



Disability Rights Education & Defense Fund



November 2, 2020

Marybel Batjer, President  
Liane M. Randolph, Commissioner  
Martha Guzman Aceves, Commissioner  
Clifford Rechtschaffen, Commissioner  
Genevieve Shiroma, Commissioner

**Public Utilities Commission**

505 Van Ness Avenue  
San Francisco, Ca 94102-3298

RE: Proceeding 12-12-011, Proposed Decision of Commissioner Shiroma –  
Decision Authorizing Deployment of Drivered And Driverless Autonomous  
Vehicle Passenger Service (C.P.U.C., Oct. 15, 2020)

Dear President Batjer and Commissioners Randolph, Aceves, Rechtschaffen, and  
Shiroma:

Representing Disability Rights Education & Defense Fund (DREDF) and Disability  
Rights California (DRC), the undersigned write in strong opposition to the Commission’s  
Conclusions of Law authorizing the deployment of drivered and driverless autonomous  
vehicle passenger service by entities without including any particular disability access  
requirements for the vehicles or services themselves.<sup>1</sup>

The exclusion was intentional. The Commission discussed accessibility, and then  
expressly declined to include access standards. See Proposed Decision, Section 4.8.2  
("The Commission ... elects not to define 'accessibility' at this time.").

Autonomous vehicles ("AVs") have the potential to dramatically improve mobility,  
vehicle and road safety for people with disabilities, including people with sensory,  
cognitive and physical disabilities. However, the promise and safety of AVs will only be  
realized if the vehicles and the surrounding infrastructure are fully accessible, and the  
safety elements consider the needs of all disabled people.

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<sup>1</sup> See proposed Conclusions of Law 1 through 4 (finding it reasonable to create drivered  
and driverless autonomous vehicle programs, and to authorize the provision and  
acceptance of rides for money, without reference to accessibility).

Ensuring safety and access for everyone is easier and cheaper if it is integrated at the outset. Safe and accessible AVs will be needed, and even required, when used by publicly funded agencies, and retrofitting will be more expensive for providers in the long run. Autonomous vehicles should be born accessible.

Now is the time for regulatory bodies like the Commission to require that AVs be designed, built, and deployed with accessibility requirements to equally include people with disabilities. These standards should include original equipment manufacturers, as they are in the best position to design AVs with full access. Moreover, in this emerging field, manufacturing and service delivery are often intertwined.

DREDF and DRC write in further opposition to the proposed Conclusions of Law 8 and 10, regarding the Passenger Safety Plan and COVID-19 Emergency Plan to be submitted by entities using autonomous vehicles, as the plans as delineated do not adequately consider the needs of people with disabilities, in violation of the Americans with Disabilities Act (ADA). Relatedly, these Conclusions of Law are inadequate because they do not require that entities submit Disability Access Plans.

I. **The Commission's Conclusions of Law Authorizing the Deployment of Autonomous Vehicles Without Access Requirements Are Misguided and Contrary to the Principles of Disability Nondiscrimination Laws.**

As an ADA Title II entity, the Commission has an affirmative obligation to ensure that people with disabilities have equal access and an equal opportunity to participate in public services, programs, and activities.<sup>2</sup> The Commission may not “utilize criteria or methods of administration ... [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability [or] [t]hat have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities[.]”<sup>3</sup>

Despite these obligations, the Commission proposes to authorize the deployment of drivered and driverless autonomous vehicles without including any access requirements for AV companies. See Section 4.8.2; Conclusions of Law 1 through 4. Rejecting comments from the advocacy group California Council for the Blind and from public entities recommending and requesting access standards, see Section 4.8.1, the Proposed Decision excludes access requirements deliberately: “The Commission ... elects not to define ‘accessibility’ at this time.” Section 4.8.2. Yet, self-driving cars are currently being designed and tested that do not provide accessibility.

The Commission errs by refusing to adopt access requirements for this emerging industry in which manufacturing and service delivery are often intertwined. The ADA provides that “no qualified individual with a disability shall, by reason of such disability,

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<sup>2</sup> 28 C.F.R. § 35.130(b)(1)(ii), (iii).

<sup>3</sup> 28 C.F.R. § 35.130(b)(3).

be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”<sup>4</sup> Federal regulations make clear that this means that, while existing facilities or programs may be brought into compliance over time,<sup>5</sup> *new* facilities or programs must be designed to be accessible *from the beginning*. For example, newly constructed government buildings and private commercial facilities must be fully accessible to people with disabilities.<sup>6</sup> To comply with the ADA, the same standard should apply to AVs.<sup>7</sup> Entities covered by the ADA are bound not only to its narrow provisions but also to its broader anti-discrimination mandate.<sup>8</sup> It is critical that the Commission require that AVs be accessible for people with all disabilities.

Due to the urgency of this issue, the Commission must return to the drawing board. It must work with the disability community to develop access requirements. It should review and consider existing laws and standards, including but not limited to the Americans with Disabilities Act of 1990 (ADA), as amended; the California Disabled Persons Act; Sections 504 and 508 of the Rehabilitation Act of 1973; the Telecommunications Act; the Web Content Accessibility Guidelines; and any guidelines established by the US Access Board. We also recommend that the Commission collaborate with the AV Accessibility Working Group on this effort. The resulting standards should meet the ADA’s goal of providing “clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.”<sup>9</sup>

At this key moment in time, particularly in California, this entirely new type of transportation must be developed to be fully accessible to all, including people with disabilities. This brand-new transportation revolution must serve everyone.

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<sup>4</sup> 42 U.S.C. § 12132.

<sup>5</sup> 28 C.F.R. §§ 35.105, 35.150, 36.304, 36.402.

<sup>6</sup> 28 C.F.R. §§ 35.151, 36.401; 42 U.S.C. § 12183.

<sup>7</sup> The purpose of the ADA is, *inter alia*, “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and “to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-date by people with disabilities.” 42 U.S.C. § 12101(b).

<sup>8</sup> See e.g., *Namisnak v. Uber Techs., Inc.*, 444 F. Supp. 3d 1136, 1143 (N.D. Cal. 2020) (“Uber’s fixation on whether WAVs are specifically required by statute is unavailing in light of the broad language of the ADA. [internal citation omitted] A covered entity under Section 12184 is subject not just to the narrow requirements associated with the purchase of new vehicles, but the statute’s broader anti-discrimination mandate.”)

<sup>9</sup> 42 U.S.C. § 12101(b)(2).

**II. The Commission’s Conclusion of Law 8 (Passenger Safety Plan) and Conclusion of Law 10 (COVID-19 Emergency Plan) do not meet the standards of the ADA.**

The plans to be required of AV program participants, as delineated by the Commission, do not meet the standards of the ADA, and are inadequate to meet the needs of individuals with disabilities.

**A. Passenger Safety Plan.**

The Commission has an interest in the safety and consumer protection of individuals who receive passenger service in an AV. (Finding of Fact 22). Based on that finding, the Commission concludes that it is reasonable to require participants to transmit a Passenger Safety Plan that “describes their policies and procedures to minimize the risk for all passengers in their driverless vehicles.” (Conclusion of Law 8).

Assessments of “risk” and safety are often used to exclude and discriminate against disabled people. For this reason, the regulations implementing Titles II and III of the ADA set out specific standards for policies and procedures related to safety, and state that safety standards adopted by public and private entities “be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.”<sup>10</sup> But the Commission’s Conclusion of Law 8 fails to include these critical disability nondiscrimination requirements.

Furthermore, disability nondiscrimination laws require that public and private companies providing transportation make reasonable modifications to policies, practices, and procedures needed by disabled riders.<sup>11</sup> But the Proposed Decision indicates that the Commission will require that the Passenger Safety Plan “apply to all passengers, including those with [...] disabilities.” This may give entities the misunderstanding that they are not bound by the ADA’s mandate to provide reasonable modifications. The Commission’s catch-all requirement that participants “comply with all other State and Federal requirements” (Conclusion of Law 7) is important, but vague. The Commission must revise its requirements on the Passenger Safety Plan to clarify explicitly that participants’ plans must include protocols for processing reasonable modification requests from riders with disabilities.

**B. COVID-19 Emergency Plan.**

Similarly, the Commission requires that the Passenger Safety Plan include a COVID-19 Emergency Plan that complies with CDC guidelines and CDPH Guidance (Conclusion of Law 10), but this provision makes no mention of disabilities, disability

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<sup>10</sup> 28 C.F.R. §§ 35.130(h), 36.301(b); *see also* 28 CFR §§ 35.139, 36.208 (“direct threat” defense).

<sup>11</sup> 28 C.F.R. §§ 35.130(b)(7), 36.302(a).

nondiscrimination, or reasonable modification. Numerous legal issues have emerged on how COVID-19 prevention requirements interact with the ADA. For example, how should a service provider treat an individual who is unable to consistently follow COVID-19 safety protocols due to an intellectual disability? The Commission is in a unique position to speak decisively on these issues by providing guidance on what AV passenger service providers should do. Disability stakeholders such as DREDF and DRC are available to provide guidance. The Commission can also consult with the Pacific ADA Center.

### C. Disability Access Plan Needed.

To ensure compliance with the ADA, the Commission should require all participants to submit a Disability Access Plan. The ADA divides transportation systems into two types: fixed route and demand response. Fixed route transit systems (like city buses, for example), are those that operate along prescribed routes according to fixed schedules. All vehicles in a fixed route transit system must be fully accessible.<sup>12</sup>

By contrast, demand response transit service (e.g., taxi service) is where a vehicle is dispatched or routed in response to a potential rider's request. Demand response systems, including those using AVs, must provide equivalent service to people with disabilities. It is discrimination under the ADA for any entity, whether publicly or privately funded, to purchase or lease a new vehicle after August 25, 1990 for demand responsive service that is not accessible, unless the system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public.<sup>13</sup>

“When viewed in its entirety” means that when all aspects of the system are analyzed, services are provided to individuals with disabilities in the most integrated setting appropriate to the needs of the individual and are equivalent to services provided to other individuals, in terms of service area, response time, fares, hours and days of service, no restrictions or priorities based on the purpose of the trip, no capacity constraints, availability of information and reservations capacity, accessible information and communications, and any other benefits such as safety and an improved passenger experience that AVs may uniquely provide.<sup>14</sup>

Given these applicable standards, the Commission must require a Disability Access Plan as part of an applicant's Proposed Service Plan, and make these plans available for public review and comment. Requiring such a plan is within the Commission's stated purview of developing and enforcing rules and regulations on passenger service for TCP permit-holders. (Finding of Fact 21).

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<sup>12</sup> 49 C.F.R. § 37.71.

<sup>13</sup> 49 C.F.R. §§ 37.103, 37.77, 37.171.

<sup>14</sup> 49 C.F.R. § 37.105.

The information that the Commission currently requires participants to provide is insufficient to evaluate or ensure full compliance with the ADA. For example, the Commission requires participants to explain how they will provide notice to passengers that they are receiving AV passenger service—which includes providing a photo of the AV to the passenger—and how the passenger will consent to or decline the service (Conclusion of Law 5.i, j). But it does not require an explanation of how that communication will be accessible to people with sensory disabilities. Similarly, the Commission requires that participants explain whether their services are open to the general public (and, if not, who is eligible to participate), what accessibility services they provide, and how they have engaged with accessibility advocates to inform their operations. (Conclusion of Law 5.k.iv(1)-(3)). The framing of these questions suggests the possibility that AV passenger service could operate without providing equivalent service to riders with disabilities. That possibility must be prevented by requiring each participant to submit a Disability Access Plan.

Disability Access Plans should demonstrate knowledge of barriers to service for people with physical, sensory, or mental disabilities, including barriers to wheelchair users who cannot transfer; identify planned accessibility features under consideration; and describe institutional capacity to receive and incorporate feedback from potential passengers with disabilities.

An analysis of each participant's Disability Access Plan is necessary for the Commission to determine whether its administration of the AV program, as a whole, is accessible to people with disabilities. Specifically, the Commission must ensure:

- Full disability access for all types of AVs to be used in passenger service. All human machine interface (HMI) systems on AVs must be fully accessible to people with disabilities. Lifts, ramps, and wheelchair securement must be available. Wheelchair securement includes a seat belt and shoulder harness for each wheelchair user.<sup>15</sup>
- Fully accessible HMI and vehicle design must also ensure access to people with sensory, cognitive, and other physical disabilities. Accessibility features must be satisfactorily maintained and remain free from obstruction. Also, riders with disabilities must be permitted to bring service animals and portable oxygen supplies onto vehicles offering transportation service, whether publicly or privately funded.<sup>16</sup>
- Every vehicle used in fixed route service must be a wheelchair-accessible vehicle (WAV).
- For all passenger service, mixed fleets used in any demand-response service

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<sup>15</sup> 49 C.F.R. § 38.23(d)(7).

<sup>16</sup> 49 C.F.R. Part 37, Subpart G.

must include wheelchair accessible AVs (WAVs), and must provide equivalent service to people with disabilities. The Commission must establish a deadline by which all AV fleets (and all mixed fleets that include both AVs and ordinary vehicles) that provide demand-response service must include wheelchair-accessible AVs in sufficient numbers that the service provides equivalent service to PWDs. Service must be equivalent in terms of:

1. Service area
2. Response time
3. Fares
4. Hours and days of service
5. No trip purpose priorities or restrictions
6. No capacity constraints
7. Availability of information and reservations capacity
8. Accessible information and communications
9. Any benefits, such as safety and an improved passenger experience, that AVs uniquely provide

Many AV fleets will be used in partnerships under contract with publicly funded transit agencies. The ADA requirements cannot be evaded through private contracts.<sup>17</sup> A privately funded entity that provides services under a contract or other arrangement with a publicly funded (government) entity is considered to “stand in the shoes” of the public entity and is thereby subject to the same requirements of that entity under the ADA. This means that private companies contracting with public agencies must also adhere to ADA requirements and provide accessible transportation services and vehicles. This extension of responsibility is particularly important for providing equitable access to people with disabilities, as the private sector is playing an increasingly significant role in shaping accessibility and mobility options in partnership with public agencies.

### **III. The Commission Should Revise its Proposed Decision to Comply with the Standards of the ADA.**

People with disabilities own vehicles and drive themselves at significantly lower rates than people without disabilities, relying instead on other modes of transportation.<sup>18</sup>

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<sup>17</sup> 28 C.F.R. § 35.130(b)(3).

<sup>18</sup> Data Analysis, Bureau of Transportation Statistics, [https://www.bts.gov/archive/publications/freedom to travel/data analysis#:~:text=Transportation%20Use&text=More%20than%2090%20percent%20of,table%2020%20and%20table%2021](https://www.bts.gov/archive/publications/freedom%20to%20travel/data%20analysis#:~:text=Transportation%20Use&text=More%20than%2090%20percent%20of,table%2020%20and%20table%2021)) (in the four months prior to interview, 62% of people with disabilities reported driving a motor vehicle, compared to 86% of people without disabilities; 13% of people with disabilities reported living in a household that did not own or lease any vehicle, compared to only 4% of households that did not contain a person with a disability) (accessed November 1, 2020).

While about 23% of individuals with disabilities report needing some sort of specialized assistance or equipment to travel outside the home, only 6% use motorized personal transportation, 6% use paratransit vehicles, and 3% use specialized transportation services provided by human services agencies.<sup>19</sup> These statistics reveal that many people with disabilities rely on modes of transportation that were not specifically designed for their needs. The regulation of AV passenger service presents the Commission with the unique opportunity to develop a transportation system that treats accessibility as a guiding principle, not an afterthought.

We urge the Commission to revise its Proposed Decision to reflect the principles of the ADA, including universal design and full accessibility.

Sincerely,

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<sup>19</sup> *Id.*