



Burton Blatt Institute
SYRACUSE UNIVERSITY

Comments on the 2011 Supplemental Notice of Proposed Rulemaking on Airline Websites and Kiosks (Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at U.S. Airports (Document ID DOT-OST-2011-0177) 14 CFR Part 382, 49 CFR Part 27; AG Order No. RIN 2105-AD96)

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Via

Federal eRulemaking Portal: <http://www.regulations.gov>

Mail: Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue, SE
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Washington, DC 20590-0001

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To Secretary of the Department of Transportation:

Thank you for the opportunity to comment on the Supplemental Notice of Proposed Rulemaking regarding Air Carrier Access Act (ACAA) requirements for airline websites and kiosks.

The Burton Blatt Institute (BBI) at Syracuse University is a research, education, and advocacy organization dedicated to advancing the civic, economic and social participation of people with disabilities worldwide. Our focus areas include employment and economic empowerment, civil rights, accessible technology, and community participation. With a staff of more than 50, BBI has offices in Syracuse, N.Y., Washington, D.C., and Atlanta, Ga.

BBI commends the Department for proposing definitive regulations for airline website and kiosk accessibility. This area has been in need of concrete standards. Less than fully accessible websites and kiosks have been prevalent in the air travel industry for as long as those benefits have existed. However, the technology to make them accessible has existed at least as long.

Because the Department substantively raised the issue of accessible websites and kiosks as early as its November 4, 2004, NRPM regarding the ACAA, the air travel industry has been aware of forthcoming accessibility mandates and has had the opportunity to prepare accordingly. BBI urges the Department to act swiftly in finalizing regulations in the deployment of accessible websites and kiosks.

The Department's proposal, that the ACAA cover airline proprietary kiosks and kiosks owned and controlled by airport operators, will be helpful in gaining greater accessibility and usability (and perhaps universal design) across the industry, given the move towards Common-Use Self-Service (CUSS) kiosks. However, the Department should further clarify that while the current proposals under the ACAA are the applicable technical standards, kiosk systems that are programs and activities of entities covered by the Americans with Disabilities Act (ADA) and the Rehabilitation Act, are covered by those laws and subject to the requirements they impose. This approach is consistent with the Department's past practice.¹ This is important, given the existence of private enforcement and dispute resolution mechanisms under the ADA and the Rehabilitation Act.

Request for Comment: *Should the Department consider requiring a set of technical or performance accessibility standards other than WCAG 2.0? Besides the Section 508 standards, what other accepted Web site accessibility standards are available? In the final rule, should the Department permit carriers to comply with Web site accessibility requirements by meeting any accepted Web site accessibility standard? Does WCAG 2.0 Level AA conformance provide a sufficient level of accessibility?*

BBI supports the Department's proposal to apply the Website Content Accessibility Guidelines (WCAG) 2.0, Level AA, as technical standards for websites. However, the Department should consider pairing WCAG technical standards with a performance standard to ensure accessibility and usability by a range of individuals with sensory, physical and cognitive disabilities.

Technical standards assist covered entities in making their websites accessible to a range of persons with disabilities. Level AA Success Criteria is an appropriate web accessibility

¹ Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance; Nondiscrimination on the Basis of Handicap in Air Travel, 61 Fed. Reg. 56409, 56417 (Nov. 1, 1996).

standard for this need. WCAG 2.0, developed from a rigorous multi-year process, is robust and stable, “technology-neutral,” and designed to keep pace with changing technology.

The WCAG 2.0 Level AA success criteria focus on how people with disabilities use and interact with websites, and they allow for reasonable flexibility by web designers and developers. The WCAG 2.0 guidelines emphasize realistic outcomes and design strategies to ensure accessibility, without being tied to a particular technology. They also are valid and usable in “cloud” computing environments as in the dedicated server world, appropriate on social networking sites as on e-commerce sites, and suitable for people with disabilities using various assistive technologies.

WCAG provides information about how people with disabilities may use the web, but does not mandate solutions tied to certain technologies. Techniques for meeting criteria are offered, but the criteria are drafted to be forward-looking—to explain what to accomplish, but not how to do it. Adherence to the WCAG 2.0 Level AA success criteria should not necessarily require a covered entity to alter the look, feel, or content of its websites. To the contrary, these cost-effective criteria should facilitate better usability for all, as is the goal of more universally designed technologies as noted by the Global Universal Design Commission (GUDC) (see <http://globaluniversaldesign.com/>) and other like entities.

An array of stakeholders was involved in developing WCAG 2.0. Industry, government, people with disabilities, and technology experts participated in an open and public process that led to final adoption of WCAG 2.0. The multi-year process ended with an Implementation Report demonstrating the Guidelines were effective and able to be implemented in a range of web settings. The report, which points to sites using the WCAG 2.0 Success Criteria, is online at <http://www.w3.org/WAI/GL/WCAG20/implementation-report/>.

Importantly, WCAG is an international—and internationally accepted—standard. Companies in the United States that do business abroad will benefit from a consistent standard that meets legal requirements wherever the Internet is accessed.

WCAG 2.0 has extensive instructional and support materials, including detailed and continually updated “How to Meet” and “Techniques” documents that provide information on how to satisfy the guidelines using different technologies.

Finally, commercial and government websites, large and small, are already using WCAG 2.0 or the earlier version 1.0, and have been doing so for years. Information about the companies who work to ensure their websites satisfy the Web Content Accessibility Guidelines, is available on line at <http://llegal.com/2010/09/doj-anprm-web/>. State and local governments (ADA Title II entities) also rely on WCAG. See for example: <http://www.osc.state.ny.us/retire/accessibility.htm> (pages of New York State Retirement system comply in full with WCAG 2.0 A, and in part with Success Criteria AA and AAA.); <http://www.prb.state.tx.us/accessibility-policy.html> (Texas Pension Review Board “striving to

meet the recommendations of the World Wide Web Consortium (W3C) as shown in the Web Content Accessibility Guidelines (WCAG) 2.0”).

Request for Comment: *Are there sufficient technical assistance resources available to support companies in implementing the standard?*

Yes. There are website accessibility consultants available to assist covered entities of all sizes. Prominent consultants include: Deque Systems, SSB Bart Group, The Paciello Group, and Dr. Jim Thatcher. There are automated accessibility tools (free and for modest fees) that are keyed to WCAG standards and useful for detecting accessibility issues. Regular monitoring and testing with a combination of these resources help airlines maintain an accessible website.

Request for Comment: *The Department seeks comment on whether we should explicitly prohibit the use of conforming alternate versions except when necessary to provide the information, services, and benefits on a specific Web page or Web site as effectively to individuals with disabilities as to those without disabilities.*

BBI believes the Department should not allow use of conforming alternative versions of websites, or “parallel websites.” Experience has shown parallel sites often are “separate and unequal,” neglected and are neither kept accessible nor updated to a reasonable degree compared to the primary website counterpart. Also, research shows parallel sites often do not offer the same functionality as primary websites.

Request for Comment: *Should accessibility requirements cover all public-facing Web site content on the Web sites, or only the portion(s) of the Web site necessary to book a flight?*

The accessibility requirements should cover all public-facing website content. Individuals with disabilities not only wish to book flights, but also access information about the airline, review information relating to frequent flier and reward programs, review airline policies, find contact information, and research airport facilities.

Request for Comment: *As an alternative, should Level A conformance or Level A plus conformance with some number of selected Level AA success criteria be required as long as the result is at least as strong as the current Section 508 Web accessibility standard?*

No. As addressed, Level AA conformance seems the best standard and readily achievable. Section 508 is an important standard for the federal government, but was drafted to be just that: a tool for federal agencies and not directly for other entities, or the web developers they employ. As the Department knows, Section 508 is currently under active revision, in large part to assure conformance with WCAG 2.0. When TEITAC, the industry–

consumer advisory committee assisting the Access Board with the Section 508 refresh, turned in its report on revision of the 508 standards it made recommendation as identical to WCAG 2.0 as possible, given WCAG 2.0 was not completed as of the report date. (See April 2008 TEITAC Report to Access Board at <http://www.access-board.gov/sec508/refresh/report/>, stating “[t]he Committee worked to harmonize its recommendations with the W3C Web Content Accessibility Guidelines 2.0 (WCAG 2.0) Working Group.”) Moreover, all commenters, industry and consumer, that added supplemental comments to the final report addressing the web portions urged the Access Board to either adopt WCAG 2.0 for the Web portion of the new 508 standards or make the new standards as identical as possible to WCAG 2.0.

Given the importance of international harmonization, and extensive support materials available for WCAG 2.0, the ACAA web regulations should refer directly to WCAG, and not adopt Section 508, a U.S.-specific regulation that is not yet stable.

Request for Comment: *Should the Department require carriers to develop guidance manuals for such personnel on how to implement technical accessibility standards so that their Web sites are also functionally usable by individuals with disabilities (i.e., they are able to access or acquire the same information, engage in the same interactions, and enjoy the same products and services as non-disabled users of their Web site with substantially equivalent ease of use)?*

Yes. Websites are not static and changes happen on a daily basis. A website does not remain accessible without an ongoing commitment. One significant aspect of that commitment is training and adherence to internal guidance and compliance manuals that help website developers prevent accessibility issues from creeping into the website. These manuals are useful for websites because of unique instruction as to the aspects of the particular website (e.g., how to code a kind of template). These manuals are also useful for tutoring new and temporary employees.

Request for Comment: *In light of the overlapping scope of the ACAA and the ADA rules, should automated kiosks that are owned, leased, or controlled by carriers and perform functions similar to airport kiosks, but are located in non-airport venues (e.g., hotel lobbies), be covered in this rulemaking?*

Yes, as long as the private and public enforcement mechanisms of the ADA remain available. The Department should specify the ACAA regulations do not impede or interfere with the rights and remedies made available in other laws.

Request for Comment: *Should the proposed time frame for accessible kiosks (i.e., kiosks ordered 60 days after the effective date of the rule) be reduced or increased assuming the rule is effective 30 days after publication in the Federal Register? Is it reasonable to require that all*

new kiosk orders initiated after the effective date of the rule be for accessible models? Should there be a delay in the effective date of this provision?

As discussed, there should be no delay after the effective date of the regulation. Indeed, there ought to be a retrofitting requirement for kiosks ordered between the time the SNPRM was issued and the effective date of the final regulation. This will encourage a faster transition to accessible kiosks.

Request for Comment: *Should existing automated airport kiosks be required to be retrofitted? What percentage or number of existing kiosks should we require to be retrofitted? How much time should be provided to carriers/airports to retrofit existing automated airport kiosks?*

BBI believes the Department should apply a retrofitting requirement to hasten availability of accessible kiosks. Given the years that have passed since the Department first raised this issue, and months that will elapse between now and finalization of these regulations, airlines will have adequate notice of the need to provide accessible kiosks. Further, because the functional lifespan of a kiosk may be long (in excess of 10 years), retrofitting of some proportion of current kiosk fleets should be required for accessibility to be realized on a reasonable timeline.

The Department should apply a graduated retrofitting requirement to balance the need for accessibility with potential costs associated with retrofitting. BBI proposes requiring 25 percent of kiosks currently in use be retrofitted for accessibility one year after the rule is made effective, 50 percent after three years, 75 percent after five years, and 100 percent after seven years. To ensure that retrofitting is done proportionately across an airline's service areas and not just in major hubs, the DOT should address the locations of retrofitting with the following proposed language: "kiosks currently in use at every snakeline or cluster or stand-alone units behind security in every U.S. airport with 10,000 or more enplanements per year."

Thank you for your consideration of improvements to the ACAA Standards and for the opportunity to comment on this important SNPRM.

Sincerely,

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