

Testimony of
Ruth Lowenkron, Disability Justice Director
on behalf of
New York Lawyers for the Public Interest
before
the New York State Senate
Hearing on New York's Transit Systems

Good morning. My name is Ruth Lowenkron and I am the Director of the Disability Justice Program at New York Lawyers for the Public Interest (NYLPI). Thank you for the opportunity to present testimony today regarding New York's transit systems.

I. New York Lawyers for the Public Interest

For over 40 years, New York Lawyers for the Public Interest (NYLPI) has been a leading civil rights and legal services advocate for New Yorkers marginalized by race, poverty, disability, and immigration status. Through our community lawyering model, we bridge the gap between traditional civil legal services and civil rights, building strength and capacity for both individual solutions and long-term impact. Our work integrates the power of individual representation, impact litigation, organizing and policy campaigns. Guided by the priorities of our communities, we strive to achieve equality of opportunity and self-determination for people with disabilities, create equal access to health care, ensure immigrant opportunity, secure environmental justice for low-income communities of color, and strengthen local nonprofits.

II. NYLPI's Disability Justice Program

NYLPI's Disability Justice Program works to ensure equality of opportunity, self-determination, and independence of New Yorkers with disabilities. In the past five years alone, NYLPI disability advocates have represented thousands of individuals and won campaigns improving the lives of hundreds of thousands of New Yorkers. Our landmark victories include integration into the community for people with mental illness, access to medical care and government services, and increased accessibility of New York City's

public hospitals. NYLPI's Disability Justice Program has long fought for equal access to public transportation for persons with disabilities, and is a member of the Access-A-Ride Reform Group (AARRG!)¹.

III. New York's Transit System does not Appropriately Serve Persons with Disabilities

While federal, state, and local non-discrimination laws clearly mandate that government services be accessible to persons with disabilities, most of New York's mass transit remains wholly inaccessible. When the Americans with Disabilities Act was passed in 1990, Congress noted that "historically, society has tended to isolate and segregate individuals with disabilities" and that "discrimination against individuals with disabilities persists in such critical areas as . . . transportation."² In New York, that discrimination is present in every mode of public transportation, and must be remedied immediately.

A. Subways

Fewer than 25 percent of New York City's subway stations are wheelchair accessible,³ placing New York well behind Chicago with 69 percent accessibility and Boston with 71 percent accessibility.⁴ Moreover, those New York subway stations that are accessible are frequently made inaccessible by out-of-service elevators and escalators. In 2015, there were nearly 40,000 elevator and escalator outages,⁵ and an average of 53.2 outages per elevator, with one station experiencing 755 outages and another station experiencing 511 outages.⁶ Approximately 70 percent of the time, the outages occur unexpectedly, making reliable travel impossible.⁷ Passengers all too often learn of non-working elevators once they exit the train at their destination, requiring them to wait for the next train and take it to a station that may be several stops away from where they wanted to be.⁸ Stuck

¹ The other core AARRG! members are Brooklyn Center for Independence of the Disabled, the Center for Independence of the Disabled New York, and Mobilization for Justice. NYLPI is grateful for the extensive assistance Mobilization for Justice provided in gathering the data upon which this testimony is based.

² 42 U.S.C §§ 12101(a)(2), (3).

³ Sarah M. Kaufman, *et al.*, *Bringing Innovation to Paratransit* 12 (December 2017), <https://wagner.nyu.edu/files/faculty/publications/Bringing%20Innovation%20to%20Paratransit.pdf/>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 15.

⁷ *Id.* at 12.

⁸ *Id.*

passengers have been forced to crawl up steps⁹ or rely on strangers to carry them,¹⁰ at risk of life and limb.

B. Buses

Technically, every one of the City's 5,700 buses is equipped to be wheelchair accessible, but in practice, inaccessibility is still a problem.¹¹ Metropolitan Transportation Authority (MTA) data for 2017 record numerous complaints made by persons with disabilities attempting to use City buses, including lifts not working, drivers refusing to stop, drivers refusing to operate lifts, drivers refusing entrance due to unsubstantiated statements of over-crowding, drivers failing to secure wheelchairs, and drivers failing to pull buses sufficiently close to the curb of the bus stop.¹²

In addition, persons with disabilities are particularly hard hit by bus route changes, which leave some neighborhoods grossly underserved.¹³ Frequent bus delays also adversely affect persons with disabilities, because they rarely have other options.¹⁴ And when buses do arrive but are crowded, it is most difficult for commuters who use wheelchairs to fit inside.¹⁵ Snow presents yet another impediment for persons who use wheelchairs and wish to ride the bus. Not only does snow make it even more difficult for riders with disabilities to navigate their way to the bus stop, but since snow is typically shoveled to the edge of the sidewalk, buses cannot lower the wheelchair lifts to allow those using wheelchairs to board.¹⁶

In addition to outright exclusion, persons with disabilities all too often face serious affronts to their dignity when boarding a bus. Persons with disabilities have to rely on the bus driver to stop the bus, delay other passengers to deploy a wheelchair ramp, wait for the

⁹ Vincent Barone, *MTA gets heat over broken elevators, lack of accessibility at subway stations*, AMNEWYORK (July 20, 2017), <https://www.amny.com/transit/mta-gets-heat-over-broken-elevators-lack-of-accessibility-at-subway-stations-1.13812957>.

¹⁰ Sasha Blair-Goldensohn, *New York Has a Great Subway, if You're Not in a Wheelchair*, NEW YORK TIMES (March 29, 2017), <https://www.nytimes.com/2017/03/29/opinion/new-york-has-a-great-subway-if-youre-not-in-a-wheelchair.html>.

¹¹ Savannah O'Leary, *25 Years After The ADA, Navigating New York City Is Still Daunting For The Disabled*, HUFFINGTON POST (July 27, 2015), https://www.huffingtonpost.com/entry/disabled-new-york_us_55a5084ee4b0a47ac15d5334.

¹² MTA Customer Feedback Data, <https://data.ny.gov/Transportation/MTA-Customer-Feedback-Data-Beginning-2014/tppa-s6t6/data>; O'Leary, *supra* note 11.

¹³ Angely Mercado, *City Buses Are Slow, Unreliable and What Many Disabled & Aging NYers Rely On*, CITY LIMITS (March 7, 2018), <https://citylimits.org/2018/03/07/citys-buses-are-slow-unreliable-and-what-many-disabled-aging-nyers-depend-on/>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

person to safely and securely board the bus, and take the time to secure the person's wheelchair. This system singles out the wheelchair user as the one halting progress.¹⁷

C. Paratransit

New York City offers a “paratransit” system, known as Access-A-Ride (AAR), for its residents who cannot use buses and subways, and for those who could use such systems if they were in fact accessible. AAR, however, is not available to all such individuals with disabilities, because each person must be determined eligible for the service.¹⁸ Eligibility impediments include assessment focus on ability to climb stairs even for those who have developmental or mental, rather than mobility impairments, the MTA's failure to appropriately credit reports of treating physicians, and repeated eligibility determinations for those with permanent disabilities. Moreover, AAR does not provide equivalent service to traditional mass transit in that it requires advance reservations -- by 5 pm of the day before the desired travel day.¹⁹

Paratransit rides are also often late and frequently do not even show up. The New York City Comptroller found that fewer than 50 percent of AAR trips were on time,²⁰ and “more than 31,000 riders” were left stranded in 2016.²¹ And if or when vehicles finally show up, lengthy rides are the norm, with AAR customers “often forced to endure ‘hours-long trips around the city’ before reaching their destinations.”²²

The MTA instituted a year-long pilot program in November 2017, which it extended through April 2019, allowing a small number of AAR users to obtain services “on-demand” – without advance reservations.²³ The on-demand pilot, which users have consistently hailed as “life-changing,” is being threatened by the budget crisis facing the MTA.

¹⁷ MTA, Guide to Accessible Transit, <http://web.mta.info/accessibility/transit.htm>.

¹⁸ MTA, New York City Transit, Guide to Access-A-Ride Service, http://web.mta.info/nyct/paratran/guide.htm#what_is.

¹⁹ MTA Guide, *supra* at note 17, <http://web.mta.info/nyct/paratran/guide.htm#reserve>.

²⁰ New York City Office of the Comptroller, Comptroller Stringer Audit Reveals Widespread Mismanagement, Waste and Service Failures in MTA's Access-A-Ride Program (May 17, 2016), <https://comptroller.nyc.gov/newsroom/comptroller-stringer-audit-reveals-widespread-mismanagement-waste-and-service-failures-in-mtas-access-a-ride-program/>.

²¹ *Id.*

²² Britney Wilson, *Stuck in Neutral: The Americans with Disabilities Act and the State of Paratransit Service in New York City*, TRANSLAW (Fed. Bar Assoc. Transp. and Transp. Sec. Law Section) Spring 2018 at 5, <http://www.fedbar.org/Image-Library/Sections-and-Divisions/TTSL/TransLaw-Spring-2018.aspx> (internal citation omitted).

²³ MTA, *MTA Offers First Ever Real-Time, On-Demand Service for Access-A-Ride Users* (November 13, 2017), <http://www.mta.info/press-release/nyct-transit/mta-offers-first-ever-real-time-demand-service-access-ride-users>.

In addition, AAR users, who are not eligible for any MTA discounts – monthly, weekly, per-ride or half-fare – and thus already pay more for each ride than any other MTA riders, are currently being threatened with disproportionate fare increases.

D. Taxis

For decades, persons who use wheelchairs have struggled to find accessible taxis. Prior to the filing of *Taxis For All Campaign. v. Taxi and Limousine Commission*,²⁴ a mere 231 of the City's 13,437 yellow taxis – or just 1.8 percent – were wheelchair accessible.²⁵ As a result of the *Taxis for All Campaign* settlement, the City agreed to make its yellow medallion taxi fleet 50 percent accessible by the end of 2020.²⁶ To date, however, only approximately 16 percent of the yellow cab fleet is accessible,²⁷ while less than 5 percent of the green fleet is accessible.²⁸

E. For Hire Vehicles

Although there are over 100,000 for-hire vehicles (FHVs) in New York City, only approximately 500, or 0.5 percent, are wheelchair accessible.²⁹

The FHVs fall far short in delivering accessible vehicles in a timeframe comparable with the delivery of non-accessible vehicles. For example, the average wait time for inaccessible Uber vehicles in Manhattan is 2 minutes, 25 seconds, and the average wait time for inaccessible Uber vehicles in the outer boroughs is 3 minutes, 8 seconds.³⁰ In sharp contrast, the wait for accessible FHVs usually exceeds 30 minutes and often is best

²⁴ 837 F. Supp. 2d 268 (S.D.N.Y. 2011).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Kristin Toussaint, *Wheelchair-accessible taxi program expands to outer boroughs*, METRO (Jan. 25, 2018), <https://www.metro.us/news/local-news/new-york/wheelchair-accessible-taxi-program-expands-to-outer-boroughs>; Edward Helmore, *End of the road? New York's cabs face uncertain future in wake of Uber and Lyft*, GUARDIAN (Jul. 29, 2017), <https://www.theguardian.com/us-news/2017/jul/29/new-york-yellow-cabs-taxis-uber-lyft>.

²⁸ Hearing of the New York City Taxi and Limousine Commission (“TLC Hearing”) Sept. 28, 2017, http://www.nyc.gov/html/tlc/downloads/pdf/transcript_09_28_17.pdf (statement of Sarah M. Kaufman); Matthew Flamm, *Facing Uber and accessibility hurdles, green taxi operators are seeing red*, CRAIN'S NEW YORK (Sept. 25, 2016), <http://www.crainsnewyork.com/article/20160925/SMALLBIZ/160929932/the-great-green-cab-experiment-is-on-the-brink-of-crumbling-against-uber-and-wheelchair-accessibility-requirements-that-many-green-cab-operators-say-randomly-change>.

²⁹ TLC Hearing, *supra* note 28 at 10 (Statement of Meera Joshi, Chair of the Commission); Stevie Hertz and Sarah Wyman, *Why you won't be getting in a wheelchair accessible Uber anytime soon*, MEDIUM (Oct. 8, 2017), <https://medium.com/transit-new-york/why-you-wont-be-getting-in-a-wheelchair-accessible-uber-anytime-soon-c9873c362378>.

³⁰ Polly Mosendz and Hanna Sender, *Exclusive: Here's How Long It Takes To Get An Uber In U.S. Cities*, NEWSWEEK (Dec. 4, 2014), <http://www.newsweek.com/exclusive-heres-how-long-it-takes-get-uber-across-us-cities-29133>.

measured in hours.³¹ In a recent study of attempts to book rides with the Uber and Lyft “apps,”³² the average wait time for wheelchair accessible vehicles (WAVs) was 17.4 minutes, compared to 4.1 minutes for inaccessible for-hire vehicles.³³ Most critically, however, these extensive waits for WAVs were only applicable to the very few times that a WAV was available at all – only 29 percent of the time.³⁴

IV. Critical Steps for Improving Transportation for Persons with Disabilities

NYLPI respectfully requests that the Senate assist citizens with disabilities to access transportation, as follows:

- Ensure that elevators are installed in New York’s subway stations;
- Ensure that all subway elevators and escalators are well-maintained to remain continually functional;
- Mandate mandatory and repeated bus driver training regarding services for riders with disabilities, and establish fines for non-cooperating drivers;
- Ensure that bus lifts are well-maintained to remain continually functional;
- Oversee the institution of borough-to-borough bus routes;
- Establish fines for inappropriate bus stop snow removal;
- Ensure that the Taxi and Limousine Corporation adheres to the settlement agreement in the Taxis For All litigation;
- Mandate that for-hire vehicles, including Uber, Lyft and other operators, provide comparable service to its customers who require wheelchair-accessible vehicles;
- In order to support the environment and reduce health impacts of diesel pollution for riders, drivers, and pedestrians, mandate bus and Access-A-Ride fleet replacement with electric vehicles;
- Ensure that the AAR on-demand pilot program is extended to all AAR users, is made permanent, and is free of any limitations on services;
- Make all current MTA transit discounts available to AAR users;
- Mandate route optimization so that AAR riders can reach their destinations without wasting hours traversing multiple boroughs;
- Ensure that all AAR employees receive extensive training in serving their customers with disabilities;

³¹ TLC Hearing, *supra* note 28 at 106, 112, 161 (Statements by Steve Blier, Quemuel Arroyo, and Susan Scheer).

³² New York Lawyers for the Public Interest, *Left Behind: New York's For-Hire Vehicle Industry Continues to Exclude People with Disabilities*, <https://nylpi.org/wp-content/uploads/2018/05/Left-Behind-Report.pdf>.

³³ *Id.*

³⁴ *Id.*

- Prevent any fare increase for AAR users; and
- Invest in public transportation via congestion pricing, as set forth in the Fix NYC report, or by other appropriate means which do not force passengers to experience a fare increase and deteriorating service.

V. Conclusion

Thank you for your time. I can be reached at (212) 244-4664 or RLowenkron@NYLPI.org, and I look forward to the opportunity further to discuss how best to ensure that persons with disabilities have equal access to transportation in New York.

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