's discussion, these requirements relate to the use of mobility-on-demand providers of fixed route services and services to the general public.
 - ▶ Fixed route and general public on-demand requirements are distinguishable from those applicable to ADA complementary paratransit service.



ADA Compliance

- ▶ Titles II and III of the ADA set out requirements for public and private entities respectively. ADA applies without regard to the receipt of federal assistance.
- ▶ Issues could arise through:
 - ▶ Discrimination by drivers
 - ▶ A shortage of accessible vehicles
 - ▶ A lack of training or acceptance of obligations
 - ▶ Wait times that are not comparable
 - ▶ The mobility on demand provider standing in the shoes of the transit agency
 - ▶ Ensuring no disparate fares



ADA and Fixed Route Service

- ▶ **Fixed route service:** Service for “which a vehicle is operated along a prescribed route according to a fixed schedule.” (49 CFR § 37.3)
- ▶ Vehicles purchased by public entities for fixed route transit purposes must be “readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.” (49 CFR Part 37, Subpart D)



ADA and Fixed Route Service

- ▶ If public fixed route service is provided, it must be designed to accommodate all potential public transit passengers who can use accessible transit.
- ▶ If mobility-on-demand providers essentially provide fixed route services for public transit entities, those providers essentially “stand in the shoes of” the public entities. (49 CFR §37.23)



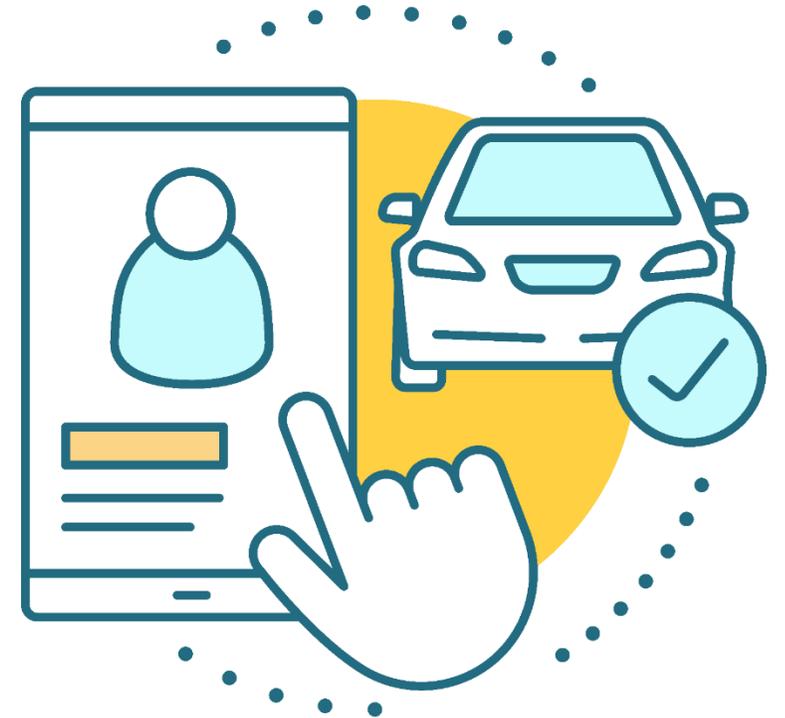
ADA and Fixed Route Service

- ▶ In other words, if vehicles operate on a fixed route and is open to the general public without a practical opportunity to pair accessible vehicles to the needs of individual passengers who require accessible vehicles, the vehicles for that service must be accessible.
- ▶ In addition, those services could increase the geographic scope of the public transit agency's ADA complementary paratransit service.



ADA and Demand Responsive Service

- ▶ Definition: The ADA regulations generally define demand responsive service as public transit service that is not fixed route service.
- ▶ A key differentiator between the types of service is whether the passenger plays a necessary role in initiating public transit service. **If the passenger has to call or otherwise use technology to request service, the service is likely demand responsive service.**
- ▶ A published schedule (or the absence of one) may also be a differentiator.



ADA and Demand Responsive Service

- ▶ ADA regulations permit public entities to purchase vehicles for demand responsive service that are not accessible.
 - ▶ “If the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities, it may purchase new vehicles that are not readily accessible to and usable by individuals with disabilities.” (49 CFR §37.77(b))

ADA Requirements and ADA Complementary Paratransit Service

- ▶ ADA complementary paratransit service is next-day service provided for individuals with disabilities who cannot access public fixed route service and which meets six service criteria used to measure comparability to fixed route services.
- ▶ Those criteria, however, are not directly applicable to fixed route services or demand responsive service that is open to the general public.

ADA and Mobility-on-Demand Service

- ▶ Which ADA requirements apply to mobility-on-demand services will depend on whether those services are more in the nature of **demand responsive services** or **fixed route services**.

Conclusion

- ▶ Consider the potential impact of the ADA requirements before entering into an agreement with mobility-on-demand providers.



Thank you!

▶ **Tony Anderson**

Partner, Thompson Coburn

aanderson@thompsoncoburn.com

202 585-6928

