BEFORE THE
DEPARTMENT OF TRANSPORTATION

In the Matter of
Transportation for Individuals
With Disabilities: Passenger Vessels

Docket OST 2007 26829

COMMENTS OF
TELECOMMUNICATIONS FOR THE DEAF AND HARD OF HEARING, INC.;
ASSOCIATION OF LATE-DEAFENED ADULTS, INC.;
NATIONAL ASSOCIATION OF THE DEAF;
DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK;
CALIFORNIA COALITION OF AGENCIES SERVING THE DEAF & HARD OF
HEARING AND HEARING LOSS ASSOCIATION OF AMERICA

Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI"), through
undersigned counsel, Association of Late-Deafened Adults, Inc. ("ALDA"), National
Association of the Deaf ("NAD"), Deaf and Hard of Hearing Consumer Advocacy Network
("DHHCAN") California Coalition of Agencies Serving the Deaf and Hard of Hearing
("CCASDHH") and Hearing Loss Association of America ("HLAA") (collectively, the
"Consumer Groups") hereby submit their comments in response to the request of the Department
of Transportation ("DOT") for public comment on the proposed Americans with Disabilities Act
("ADA") rules designed to ensure nondiscrimination on the basis of disability by passenger
vessels.

I. THE COMMENTING PARTIES

TDI is a national advocacy organization that promotes equal access to
telecommunications and media for the 28 million Americans who are deaf, hard of hearing, late-
deafened, or deaf-blind so that they may attain the opportunities and benefits of the
TDI believes that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

Formed in Chicago, Illinois in 1987, ALDA works collaboratively with other organizations around the world serving the needs of late-deafened people. Through its chapters and groups around the country, ALDA promotes public and private programs designed to alleviate the problems of late-deafness and for reintegrating late-deafened adults into all aspects of society. ALDA also provides educational information concerning issues affecting late-deafened adults, as well as advocacy on behalf of, and support for, late-deafened adults and their families and friends.

DHHCAN, established in 1993, serves as the national coalition of organizations representing the interests of deaf, hard of hearing, and deaf-blind citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

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1 TDI educates and encourages consumer involvement regarding legal rights to telecommunications accessibility; provides technical assistance and consultation to industry, associations, and individuals; encourages accessible applications of existing and emerging telecommunications and media technologies in all sectors of the community; advises on and promotes the uniformity of standards for telecommunications technologies; works in collaboration with other disability organizations, government, industry, and academia; develops and advocates national policies that support accessibility issues; and publishes “The GA-SK” quarterly news magazine and the annual Blue Book, TDI National Directory & Resource Guide for Equal Access in Telecommunications and Media for People Who Are Deaf, Late-Deafened, Hard of hearing or Deaf-Blind.

2 The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf and Hard of hearing, Inc. (TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.
Established in 1880, the NAD is the nation’s oldest and largest constituency organization safeguarding the accessibility and civil rights of 28 million deaf, hard of hearing, late deafened, and deaf-blind Americans in a variety of areas, including education, employment, health care, and telecommunications. A private, non-profit organization, the NAD is a dynamic federation of state associations and organizational affiliates and direct members. Primary areas of focus include grassroots advocacy and empowerment, captioned media, deafness-related information and publications, legal rights technical assistance, policy development and research, and youth leadership development. The NAD works closely with deafness related national organizations and is a member of several coalitions representing the interests of deaf, hard of hearing, late deafened, and deaf-blind individuals.

CCASDHH was established in 1988 and incorporated as a nonprofit statewide membership organization. On an annual basis, CCASDHH’s member agencies\(^2\) ensure that a variety of social services are available serving 3.8 million deaf and hard of hearing individuals regardless of where they live throughout all 58 counties in California. Through its member agencies’ diverse workforce, including Native American, Hispanic, Asian, Russian, Hmong, and African-American individuals who are deaf or hard of hearing, CCASDHH works hard to improve the quality of lives of Californians who are deaf or hard of hearing and who otherwise would not have full access to such services as telecommunications, education, certified sign

\(^2\) CCASDHH’s members include eight nonprofit community-based organizations providing various social services “of by and for” deaf and hard-of-hearing Californians -- NorCal Center on Deafness; Greater Los Angeles Agency on Deafness; Deaf Counseling, Advocacy and Referral Agency; Deaf Community Services of San Diego; Deaf and Hard of Hearing Service Center; Center on Deafness: Inland Empire; Orange County Deaf Equal Access Foundation and Tri-County GLAD - and the California Association of the Deaf, a statewide membership organization representing deaf and hard-of-hearing consumers.
language interpreters, parent-to-parent support for newborns identified with a hearing loss, literacy, employment development, and advocacy.  

The Hearing Loss Association of America ("HLAA") is the nation’s largest organization for people with hearing loss. The HLAA exists to open the world of communication for people with hearing loss through information, education, advocacy and support.

II. DISCUSSION

The draft rules on accessibility include a number of provisions that will result in greater accessibility of passenger vessels for people who are deaf or hard of hearing, and we applaud the DOT for that. However, the Consumer Groups have identified a number of changes that need to be made or omissions that need to be corrected to provide equal access.

A. §39.53 - Must Information and Reservation Services of Passenger Vessel Operators (PVOs) Be Accessible to Individuals with Hearing or Vision Impairments?

The proposed rule requires that telephone reservation or information services provided to the public must also be made available to individuals who are deaf or hard of hearing through use of TTY. The regulations to Title III of the ADA require that a, “public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services…” This may include the provision of TTY services, however Consumer Groups feel that due to the different needs within the deaf and hard of hearing population this needs to be broadened to encompass any Telecommunications Relay Services (TRS) as defined by Title IV of the ADA. The regulations of Title II of the ADA

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4 Member agencies and CCASDHH were the primary forces in state legislation that established the TTY equipment distribution program and the California Relay Service, long before the Americans with Disabilities Act was passed. As direct service providers, CCASDHH member agencies have the pulse of the community they serve to best determine needs and priorities.

5 28 C.F.R. §36.303(a).
require state and local government entities that communicate by telephone with the public to provide TTYs or “equally effective telecommunication systems” to communicate with individuals who are deaf or hard of hearing or who have a speech disability.\(^6\) TRS enables individuals who are deaf or hard of hearing or who have a speech disability to engage in telephone communications in a manner that is functionally equivalent to the ability of a telephone user. A TRS call may be initiated by anyone, with or without a hearing or speech disability, including places of public accommodation. TRS is now available for many modes of accessing telecommunications, including text-to-voice (using a TTY, also known as a telecommunications device for the deaf, or TDD), voice/hearing carry over, Internet Protocol relay, video relay, captioned telephones, and other forms of TRS as defined under Title IV of the ADA by the Federal Communications Commission.

The DOT has stated its awareness that some deaf and hard of hearing persons may now use other technologies in preference to TTYs and has asked for comment on what other technologies are used. Currently, there is a broad range of hearing ability within the deaf and hard of hearing population, thus individuals require different levels of hearing accessibility and there is no one perfect technology for everyone. Consumer Groups advocate the language of TRS, however stress that the DOT should remain mindful of this range of abilities and promulgate rules reflecting this to ensure that all members of the deaf and hard of hearing population will be accommodated.

For these reasons, the Consumer Groups propose the following changes to the proposed Section 39.53 (additional text indicated by *italics*):

\(^6\) 28 C.F.R. § 35.161.
This section applies to information and reservation services made available to persons in the United States.

(a) If, as a PVO, you provide telephone reservation or information service to the public, you must make this service available to individuals who are deaf or hard of hearing or who have a speech disability through the use of any Telecommunications Relay Service.

(b) If, as a PVO, you provide telephone reservation or information service to the public and you make this service available to individuals who are deaf or hard-of-hearing through use of a text telephone (TTY):

(1) You must make TTY service available during the same hours as telephone service for the general public.

(2) Your response time to TTY calls must be equivalent to your response time for your telephone service to the general public.

The DOT also asks for comments about whether accessibility of on-line booking services, as well as web sites providing information or other resources, should be addressed in the final rule based on this NPRM or a future rule. The Consumer Groups agree that it is very important that PVOs ensure that information and services provided on-line through the Internet are accessible and usable by individuals with disabilities. The Consumer Groups also agree that a web site meeting Section 508 or World Wide Web Consortium standards would be considered accessible for this purpose. For example, to ensure that audiovisual material is accessible to people who are deaf or hard of hearing, the audiovisual material should be captioned.

B. §39.57 – What is the general requirement for PVOs’ communications with passengers?

The Consumer Groups suggest that §39.57 be modified to include the word “services” in addition to “auxiliary aids.” PVOs must provide auxiliary aids and services when necessary to ensure effective communication with passengers with disabilities. Examples of the types of auxiliary aids and services that might be necessary are provided below in comments to §39.63 and §39.85.
C. §39.63 - What Accommodations are Required at Terminals and Other Landside Facilities for Individuals With Hearing or Vision Impairments?

In general, PVOs should be required to ensure that qualified individuals with disabilities, including people who are deaf or hard of hearing, have appropriate and effective visual, auditory or tactile access to the same information the PVO provides to other passengers. This would include, but is not limited to, information concerning ticketing, check-in, scheduled departure and arrival times, delays or changes, vessel changes, weather conditions, beverage and menu information, boarding information, connections, port assignments or changes, checking of luggage or vehicles, the availability of frequent user benefits, individuals being paged, and emergencies. In this regard, vessel personnel should be trained to communicate in a clear, understandable manner through appropriate visual, auditory or tactile communications modes with individuals with a disability, including people who are deaf or hard of hearing.

Promotional materials for passenger lines, whether the materials are brochures or other printed material or on the Internet, should be required to include information regarding the availability of accommodations for people who are deaf or hard of hearing. The items to be mentioned in the promotional materials should include, among other items, assistive listening systems, closed and open captioning, notification systems, TTYs or other accessible telecommunications equipment, and qualified interpreter and CART services.

D. §39.85 - What Services Must PVOs Provide to Passengers With a Disability on Board a Passenger Vehicle?

The proposed rule states that passengers onboard a vessel must be provided effective communication so that they have timely access to information the PVO provides to other passengers. This statement is too general and needs to include more specific requirements so that people who are deaf or hard of hearing can safely enjoy their trip and have equal access to
and an equal opportunity to participate in the programs and services provided to all passengers on board. These requirements include the need for assistive listening systems, accessible telecommunications equipment, and captioning functionality, both inside cabins and throughout the vessel, as well as sign language interpreter and CART services.

In addition, PVOs should be required to include information about auxiliary aids and services available for people who are deaf or hard of hearing to participate equally in scheduled activities announced on bulletin boards and/or distributed through the ship’s newsletters. In other words, the same media used to announce activities to passengers should include information about the auxiliary aids and services that are available for people who are deaf or hard of hearing.

1. **Assistive Listening Systems**

   Each assembly area and public seating area where audible communication is integral to the use of the space must have an assistive listening system capable of accommodating a variety of hearing abilities. Onboard the vessel, captioning for televisions should be readily available, sign language interpreters should be present on-stage if requested and Communications Access Realtime Translation (CART) writers should be available upon request, at a reasonable time prior to departure. As previously stated, individuals within the deaf and hard of hearing population have a range of levels of hearing ability and a variety of preferences as far as how they communicate. When anyone depends on communication and information in sign language, then a sign language interpreter on stage is appropriate, and some individuals who do not know sign language, require CART services to understand and enjoy live-events. PVOs must ensure that they are able to accommodate a variety of hearing abilities and needs if such services are requested.
Additionally, assistive listening systems should be available in rooms with communications accessibility features. People who are hard of hearing should be able to watch television or videos without the need to turn the volume to a level that might be too loud for other passengers in the same room or other guests in nearby rooms. Instructions should be included with the devices.

The proposed regulations do not call for testing the assistive listening devices prior to the start of a performance. Because it is impractical to correct a faulty assistive listening device once the performance is underway, it is important to require that the devices be tested with the users just prior to each performance. Additionally, the rules should require that a sufficient number of the ship’s personnel be trained in the use of assistive listening systems. Without such training, simply having such systems on board would not be helpful.

2. Accessible Telecommunications Equipment

In order to meet the compatibility requirements of Section 255 of the Communications Act of 1934, as amended, 47 U.S.C. § 255, and to make it possible for people who wear hearing aids to use the telephones, the rules should require that all telephones in all public areas and in all guest rooms be hearing aid compatible and conform to the regulations of the Federal Communications Commission ("FCC") found at 47 C.F.R. §§ 68.3, 68.4, 68.112, 68.316 and 68.317. The hearing aid compatibility requirement should apply to all guest rooms because there are many people who use hearing aids who only need a telephone that is hearing aid compatible. Therefore, they would not need to request a guest room with this hearing aid compatibility communications accessibility feature.

The proposed rules do not have a requirement for other accessible telecommunications equipment, such as video phones, to be available in public places or in guest rooms. This
omission is inconsistent with the Americans with Disabilities Act ("ADA"), PL 101-336, July 26, 1990, codified in part at 47 U.S.C. § 225, which requires telecommunications for people with hearing and/or speech impairments that are functionally equivalent to voice telephone service. Further, the regulations to Title III of the ADA requires public accommodations that offer the opportunity to make outgoing telephone calls on more than an incidental convenience basis to make available, upon request, a TTY for the use by an individual who is deaf or hard of hearing or who has a speech disability.\footnote{28 C.F.R. § 36.303(d)(1).} Since the passage of the ADA in 1990, technological advancements have resulted in an expansion of accessible telecommunications equipment. For example, video phones permit people who are deaf or hard of hearing and use sign language to engage in a telephone conversation in real time, without the delays of typing a text message. As a result, video phones are becoming the primary means of telephone communications for many people who are deaf. Similarly, captioned telephones enable a person who is deaf or hard of hearing to read the captioning for any part of the conversation they may miss or need to clarify and voice for themselves through the phone. Therefore, the rules should require, at a minimum, that (i) a TTY be installed wherever there are public telephones, and (ii) a TTY and/or other accessible telecommunications equipment (such as a video phone or captioned telephone) be available on request guest room with telecommunications features.

The rules should require that the office, front desk or ship operator be equipped with a TTY phone so that guests who are deaf or hard of hearing and cannot use a voice telephone can make calls to receive various services (on a 24/7 basis if other guest calls are answered on a 24/7 basis) as well as assistance in the event of an emergency. Not only does this make it possible for guests to receive room service, obtain information, or have other needs taken care of, it is a
critical safety measure in the event of an emergency. The rule should also require that all operators and other personnel who are answering guest calls be trained in the use of the TTY.

All TTYs and other accessible telecommunications equipment should be provided with instructions for their use, including instructions on how to call the ship’s operators, other personnel who respond to passenger calls, and other deaf or hard of hearing passengers with TTYs or other accessible telecommunications equipment in their cabins.

3. Captioning

There is a critical safety need for all emergency training videos and emergency announcements made over the television to have captioning in both public areas and in the guest rooms with communications accessibility features. In addition, people who are deaf or hard of hearing cannot enjoy television shows and videos in their rooms or movies and other programs shown in public areas without captioning. Therefore, all televisions, movies and other audio visual displays in public areas should be required to have captioning upon the request of a passenger who is deaf or hard of hearing, and all televisions in rooms with communications accessibility features and all videos available for passenger use should likewise have closed captioning.

4. Sign Language and CART Services

Qualified sign language interpreter and CART services must be available upon request and with reasonable notice to ensure effective communication with, equal access to, and an equal opportunity to participate in a PVO’s programs and services by people who are deaf or hard of hearing.

E. § 39.87 - What services are PVOs not required to provide to passengers with a disability on board a passenger vessel?
Consumer Groups recommend that section 39.87(c) of the proposed regulation be modified as follows (additional text in italics) to avoid confusion about “assistive devices” that may be required, such as assistive listening systems/devices, TTYs, or other auxiliary aids:

(c) Provision of medical equipment, devices, or services, or assistive devices, except to the extent provided to all passengers.

F. §39.89 - What Requirements Apply to Onboard Safety Briefings, Information and Drills?

All onboard safety briefings, information and drills must be effectively communicated to all passengers, including those who are deaf or hard of hearing. This may include the use of sign language interpreters, captioning of all briefings, making information available in written form and having special safety drills for those who are deaf or hard of hearing. Consumer Groups support the rule’s requirement that PVOs must present onboard safety briefings to passengers on video screens and that they be accessible to people who are deaf or hard of hearing through the use of open captioning and the placement of a sign language interpreter inset in the video. However, Consumer Groups recommend that the proposed rule reflect that captioning and sign language interpreter insets are examples intended to meet the diverse needs of people who are deaf or hard of hearing and that both may be necessary. As such, Consumer Groups recommend that Section 39.89(c) be changed as follows (proposed additional text in italics):

“... (e.g., through use of open captioning or placement of a sign language interpreter in the video, depending on the needs of the individual passenger who is deaf or hard of hearing).

In addition to onboard safety briefings, information and drills, in the case of an emergency, it is imperative that PVOs communicate effectively with passengers who are deaf or hard of hearing. For example, emergency alarms to alert people who are deaf or hard of hearing include vibrator alarms placed in beds, as well as flashing lights in the guest rooms, bathrooms
and common areas. Guest rooms with communications accessibility features should be required to have emergency alarms designed for people who are deaf or hard of hearing. These alarms should be tested prior to departure.

Additionally, because people who are deaf or hard of hearing will not hear emergency announcements, PVOs should be required to issue emergency text pagers or Personal Digital Assistants ("PDAs") with keyboards to enable two-way communications to all passengers who are deaf or hard of hearing. These text pagers or PDAs should vibrate in an emergency and display text messages with the same information that is provided by the verbal emergency announcement. The text pagers or PDAs would have the added benefit of generally facilitating communications between the passengers who are deaf or hard of hearing and the ship’s crew.

Text pagers, PDAs and any other safety devices should be tested prior to departure to ensure their use on board. Additionally, all equipment should be offered with clear and simple instructions. Personnel aboard the PVO should be able to demonstrate and clearly communicate instructions regarding the use of such equipment such that all deaf or hard of hearing individuals can easily understand how such equipment is used. Moreover, as with the availability of all equipment, spare emergency equipment should be kept aboard the vessel.

F. Availability of Spare Equipment

The proposed rules do not address the availability of spare equipment. Yet, when a vessel is out at sea, there would be no ability to obtain spare equipment unless it is on board. The rules therefore should require that vessels have on board spare assistive listening systems and devices, closed caption television sets, TTYs, other accessible telecommunications equipment, and other required devices.
III. CONCLUSION

For the reasons discussed herein, the Consumer Groups propose that the DOT’s proposed American with Disabilities Act (“ADA”) rules for Passenger Vessels be modified as discussed above.

Respectfully submitted,

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