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Rachel Reed

Georgia State University College of Law, rachelpastor@gmail.com

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DISABILITY RIGHTS IN THE AGE OF UBER: APPLYING THE AMERICANS WITH DISABILITIES ACT OF 1990 TO TRANSPORTATION NETWORK COMPANIES

Rachael Reed*

INTRODUCTION

Uber began with a simple idea: “tap a button, get a ride.”¹ The company’s founders put that idea into practice when they first launched UberCab service in San Francisco in the summer of 2010.² Since then, Uber has experienced incredible growth.³ Within five years of its launch, Uber grew from just a small network of San Francisco employees and drivers⁴ to operating in 311 cities and employing more than 3,000 people worldwide.⁵ Accordingly, ride-hailing services like Uber and its primary competitor Lyft, commonly referred to as Transportation Network Companies (TNCs),⁶ have become an increasingly common part of life for

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1. *Our Story*, UBER, www.uber.com/our-story (last visited Sept. 3, 2016); see Kara Swisher, *Man and Uber Man*, VANITY FAIR (Nov. 5, 2014, 12:00 AM), <http://www.vanityfair.com/news/2014/12/uber-travis-kalanick-controversy>.

2. Swisher, *supra* note 1.

3. Lisa Rayle et al., *App-Based, On-Demand Ride Services: Comparing Taxi and Ridesourcing Trips and User Characteristics in San Francisco 2* (Univ. of Cal. Transp. Ctr., Working Paper No. UCTC-FR-2014-08, 2014), <http://www.uctc.net/research/papers/UCTC-FR-2014-08.pdf>; Charles J. Johnson, *Timeline: History of Uber*, CHI. TRIB. (Mar. 11, 2015, 10:12 AM), <http://www.chicagotribune.com/bluesky/technology/chi-timeline-ubers-controversial-rise-20150205-htmlstory.html> (“In fewer than five years, Uber has reshaped how many people the world over get around, growing into a powerhouse brand with a valuation of roughly \$40 billion.”); Adam Lashinsky, *Uber: An Oral History*, FORTUNE (June 3, 2015, 11:00 AM), <http://fortune.com/2015/06/03/uber-an-oral-history/>.

4. Swisher, *supra* note 1.

5. Lashinsky, *supra* note 3. As of June 2015, Uber operates in fifty-eight countries. *Id.* See *Find a City*, UBER, <https://www.uber.com/cities> (last visited Sept. 19, 2015) (providing a list of countries and cities where the service currently operates).

6. Rayle, *supra* note 3, at 1. In attempting to regulate companies like Lyft and Uber, many states use the term “transportation network company” to categorize a company that uses a mobile application

people that live in cities where they operate.⁷ TNCs' popularity is due in part to their unique use of mobile applications and GPS data to connect people seeking rides with nearby drivers who then use their personal vehicles to transport riders to their desired destinations.⁸

For most TNC customers, securing transportation through a TNC's mobile application provides a more convenient and cost-effective alternative to a traditional taxi service.⁹ However, for some potential riders, the service falls short in a very significant way.¹⁰ More than once, Uber drivers refused a ride to Kristen Parisi, a Boston woman who requires a wheelchair to get around.¹¹ On the first instance, Parisi's driver claimed her wheelchair would not fit in the car, even

to arrange car for hire services. *E.g.*, CAL. PUB. UTIL. CODE § 5431(a) (West 2015) ("As used in this article, a 'transportation network company' is an organization . . . that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle."); H.B. 190, 153d Gen. Assemb., Reg. Sess. (Ga. 2015) (codified as O.C.G.A. § 33-1-24(a)(2)) (effective Jan. 1, 2016) ("Transportation network company' means a corporation, partnership, sole proprietorship, or other entity that uses a digital network or other means to connect customers to transportation network company drivers for the purposes of providing transportation for compensation including, but not limited to, payment, donation, or other item of value."). Other names for this category of business include, "ridesharing," "real-time ridesharing," "parataxis," "ridematching," "on-demand rides," "app-based rides," and "ridesourcing." Rayle, *supra* note 3, at 2.

7. See Lashinsky, *supra* note 3 ("For many users it's hard to imagine a time when taxis or dial-number car services were the only way to be driven around.").

8. Tienielle, *The Beginner's Guide to Uber*, UBER (Jan. 29, 2015), <https://newsroom.uber.com/the-beginners-guide-to-uber-2/> ("Uber uses your phone's GPS to detect your location and connects you with the nearest available driver. Get picked up anywhere by dropping the pin for your pickup location and hitting 'Request.'"); *Uber Needs Partners like You*, UBER, <https://get.uber.com/drive/> (last visited Aug. 28, 2016) ("Got a car? Turn it into a money machine. . . [Y]ou've already got everything you need to get started."). Another benefit of using the Uber service compared to a traditional taxi is the integration of fare payment into the app; when riders arrive at their destination, fare is automatically charged to the credit card numbers they used to create their rider accounts. Tienielle, *supra*.

9. Sara Silverstein, *These Animated Charts Tell You Everything About Uber Prices In 21 Cities*, BUS. INSIDER (Oct. 16, 2014, 12:47 PM), <http://www.businessinsider.com/uber-vs-taxi-pricing-by-city-2014-10> ("Uber rates do beat cab fares in most cities."). Uber rides can also be more cost effective because they do not require an additional tip on top of the charged fare. *Id.*; see also *Ride*, UBER, <https://www.uber.com/ride/> (last visited Aug. 28, 2016) ("Everyday rides that are always smarter than a taxi.").

10. See Laura J. Nelson, *Uber, Lyft Under Pressure to Improve Accessibility*, DISABILITY SCOOP (Sept. 14, 2015), <http://www.disabilityscoop.com/2015/09/14/uber-lyft-accessibility/20794/>; Jen Wiczner, *Why the Disabled Are Suing Uber and Lyft*, FORTUNE (May 22, 2015, 6:13 PM), <http://fortune.com/2015/05/22/uber-lyft-disabled/>.

11. Dara Kerr, *What Is Uber Doing to Train Its Drivers on Disability Rights?*, CNET (Aug. 3, 2015, 6:00 AM) <http://www.cnet.com/news/what-is-uber-doing-to-train-drivers-on-disability-rights/>; Nina Strohlic, *Uber: Disability Laws Don't Apply to Us*, DAILY BEAST (May 21, 2015, 5:15 AM), <http://www.thedailybeast.com/articles/2015/05/21/uber-disability-laws-don-t-apply-to-us.html>.

though Parisi explained to the driver that the wheelchair fit inside the trunk of her own compact car.¹² Parisi heard a similar excuse the second time, but unwilling to accept the driver's claims, loaded both herself and her wheelchair into the backseat of her ride without any assistance from the driver.¹³ During that ride, Parisi's driver added insult to injury by telling her she "must not be a Christian" and should "develop thicker skin."¹⁴ Regrettably, Parisi's story is not unique.¹⁵

Within the past year, individual plaintiffs and disability rights organizations have initiated a number of lawsuits against Uber, and similar companies like Lyft, alleging violations of Title III of the Americans with Disabilities Act of 1990 (Title III).¹⁶ In each of these cases, the plaintiffs' success turns on affirmatively answering one significant threshold question: Whether Uber, or a similar entity, falls within the scope of Title III.¹⁷ Traditional taxi companies fall squarely within the Americans with Disabilities Act of 1990's (ADA) coverage under 42 U.S.C. § 12184 (§ 12184), which governs private companies that provide transportation services.¹⁸ Given the similarities between the functions of TNCs and taxi companies,

12. Strohlic, *supra* note 11; Kerr, *supra* note 11 ("[Parisi] gets around in a small manual wheelchair she says weighs about 15 pounds and can be easily folded to fit into a car's back seat or trunk.").

13. Kerr, *supra* note 11.

14. Strohlic, *supra* note 11; Kerr, *supra* note 11 ("During the ride, Parisi said the driver berated her, saying just like she wouldn't drive a dog, she shouldn't be expected to take a wheelchair.").

15. *See, e.g.*, Nelson, *supra* note 10 (describing how a Los Angeles Uber driver refused to exit his car after a wheelchair bound passenger requested assistance with stowing the folded chair in the trunk of the car).

16. *Id.* ("Both [Uber and Lyft] are facing lawsuits across the country—in California, Texas and Arizona—alleging that their drivers discriminate against people with wheelchairs and seeing-eye dogs."); *e.g.*, *Nat'l Fed'n of the Blind of Cal. v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073, 1076 (N.D. Cal. 2015) (alleging discrimination against blind persons by refusing to transport service dogs); *Ramos v. Uber Techs., Inc.*, No. SA-14-CA-502-XR, 2015 WL 758087, at *1 (W.D. Tex. Feb. 20, 2015) (alleging a failure to provide service to mobility impaired customers).

17. *Nat'l Fed'n of the Blind of Cal.*, 103 F. Supp. 3d at 1082 ("Uber urges this Court to find that it is not a public accommodation under the ADA, placing it outside the scope of regulated businesses."); *Ramos*, 2015 WL 758087, at *3 ("Plaintiffs are alleging that Uber and Lyft are subject to [42 U.S.C.] § 12184 as private entities that are primarily engaged in the business of transporting people . . .").

18. The Americans with Disabilities Act of 1990, 42 U.S.C. § 12184 (2012); *see also* 49 C.F.R. § 37.29(a) (2015) ("Providers of taxi service are subject to the requirements of this part for private entities primarily engaged in the business of transporting people which provide demand responsive service.").

holding TNCs to the same standard seems like an easy decision.¹⁹ However, the TNCs currently facing Title III suits do not agree with that premise.²⁰

Although Uber and Lyft, the two primary targets of Title III litigation, both have nondiscrimination policies in place,²¹ they claim that as “technology companies” rather than “transportation companies,” their operations fall outside the scope of Title III regulations.²² To make this argument, Uber and Lyft contend that their primary function is not providing rides, but instead providing a platform through which drivers and riders can connect.²³ Federal courts have not yet resolved this issue or provided clear guidance on what obligations TNCs may have under the ADA.²⁴ This Note seeks to provide that guidance and explore whether the laws adequately ensure that people with disabilities receive the benefits of this new brand of transportation.

Part I of this Note outlines the Title III provisions most applicable to TNCs, and provides a synopsis of discrimination suits brought against these companies under Title III.²⁵ Part II assesses the viability of riders with disabilities’ Title III claims by analyzing whether TNCs qualify as private providers of public transportation or public

19. See Brian Muse, *Uber’s ADA Conundrum*, ADA MUSINGS (May 28, 2015), <http://adamusings.com/2015/05/28/ubers-ada-conundrum/> (“When you think of Uber—or similar companies like Lyft and Sidecar—you probably think of a transportation company.”).

20. See discussion *infra* Part I.B.

21. *Uber Non-Discrimination Policy*, UBER, <https://www.uber.com/legal/non-discrimination-policy> (last visited Oct. 17, 2015); *Anti-Discrimination Policies*, LYFT, <https://help.lyft.com/hc/en-us/articles/214218517-Anti-Discrimination-Policies> (last visited Aug. 28, 2016).

22. Stochlic, *supra* note 11 (claiming that in response to a discrimination complaint, Uber denied it offered a taxi service); Defendant Lyft Inc.’s Corrected Motion to Dismiss Complaint at 7, *Ramos v. Uber Techs., Inc.*, No. SA–14–CA–502–XR, 2015 WL 758087 (W.D. Tex. Feb. 20, 2015) (No. 5-14-cv-00502-XR), 2014 WL 5590872 (denying that Lyft falls within the ADA’s statutory definition of a private entity providing “specified public transportation” services).

23. *Ramos v. Uber Techs., Inc.*, No. SA–14–CA–502–XR, 2015 WL 758087, at *10 (W.D. Tex. Feb. 20, 2015) (“Defendants argue that they are not subject to § 12184 because they do not provide specified public transportation services and are not engaged in the business of transporting people, but are simply mobile-based ridesharing platforms to connect drivers and riders.”).

24. Stochlic, *supra* note 11 (“The big problem is that until the courts settle whether Uber is a software company or a transportation company, the disability community will just have to be patient and try to work with Uber, not against them.”) (quoting Eric Lipp, Executive Director of the Open Doors Organization, a disability travel network).

25. See *infra* Part I.

accommodations under the ADA and predicts what obligations TNCs would have under either definition.²⁶ Finally, Part III contends that TNCs should be treated as transportation providers with obligations similar to those imposed on taxi services.²⁷

I. BACKGROUND

A. *The Americans with Disabilities Act of 1990*

Congress enacted the ADA in July of 1990²⁸ to prohibit discrimination based on disability and make strides towards ensuring that people with disabilities share equally in the benefits of American life.²⁹ To achieve this broader aim, the legislation focused specifically on resolving issues of discrimination and accessibility in employment,³⁰ places of public accommodation,³¹ transportation

26. *See infra* Part II.

27. *See infra* Part III.

28. Presidential Statement on Signing the Americans with Disabilities Act of 1990, 2 PUB. PAPERS 1070, 1070 (July 26, 1990) (describing the ADA as “comprehensive legislation” aiming to remove barriers faced by individuals with disabilities in “employment opportunities, government services, public accommodations, transportation, and telecommunications”). The ADA passed with nearly unanimous bipartisan support. 136 CONG. REC. 17,375–76 (1990) (Senate) (passing with a vote of ninety-one to six in the Senate with three senators not voting); 136 CONG. REC. 17,296–97 (1990) (House) (passing with a vote of 377 to 28 in the House with 27 not voting).

29. Americans with Disabilities Act of 1990, 42 U.S.C. § 12101(b) (2012) (enumerating the purposes of the ADA); Presidential Remarks on Signing the Americans with Disabilities Act of 1990, 2 PUB. PAPERS 1067, 1068 (July 26, 1990) (“This act is powerful in its simplicity. It will ensure that people with disabilities are given the basic guarantees for which they have worked so long and hard: independence, freedom of choice, control of their lives, the opportunity to blend fully and equally into the rich mosaic of the American mainstream.”). As codified in 42 U.S.C. § 12101(b), the purposes of the ADA are:

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and (4) 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-day by people with disabilities.

42 U.S.C. § 12101(b).

30. 42 U.S.C. §§ 12111-12117 (2012) (employment).

31. 42 U.S.C. §§ 12131-12134 (2012) (public services); 42 U.S.C. §§ 12181-12189 (2012) (public accommodations and services operated by private entities).

services,³² and communication services.³³ Title III of the ADA prohibits discrimination by public accommodation and private service providers.³⁴ Many of ADA's most visible effects, accommodations such as a wheelchair ramps in theaters or grab bars in store restrooms, are direct results of Title III and its corresponding regulations.³⁵

1. Provisions Governing Transportation Providers

Within Title III, § 12184 prohibits private entities “primarily engaged in the business of transporting people” from discriminating against people with disabilities in the use and enjoyment of “specified public transportation” services.³⁶ Discrimination under this section includes: (1) failing to make a reasonable modification required for extending service to an individual with a disability when the modification would not fundamentally alter the nature of provider's the service;³⁷ (2) excluding individuals from using a service due to a lack of auxiliary aids that the service provider could offer without undue burden;³⁸ and (3) leaving in place readily removable physical or communication barriers that limit an individual with disabilities' ability to use the provider's transportation service.³⁹

32. 42 U.S.C. §§ 12141-12165 (2012) (public transportation); 42 U.S.C. § 12184 (2012) (transportation provided by private entities).

33. 42 U.S.C. § 12101(a)(3) (2012) (“[D]iscrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.”); Presidential Remarks on Signing the Americans with Disabilities Act of 1990, 2 PUB. PAPERS 1067, 1068 (July 26, 1990) (“[T]he ADA ensures equivalent telephone services for people with speech or hearing impediments.”).

34. 42 U.S.C. §§ 12181-12189 (2012).

35. EQUAL EMP'T OPPORTUNITY COMM'N & U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., THE AMERICANS WITH DISABILITIES ACT: QUESTIONS AND ANSWERS 22 (1999); WILLIAM D. GOREN, UNDERSTANDING THE AMERICANS WITH DISABILITIES ACT 70 (3d ed. 2010).

36. 42 U.S.C. § 12184 (2012). “Specified public transportation” is defined as “transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.” 42 U.S.C. § 12181(10) (2012).

37. 42 U.S.C. § 12184(b)(2)(A), 12182(b)(2)(A)(ii) (2012).

38. 42 U.S.C. § 12184(b)(2)(B), 12182(b)(2)(A)(iii).

39. 42 U.S.C. § 12184(b)(2)(C), 12182(b)(2)(A), 12183(a)(2) (2012).

In addition to complying with § 12184's statutory prohibitions, transportation providers must also adhere to the Department of Transportation's corresponding regulations, 49 C.F.R. §§ 37.1 to .215.⁴⁰ Most pertinent to the purposes of this Note, 49 C.F.R. § 37.29 provides guidance to private entities providing taxi services.⁴¹ This regulation not only prohibits taxi services from refusing to serve people with disabilities that can use a taxi, but also prohibits taxi services from refusing to assist passengers with mobility devices or charging people with disabilities higher fares.⁴² The regulation does not require taxi services to acquire or maintain any number of accessible vehicles within their fleets.⁴³ In short, these regulations mean that taxi companies and similar transportation services fulfill their ADA obligations as long as they do not refuse service to individuals with disabilities who are capable of riding in the vehicle and require limited to no assistance from the driver.⁴⁴

40. 49 C.F.R. § 37.1 (2015) ("The purpose of this part is to implement the transportation and related provisions of titles II and III of the Americans with Disabilities Act of 1990.")

41. 49 C.F.R. § 37.29(a) (2015) ("Providers of taxi service are subject to the requirements of this part for private entities primarily engaged in the business of transporting people which provide demand responsive service."). Notably, the guidance for interpreting the requirements governing private providers of taxi services under 49 C.F.R. § 37.29 provides that, "[f]or purposes of this section, other transportation services that involve calling for a car and a driver to take one places (e.g., limousine services, of the kind that provide luxury cars and chauffeurs for senior proms and analogous adult events) are regarded as taxi services." Section 37.29 Private Providers of Taxi Service, 49 C.F.R. pt. 37 app. D subpt. B (2014).

42. 49 C.F.R. § 37.29(c) ("Private entities providing taxi service shall not discriminate against individuals with disabilities by actions including, but not limited to, refusing to provide service to individuals with disabilities who can use taxi vehicles, refusing to assist with the stowing of mobility devices, and charging higher fares or fees for carrying individuals with disabilities and their equipment than are charged to other persons.")

43. 49 C.F.R. § 37.29(b) ("Providers of taxi service are not required to purchase or lease accessible automobiles. When a provider of taxi service purchases or leases a vehicle other than an automobile, the vehicle is required to be accessible unless the provider demonstrates equivalency as provided in § 37.105 of this part. A provider of taxi service is not required to purchase vehicles other than automobiles in order to have a number of accessible vehicles in its fleet.")

44. 49 C.F.R. § 37.29. Appendix D to Part 37 of the Department of Transportation regulations provides some useful examples of what does and does not constitute discrimination by a private provider of a taxi service. *See, e.g.*, Section 37.5 Nondiscrimination, 49 C.F.R. pt. 37 app. D, subpt. A (2014) ("If a taxi company charges \$1.00 to stow luggage in the trunk, it cannot charge \$2.00 to stow a folding wheelchair there."); Section 37.29 Private Providers of Taxi Service, 49 C.F.R. pt. 37 app. D, subpt. B (2014) ("It would be discrimination for a driver to refuse to assist with stowing a wheelchair in the trunk (since taxi drivers routinely assist passengers with stowing luggage)."); *id.* (A taxi company cannot "insist that a wheelchair user wait for a lift-equipped van if the person could use an automobile"). For an example of a recent case alleging disability discrimination against a taxi company, see *Doud v.*

2. Provisions Governing Public Accommodations

In addition to imposing nondiscrimination obligations on private entities that provide transportation services, Title III also prohibits discrimination in places of public accommodation, a broad category including restaurants, doctors' offices, and a wide variety of other places that provide goods and services to the public.⁴⁵ Although the ADA does not specifically define "public accommodations" beyond being private entities that affect commerce, the Act does limit the application of the term to an exhaustive list of twelve specific types of entities.⁴⁶ Some of these categories include service establishments such as laundromats or doctors' offices, transportation terminals, retail establishments, and places of lodging such as hotels.⁴⁷

42 U.S.C. § 12182 (§ 12182) articulates the ADA's ban on discrimination in the use of public accommodations.⁴⁸ The general rule provides that, "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."⁴⁹ The statute prohibits operators of public accommodations from denying individuals goods or services based on their disability or by offering them goods and services that are either unequal to or separate from the goods and services available to others, defining such actions as discrimination.⁵⁰

Yellow Cab of Reno, Inc., No. 3:13-cv-00664-WGC, 2015 WL 895077, at *1, *15 (D. Nev. Mar. 3, 2015) (granting plaintiffs' motion for partial summary judgment on their Title III claim where the defendant company's cab driver refused service to a woman who used a portable scooter, insisting that she wait for a vehicle that could load both her and the scooter intact, despite the fact that the scooter could be disassembled and loaded into the trunk of the car).

45. 42 U.S.C. § 12182 (2012).

46. 42 U.S.C. § 12181(7) (2012); H.R. REP. NO. 101-485(II), at 383 (1990) ("The twelve categories of entities included in the definition of the term 'public accommodation' are exhaustive.")

47. 42 U.S.C. § 12181(7); H.R. REP. NO. 101-485(II), at 383 ("[W]ithin each of these categories, the legislation only lists a few examples and then, in most cases, adds the phrase 'other similar' entities. The Committee intends that the 'other similar' terminology should be construed liberally . . .").

48. 42 U.S.C. § 12182.

49. 42 U.S.C. § 12182(a).

50. 42 U.S.C. § 12182(b)(1)(A); H.R. REP. NO. 101-485(II), at 387 ("These general prohibitions are patterned after the basic, general prohibitions that exist in other civil rights laws that prohibit

Section 12182 makes clear that discrimination also includes an operator's failure to affirmatively take reasonable steps to ensure that people with disabilities have equal access to its goods or services.⁵¹ Additionally, § 12182 contains a specific provision addressing public accommodations that operate demand responsive transportation systems.⁵² This provision requires such systems to provide an equivalent level of service to people with disabilities as it provides for others.⁵³

B. Discrimination Claims Brought Against Transportation Network Companies

Within the past two years, individual plaintiffs and disability rights organizations filed numerous actions against TNCs, alleging that the companies or their drivers discriminated against individuals with disabilities in violation of Title III of the ADA.⁵⁴ Although no federal courts have issued opinions definitively holding that TNCs have responsibilities under a specific provision of Title III, preliminary

discrimination on the basis of race, sex, religion, or national origin.”).

51. 42 U.S.C. § 12182(b)(2)(A); H.R. REP. NO. 101-485(II), at 388.

52. 42 U.S.C. § 12182(b)(2)(C). Title III of the ADA defines a demand responsive system as “any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.” 42 U.S.C. § 12181(3). “The term ‘fixed route system’ means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.” 42 U.S.C. § 12181(4).

53. 42 U.S.C. § 12182(b)(2)(C)(i) (stating that discrimination by entities operating public accommodations includes, “a failure of a private entity which operates a demand responsive system and which is not subject to section 12184 of this title to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities”). The corresponding Department of Justice regulations dealing with transportation provided by public accommodations provide useful examples of the types of transportation systems § 12182 is intended to cover. 28 C.F.R. § 36.310(a)(2) (2015) (“Transportation services subject to this section include, but are not limited to, shuttle services operated between transportation terminals and places of public accommodation, customer shuttle bus services operated by private companies and shopping centers, student transportation systems, and transportation provided within recreational facilities such as stadiums, zoos, amusement parks, and ski resorts.”).

54. Nelson, *supra* note 10 (referring to Uber and Lyft, stating that “[b]oth companies are facing lawsuits across the country—in California, Texas and Arizona—alleging that their drivers discriminate against people with wheelchairs and seeing-eye dogs”); *e.g.*, Ramos v. Uber Techs., Inc., No. SA-14-CA-502-XX, 2015 WL 758087, at *1 (W.D. Tex. Feb. 20, 2015) (alleging a failure to provide service to mobility impaired customers); Nat’l Fed’n of the Blind of Cal. v. Uber Techs., Inc., 103 F. Supp. 3d 1073, 1076 (N.D. Cal. 2015) (alleging discrimination against blind persons by refusing to transport service dogs).

rulings in the most recent cases suggest that courts are at least willing to consider the issue.⁵⁵ In their complaints against TNCs, plaintiffs present courts with two narrow questions to answer: (1) whether TNCs meet the statutory definition of a private entity providing a specified public transportation service under § 12184, and (2) whether TNCs qualify as a public accommodation subject to § 12182.⁵⁶

In *Ramos v. Uber Technologies, Inc.*, the plaintiffs broadly asserted causes of action against both Uber and Lyft for “Discrimination Against Mobility Impaired Citizens” in violation of § 12184, the ADA provision prohibiting discrimination by providers of public transportation services.⁵⁷ Specifically, plaintiffs alleged that Uber and Lyft violated the ADA by failing to provide vehicle-for-hire services to mobility-impaired consumers.⁵⁸ The defendants argued in a motion to dismiss that § 12184 does not apply to TNCs because they do not engage in the “business of transporting

55. *Ramos*, 2015 WL 758087, at *10 (declining to dismiss plaintiffs’ Title III claims against TNCs as a matter of law); *Nat’l Fed’n of the Blind of Cal.*, 103 F. Supp. 3d at 1083–84 (declining to dismiss plaintiffs’ Title III claims against Uber as a matter of law).

56. *See, e.g., Ramos*, 2015 WL 758087, at *3–4; *Nat’l Fed’n of the Blind of Cal.*, 103 F.Supp.3d at 1082–83.

57. *Ramos*, 2015 WL 758087, at *1. In a proposed Amended Complaint, the *Ramos* plaintiffs made the following allegations:

- (1) that Uber and Lyft do not provide vehicles-for-hire services to mobility impaired consumers such as Plaintiffs who require wheelchair accessible transportation vehicles or other accommodating services;
- (2) Uber and Lyft allow their vehicles-for-hire to deny service to the disabled;
- (3) Uber and Lyft provide no training or guidance to the drivers about how to lawfully meet the needs of disabled consumers;
- (4) upon information and belief, Uber’s and Lyft’s fleets contain vehicles accessible to Plaintiffs, but none of these vehicles was dispatched to Plaintiffs when they used the apps to request rides;
- (5) Uber and Lyft and their service providers have failed to provide any mechanism by which to serve mobility impaired individuals such as Plaintiffs and others similarly situated; and
- (6) Uber and Lyft have refused to make reasonable accommodations in policies, practices, and procedures or to provide auxiliary aids and services necessary to allow full use and enjoyment of their transportation services by Plaintiffs.

Id. at *9.

58. *Id.* at *1. Defendants Uber and Lyft each filed motions to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) on the basis that the plaintiffs, having never actually used the Uber or Lyft applications, lacked standing to bring a claim. *Id.* On this issue, the court later held that, “Plaintiffs need not have sought and been denied service by Uber or Lyft to have standing to assert a claim, so long as they established that they had actual notice that Defendants did not intend to comply with the ADA” *Id.* at *2.

people.”⁵⁹ Defendants characterized their businesses as “simply mobile-based ridesharing platforms to connect drivers and riders.”⁶⁰ Under the defendants’ theory, a TNC need only ensure that people with disabilities can access and use the company’s mobile application to satisfy its ADA obligations.⁶¹ The *Ramos* court decided that plaintiffs’ complaint stated a plausible enough claim to survive the defendants’ motion to dismiss, and declined to answer if Uber and Lyft were subject to § 12184 without further factual development.⁶²

In another motion to dismiss ruling, a California District Court grappled not only with the question of whether TNCs had obligations under § 12184, but also with the question of whether a TNC operated a place of public accommodation, governed by § 12182.⁶³ In *National Federation of the Blind of California v. Uber Technologies, Inc.*, a disability rights organization and three individuals alleged that Uber discriminated against blind persons by refusing to transport service dogs in violation of the ADA.⁶⁴ Specifically, plaintiffs alleged that Uber operated a “travel service,” which qualifies as a public accommodation under 42 U.S.C. § 12181(b)(7)(F); therefore the company violated § 12182(b) when its driver refused service to individuals with guide dogs.⁶⁵ Much like in *Ramos*, the district court

59. *Id.* at *10.

60. *Ramos*, 2015 WL 758087, at *10. In addition to trying to resist subsection to 42 U.S.C. § 12184 by arguing that Uber and Lyft did not engage in the business of transporting people, Defendants also attempted to argue that they must be found to operate a place of public accommodation for plaintiffs to state a claim under *any* provision of Title III, including § 12184. *Id.* at *5. The court denied defendant’s motions to dismiss on this basis, stating that “Uber and Lyft misread Title III” and clarifying that “none of section 12184’s provisions require a plaintiff to establish that the defendant operates a place of public accommodation.” *Id.* at *5–6.

61. *Id.* at *10 (“Defendants further argue that since Plaintiffs do not allege that they were unable to use the app, Defendants are not discriminating against them.”).

62. *Id.* (“Whether Defendants ‘provide specified public transportation services’ or are ‘primarily engaged in the business of transporting people’ is a mixed question of law and fact that cannot be resolved at this point without going outside the Complaint and converting the motion to a motion for summary judgment.”).

63. *Nat’l Fed’n of the Blind of Cal. v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073, 1083 (N.D. Cal. 2015) (alleging discrimination against blind persons by refusing to transport service dogs).

64. *Id.* at 1076.

65. *Id.* at 1083. In determining the plausibility of the plaintiffs’ claim that Uber qualifies as a “public accommodation” under the travel service category, the court considered a First Circuit case where the Court discussed the meaning of “public accommodation” and reasoned that “[b]y including ‘travel service’ among the list of services considered ‘public accommodations,’ Congress clearly contemplated that ‘service establishments’ include providers of services which do not require a person to physically

here held that plaintiffs demonstrated a plausible claim,⁶⁶ but ultimately decided the issues regarding ADA applicability required more factual development.⁶⁷ Until these or similar cases reach a final decision, TNCs' obligations under Title III of the ADA remain ambiguous.

II. ANALYSIS

As *National Federation of the Blind* and *Ramos* demonstrate, resolving whether TNCs have obligations under Title III of the ADA and clearly establishing what those obligations may be are necessary steps to ensuring that people with disabilities experience the “full and equal enjoyment”⁶⁸ of the services a company like Uber provides.⁶⁹

enter an actual physical structure.” *Id.* (quoting *Carparts Distrib. Ctr., Inc. v. Auto. Wholesaler’s Ass’n of New England, Inc.*, 37 F.3d 12, 13 (1st Cir. 1994)). In addition to arguing that Uber qualified as a public accommodation governed by § 12182, the plaintiffs raised an alternative theory arguing that the TNC qualified as a “specified public transportation service” with obligations under 42 U.S.C. § 12184. *Id.* In response, however, Uber asserted only that it was not a public accommodation and did not ask the court to dismiss the plaintiffs’ § 12184 claims. *See id.*

66. *Nat’l Fed’n of the Blind of Cal. v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073, 1083 (N.D. Cal. 2015) (“In the absence of clear law to the contrary, the Court finds that plaintiffs’ allegations, when taken as true, demonstrate a plausible claim for Uber’s ADA liability under § 12182.”).

67. *Id.* at 1083–84 (“The Court denies Uber’s motion to dismiss and finds that the determination of Uber’s potential liability under the public accommodation provision of the ADA requires more factual development.”).

68. 42 U.S.C. § 12182(a) (2012) (“No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”); 42 U.S.C. § 12184(a) (2012) (“No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.”).

69. Complaint for Violations of the Americans with Disabilities Act, the California Unruh Civil Rights Act, and the California Disabled Persons Act at 17, *Nat’l Fed’n of the Blind of Cal. v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073 (N.D. Cal. 2015) (No. 14–cv–4086 NC) (asserting causes of action under 42 U.S.C. § 12182(a) covering “public accommodations” and 42 U.S.C. § 12184(a) covering “specified public transportation services”); Plaintiffs’ Original Complaint and Request for Preliminary and Permanent Injunctive Relief at 4, *Ramos v. Uber Techs., Inc.*, 2015 WL 758087 (W.D. Tex. Feb. 20 2015) (No. 5:14-cv-00502), 2014 WL 2980274 (asserting a cause of action under 42 U.S.C. § 12184(a)).

A. TNCs Under 42 U.S.C. § 12184

Title III, § 12184 creates ADA obligations for entities that provide transportation services to the general public.⁷⁰ Given the nature of users' experiences with TNCs, labeling the companies as transportation services seems a natural fit.⁷¹ From a rider's point of view, a TNC's service does not end with connecting to a driver.⁷² The rider's experience includes not only this initial connection, but also the ride itself.⁷³ Even the companies' own promotional language suggests this result.⁷⁴ For example, in 2015, Uber's website led with the headline, "your ride, on demand: *transportation* in minutes with the Uber app."⁷⁵ As of September 2016, the homepage read "[g]et there" and "tap the app, get a ride."⁷⁶ Even though, Uber's more recent headline omitted the word "transportation," the message Uber broadcasts to the public still emphasizes getting to a destination and receiving a ride.⁷⁷ It follows from these facts that Uber and other TNCs could be deemed transportation providers covered by § 12184.

70. 42 U.S.C. § 12184(a) (2012).

71. Muse, *supra* note 19 ("When you think of Uber—or similar companies like Lyft and Sidecar—you probably think of a transportation company.").

72. *See id.*

73. *See id.*

74. *See* UBER, <https://www.uber.com/> (last visited Sep. 3, 2016) [hereinafter UBER 2016]; UBER (Oct. 16, 2015), <https://www.uber.com/> [<https://web.archive.org/web/20151016010049/https://www.uber.com/>] [hereinafter UBER 2015]; LYFT, <https://www.lyft.com/> (last visited Sep. 3, 2016) (breaking down the service's functionality into three parts: (1) requesting a ride, (2) receiving the ride, and (3) paying for the ride at the end of your trip).

75. UBER 2015, *supra* note 74 (emphasis added); *see also Sign Up*, LYFT, www.lyft.com/signup (last visited Sep. 3, 2016) ("*Take Lyft for a welcoming, affordable, and memorable ride.*") (emphasis added). *But see The Company*, UBER (Oct. 16, 2015), <https://www.uber.com/about> [<https://web.archive.org/web/20151015190213/https://www.uber.com/about>]. As of October 2015, Uber's online "About Us" section employed language that tracked more closely with the company's proposition that it is a "technology company." *Id.* This page described the company's operations as "seamlessly connecting riders to drivers through our apps." *Id.* While the description mentioned "opening up possibilities for riders" and creating "more business for drivers," it did not mention providing transportation. *Id.* The website no longer features an "About Us" page, but instead conveys similar information under the heading, "Our Story." *Our Story*, *supra* note 1. The new "Uber Story" also emphasizes the company's role in facilitating connections between riders and drivers. *Id.* ("Across borders, cultures, and languages, we're proud to connect people who need a reliable ride with people looking to earn money driving their car."). The new page mentions transportation, but only within the context of using the app to make transportation in cities more accessible and reliable. *Id.*

76. UBER 2016, *supra* note 74.

77. *Id.*

However, establishing obligations under this section requires more than these merely intuitive inferences.⁷⁸

1. Defining TNCs as Specified Public Transportation Services

As discussed in the preceding section, Title III explicitly prohibits discrimination on the basis of disability in the use and enjoyment of “specified public transportation services.”⁷⁹ 42 U.S.C. § 12181 defines “specified public transportation” as “transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.”⁸⁰ A wide range of conveyances, including car for hire services, fall under this broad definition.⁸¹ Given this breadth, rides provided by TNC drivers would almost certainly qualify. Uber’s operations provide an example. First, Uber drivers use a car to pick up and deliver customers to a desired destination.⁸² Understood plainly, these drivers provide riders with *transportation by conveyance*.⁸³ Second, Uber allows anybody to download its app for free and use it to secure a ride within any city where the company operates.⁸⁴ Therefore, Uber provides service *to the general public*.⁸⁵ Finally, Uber users can access and use the app to secure a ride at any time.⁸⁶ This means

78. See discussion *infra* Part II.A.

79. 42 U.S.C. § 12184(a) (2012); see also discussion *supra* Part I.A.

80. 42 U.S.C. § 12181(10) (2012); see also 49 C.F.R. § 37.3 (2015) (offering the identical definition).

81. 49 C.F.R. § 37.29 (2015) (confirming Title III covers providers of taxi services); *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 129 (2005) (holding that cruise ships are “specified transportation providers” subject to 42 U.S.C. § 12184, the Title III provision controlling transportation services).

82. See *Drive, It’s Easy to Get Started*, UBER, <https://www.uber.com/drive/> (last visited Feb. 8, 2017) (“Tell us a little about yourself and your car.”); *Uber Needs Partners like You*, *supra* note 8; *Muse*, *supra* note 19.

83. *Uber Needs Partners like You*, *supra* note 8; *Ride*, *supra* note 9.

84. *Uber*, GOOGLE PLAY, <https://play.google.com/store/apps/details?id=com.ubercab> (last visited Dec. 18, 2015); see also *Lyft – Taxi App Alternative*, GOOGLE PLAY, <https://play.google.com/store/apps/details?id=me.lyft.android> (last visited Dec. 18, 2015).

85. See *Uber*, *supra* note 84.

86. Zara, *Greater Accessibility for Riders and Drivers*, UBER (Jul. 24, 2015), <https://newsroom.uber.com/greater-accessibility/> (“For riders, Uber is an efficient, affordable ride *anywhere, anytime.*”) (emphasis added).

Uber provides its ride-hailing service *on a regular and continuing basis*.⁸⁷ Accordingly, the rides provided by Uber drivers most likely qualify as specified public transportation. Despite this clean conclusion however, TNCs still have other avenues for arguing that their operations fall outside the scope of § 12184's control.

2. Determining Whether TNCs are “Primarily Engaged” in Transportation

Defining an entity as a specified public transportation provider does not end the analysis of whether that entity has Title III obligations. Section 12184—the Title III provision controlling private entities that provide public transportation—controls only those entities who are “*primarily engaged in the business of transporting people* and whose operations affect commerce.”⁸⁸ This is the limitation TNCs rely on when arguing that § 12184 does not apply to them.⁸⁹

TNCs contend that they are not primarily engaged in the business of transportation.⁹⁰ Instead, TNCs argue that they are, first and foremost, technology companies.⁹¹ As demonstrated in *Ramos*, TNCs narrowly frame their operations as creating and maintaining mobile-based applications.⁹² After a TNC connects a driver and rider, the

87. *Id.* The Plaintiffs' Memorandum in *National Federation for the Blind* summarized the argument neatly: “UberX customers, members of the general public, regularly request transportation, and Defendants then provide them with transportation. . . . Thus, Defendants provide specified transportation services to the general public.” Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint and/or for a More Definite Statement at 17, *Nat'l Fed'n of the Blind of Cal. v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073 (N.D. Cal. 2015) (No. 3:14-cv-04086-NC), 2014 WL 8480938 [hereinafter, Plaintiffs' Memo].

88. 42 U.S.C. § 12184(a) (2012) (emphasis added).

89. *Ramos v. Uber Techs., Inc.*, No. SA-14-CA-502-XR, 2015 WL 758087, at *10 (W.D. Tex. Feb. 20, 2015) (“Defendants argue that they are not subject to § 12184 because they do not provide specified public transportation services and *are not engaged in the business of transporting people . . .*”) (emphasis added).

90. Muse, *supra* note 19; see Defendant Lyft, Inc.'s Corrected Motion to Dismiss Complaint, *supra* note 22 (denying that Lyft falls within the ADA's statutory definition of a private entity providing “specified public transportation” services).

91. Muse, *supra* note 19; Defendant Lyft, Inc.'s Corrected Motion to Dismiss Complaint, *supra* note 22, at 7.

92. *Ramos*, 2015 WL 758087, at *10 (“Uber contends that it ‘merely provide[s] a platform for people with particular skills or assets to connect with other people looking to pay for those skills or assets.’”). TNCs' own language regarding their operations often focuses on the technology aspects of

company plays a diminished role in providing the actual conveyance.⁹³ TNCs base this argument on the fact that drivers use their personal vehicles to transport customers instead of vehicles owned or leased by the TNC.⁹⁴ This distances TNCs from the transportation aspect of their services. Moreover, TNCs often claim their drivers are independent contractors and not employees, further separating the TNC from the actual conveyances and the manner in which they are provided.⁹⁵

Despite these facts, success using the “technology not transportation” argument will require courts to accept an unnaturally narrow view of TNCs’ operations. Viewing TNCs as purely technology companies ignores not only riders’, but also drivers’ experiences.⁹⁶ Regardless of whether TNC drivers are labeled independent contractors or employees, TNCs have a significant level of control over driver and rider transactions.⁹⁷ TNCs have the ability to “control and facilitate who may request transportation, the method of request, the dispatching of drivers, who may serve as drivers,⁹⁸ [and] what types of vehicles may be used to provide the

the business rather than transportation. *See, e.g., Drive with Lyft*, LYFT, <https://www.lyft.com/drivers> (last visited Sept. 3, 2016) (“Lyft matches drivers with passengers who request rides through our smartphone app, and passengers pay automatically through the app.”) (emphasis added); *The Company*, *supra* note 75 (describing Uber, the company’s, function as “seamlessly connecting riders to drivers through our apps”); *Our Story*, *supra* note 1.

93. *Ramos*, 2015 WL 758087, at *10.

94. *Id.*

95. *See* Heather Somerville, *Uber Has Lost Again in the Fight Over How to Classify Its Drivers*, BUS. INSIDER (Sept. 10, 2015, 12:37 AM), <http://www.businessinsider.com/uber-independent-contractors-or-employee-2015-9>. Whether Uber drivers are considered employees or independent contractors has been the subject of recent litigation. *See generally* Dan Levine, *Uber Drivers Granted Class Action Status in Lawsuit over Employment*, REUTERS (Sept. 1, 2015, 7:36 PM), <http://www.reuters.com/article/2015/09/01/us-uber-tech-drivers-lawsuit-idUSKCN0R14O920150901>.

Notably, a finding that drivers are independent contractors could pose a potential problem for holding TNCs accountable for the discriminatory actions of their drivers. Fully exploring this issue and the classification of drivers is beyond the scope of this note.

96. Plaintiffs’ Memo, *supra* note 87, at 17; Muse, *supra* note 19.

97. Plaintiffs’ Memo, *supra* note 87, at 17.

98. *Driving Jobs vs. Driving with Uber*, UBER, <https://www.uber.com/driver-jobs> (last visited Sept. 3, 2016). Although Uber labels drivers as independent contractors who enjoy substantial freedoms when it comes to hours and selecting which ride requests to respond to, Uber has complete control over selecting who can drive. *Id.* Drivers must apply through Uber, be twenty-one or older, have a personal license and registration for their vehicle, and pass a background check to gain access to the Uber driver platform. *Id.*

transportation.”⁹⁹ Additionally, TNCs control customer billing and payment for drivers.¹⁰⁰ Completely separating transportation services from a TNCs’ technology functions becomes less practical when considering the full scope of these controls and the customer’s expectation for transportation, not merely a connection.¹⁰¹

B. Establishing TNCs’ Obligations under 42 U.S.C. § 12184

If courts reject the technology argument and decide that TNCs are in fact subject to § 12184, the companies will have to continue defending discrimination claims like those brought in *Ramos* and *National Federation of the Blind*.¹⁰² Although such a ruling would definitively establish that TNCs have Title III obligations, the decision would not necessarily require TNCs to make significant changes to their current policies and procedures. Section 12184 limits actionable discrimination to the following: (1) the use of eligibility criteria that tends to screen out people with disabilities,¹⁰³ (2) failures to make reasonable accommodations and modifications,¹⁰⁴ and (3) the purchase or lease of non-accessible vehicles capable of seating eight or more.¹⁰⁵ The provisions relating to eligibility criteria and vehicle purchases do not pose significant problems for TNCs. To sign up for a TNC’s service, a user need only download the mobile application and register a payment method.¹⁰⁶ Uber, for example, has already incorporated accessibility features for riders with visual and

99. Plaintiffs’ Memo, *supra* note 87, at 17. Uber drivers are required to drive model year 2000 or newer vehicles—2005 in some cities. *Driving Jobs vs. Driving with Uber*, *supra* note 98.

100. Plaintiffs’ Memo, *supra* note 87, at 17. *Uber Needs Partners like You*, *supra* note 8 (“Drive with Uber and earn great money as an independent contractor. Get paid weekly just for helping our community of riders get rides around town. Be your own boss and get paid in fares for driving on your own schedule.”); *see also Drive with Lyft*, *supra* note 92 (“Drivers get 80% of payment from passengers. Money is deposited into your account each week.”).

101. *Muse*, *supra* note 19.

102. *See Ramos v. Uber Techs., Inc.*, No. SA-14-CA-502-XR, 2015 WL 758087, at *1 (W.D. Tex. Feb. 20, 2015) (alleging a failure to provide service to mobility-impaired customers); *Nat’l Fed’n of the Blind of Cal. v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073, 1076 (N.D. Cal. 2015) (alleging discrimination against blind persons by refusing to transport service dogs).

103. 42 U.S.C. § 12184(b)(1) (2012).

104. 42 U.S.C. § 12184(b)(2).

105. 42 U.S.C. § 12184(b)(3–7).

106. *Lyft – Taxi App Alternative*, *supra* note 84; *Uber*, *supra* note 84.

hearing impairments into its application.¹⁰⁷ Additionally, the standard TNC business model does not involve the purchase or lease of any new vehicles, let alone those with a high seating capacity.¹⁰⁸

The majority of TNCs' § 12184 compliance efforts will need to focus on ensuring that drivers accommodate riders with disabilities whenever it is reasonable to do so. Section 12184 provides little guidance on what constitutes a reasonable accommodation, but the DOT's corresponding regulations governing taxi services may give some indication of what the law would require from TNCs.¹⁰⁹ 49 C.F.R. § 37.29 outlines the regulations for private entities providing taxi services.¹¹⁰ This regulation prohibits taxi drivers from refusing to serve or assist passengers with disabilities who are capable of riding in their vehicles.¹¹¹ Additionally, taxis may not charge individuals with disabilities higher fares.¹¹² The regulation does not, however, require taxi services to purchase or have available any number of wheelchair accessible vehicles.¹¹³

107. *How to Use VoiceOver*, UBER, <https://help.uber.com/h/902465fa-f227-49f1-aea4-59940446e792> (last visited Sept. 3, 2016).

108. *See Driving Jobs vs. Driving with Uber*, *supra* note 98 (“To drive with Uber, you’ll need a car that is either 2000 or newer [or] 2005 or newer, depending on your city.”); *Drive with Lyft*, *supra* note 92 (“Your car needs to have four external door handles and at least five total seat belts. You must be a covered party on your car’s in-state insurance, and have in-state license plates.”).

109. *See* Section 37.29 Private Providers of Taxi Service, 49 C.F.R. pt. 37 app. D, subpt. B (2014).

110. 49 C.F.R. § 37.29(a) (2015).

111. 49 C.F.R. § 37.29(c). Section 37.29 Private Providers of Taxi Service, 49 C.F.R. pt. 37 app. D, subpt. B (2014) (“It would be discrimination to pass up a passenger because he or she was blind or used a wheelchair, if the wheelchair was one that could be stowed in the cab and the passenger could transfer to a vehicle seat.”).

112. 49 C.F.R. § 37.29(c) (“Private entities providing taxi service shall not discriminate against individuals with disabilities by actions including . . . charging higher fares or fees for carrying individuals with disabilities and their equipment than are charged to other persons.”). The rule applies even if the individual requires an accessible vehicle with greater mileage costs. Section 37.5 Nondiscrimination, 49 C.F.R. pt. 37 app. D, subpt. A (2014). For example, a trip in a wheelchair-accessible van cannot demand a higher fare than the same trip in an economy car. *Id.* The bar on excessive fares for people with disabilities does not, however, prevent taxi services from charging passengers to stow equipment related to their disability if the service would otherwise assess the same fee for stowing luggage. *See id.*

113. 49 C.F.R. § 37.29(b) (“Providers of taxi service are not required to purchase or lease accessible automobiles. When a provider of taxi service purchases or leases a vehicle other than an automobile, the vehicle is required to be accessible unless the provider demonstrates equivalency as provided in § 37.105 of this part. A provider of taxi service is not required to purchase vehicles other than automobiles in order to have a number of accessible vehicles in its fleet.”).

Applying these rules to TNCs would simply mean that a TNC driver could not refuse service to a rider with disabilities if the driver has the means to accommodate that passenger in his vehicle.¹¹⁴ For example, if a rider uses a collapsible wheelchair that could stow within the backseat or trunk of the driver's car, then the driver can accommodate that rider in the vehicle, and refusing to provide service would qualify as discrimination under Title III.¹¹⁵ Although Uber and Lyft each deny having any Title III obligations, both companies already have general anti-discrimination policies in place that closely resemble the discrimination prohibitions imposed on taxi services under 49 C.F.R. § 37.29.¹¹⁶ Uber and Lyft's policies prohibit drivers from refusing to provide service to riders based on disability.¹¹⁷ The language of 49 C.F.R. § 37.29 articulates almost identical prohibitions: taxi companies cannot refuse to provide service to individuals with disabilities.¹¹⁸ In addition to general anti-discrimination policies, both companies also have more detailed policies that specifically articulate their drivers' requirements to accommodate service animals and storable wheelchairs.¹¹⁹

114. 49 C.F.R. § 37.29(c).

115. Section 37.29 Private Providers of Taxi Service, 49 C.F.R. pt. 37 app. D, subpt. B (2014) (A taxi company cannot "insist that a wheelchair user wait for a lift-equipped van if the person could use an automobile").

116. *Uber Non-Discrimination Policy*, *supra* note 21; *Anti-Discrimination Policies*, *supra* note 21.

117. *Uber Non-Discrimination Policy*, *supra* note 21; *Anti-Discrimination Policies*, *supra* note 21.

118. *Compare* 49 C.F.R. § 37.29(c) (defining "refusing to provide service to individuals with disabilities who can use taxi vehicles" as prohibited discrimination), *with Uber Non-Discrimination Policy*, *supra* note 21 (defining "refusing to provide or accept services" on the basis of disability as prohibited discrimination).

119. *Service Animal Policy*, LYFT, <https://help.lyft.com/hc/en-us/articles/214589657> (last visited Sept. 14, 2016). The Service Animal Policy states "drivers on the Lyft platform may not deny service or otherwise discriminate against passengers with service animals." *Id.* If a driver is unable to transport a service animal for a medically documented reason, Lyft will make alternate arrangements for that passenger. *Id.* "Refusing service to passengers with service animals may result in the immediate removal of the driver from the Lyft platform." *Id.* Lyft's wheelchair policy states, "[i]t is Lyft's policy that passengers who use wheelchairs—that can safely and securely fit in the car's trunk or backseat without obstructing the driver's view—should be reasonably accommodated by drivers on the Lyft platform. You, as a driver, should make every reasonable effort to transport the passenger and their wheelchair." *Wheelchair Policy*, LYFT, <https://help.lyft.com/hc/en-us/articles/214218527> (last visited Sept. 14, 2016). In the suits against them, Uber and Lyft do not make any assertions regarding their nondiscrimination policies; instead, they focus solely on challenging the applicability of the ADA. *See generally* Nat'l Fed'n of the Blind of Cal. v. Uber Techs., Inc., 103 F. Supp. 3d 1073, 1083 (N.D. Cal. 2015); Ramos v. Uber Techs., Inc., No. SA-14-CA-502-XR, 2015 WL 758087, at *1 (W.D. Tex. Feb. 20, 2015).

Enforcement of these existing policies could establish TNCs' Title III compliance as transportation providers under § 12184.

C. TNCs Under 42 U.S.C. § 12182

Another possible path for establishing obligations for TNCs under the ADA—especially if courts agree with the assertion that these companies do not “primarily engage in the business of transporting people”¹²⁰ —is determining that TNCs qualify as public accommodations. Title III prohibits discrimination on the basis of disability “in the full and equal enjoyment” of services provided by a place of accommodation.¹²¹ TNCs have two primary arguments for avoiding obligations as public accommodations: (1) their mobile platforms are “virtual environments” that do not fall within the ADA’s definition of a *place* of public accommodation,¹²² and (2) even if drivers’ vehicles qualify as places of public accommodation, the TNCs do not own or directly operate those vehicles.¹²³

1. TNC’s Electronic Platforms as Public Accommodations

Contrasting views exist as to whether non-physical spaces, like websites or mobile applications, fall within the ADA’s definition of a public accommodation.¹²⁴ The First Circuit holds the most expansive view: public accommodations include web-based services.¹²⁵ Yet,

120. 42 U.S.C. § 12182 (2012).

121. *Id.*

122. Defendant Lyft, Inc.’s Corrected Motion to Dismiss Complaint, *supra* note 22, at 6 (“Plaintiffs’ allegation that ‘Lyft customers use a smartphone app to locate, schedule, and pay for their travel,’ conclusively establishes that Lyft’s smartphone application, which operates much like a website, is a virtual environment that does not fall within the ADA’s definition of public accommodation.”). *But see* Doe v. Mutual of Omaha Ins. Co., 179 F.3d 557, 559 (7th Cir. 1999) (noting that owners and operators of entities open to the public—whether in physical space or electronic space—cannot exclude people with disabilities).

123. Plaintiffs’ Memo, *supra* note 87, at 20.

124. GOREN, *supra* note 35, at 128; *see generally* Trevor Crowley, Comment, *Wheelchair Ramps in Cyberspace: Bring the Americans with Disabilities Act into the 21st Century*, 2013 B.Y.U. L. REV. 651 (2013) (discussing the circuit split in determining whether websites qualify as public accommodations under Title III).

125. Nat’l Ass’n of the Deaf v. Netflix, Inc., 869 F. Supp. 2d 196, 200 (D. Mass. 2012) (“In a society in which business is increasingly conducted online, excluding businesses that sell services through the Internet from the ADA would ‘run afoul of the purposes of the ADA and would severely frustrate

even under this view, an entity still must fall within one of the twelve “public accommodation” categories for its web-based services to trigger obligations under § 12182.¹²⁶ The plaintiffs in *National Federation of the Blind* argued that TNCs fall into the “service establishment” public accommodation category, which lists “travel service[s]” as an example of covered entities.¹²⁷ Neither the ADA nor any of its related guidance further defines “travel service,” but a plain reading of the text could support including TNCs under that category.¹²⁸ The Court in *National Federation of the Blind* noted that Uber failed to identify any case law that precluded TNCs from qualifying as “travel services.”¹²⁹

Conversely, the Ninth Circuit has held that only “an actual physical place” qualifies as a public accommodation under § 12182.¹³⁰ Because courts that hold this view decline to include web-based services within the scope of § 12182’s coverage, finding that TNCs’ mobile platforms qualify as public accommodations seems unlikely in these jurisdictions.¹³¹ However, this bright line definition does not necessarily mean that all claims of discrimination occurring in virtual environments are bound to fail. The Ninth Circuit has shown a willingness to recognize some Title III claims that arise from “off-site” discrimination.¹³² The Ninth Circuit employs a two-part test for defining actionable “off-site” discrimination:

Congress’s intent that individuals with disabilities fully enjoy the goods, services, privileges and advantages, available indiscriminately to other members of the general public.” (quoting *Carparts Distrib. Ctr. v. Auto. Wholesaler’s Ass’n of New England*, 37 F.3d 12, 20 (1st Cir. 1994)).

126. See 42 U.S.C. § 12182(a) (2012) (“No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”).

127. *Nat’l Fed’n of the Blind of Cal. v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073, 1083 (N.D. Cal. 2015).

128. *Id.*

129. *Id.*

130. *Cullen v. Netflix, Inc.*, 880 F. Supp. 2d 1017, 1023 (N.D. Cal. 2012) (quoting *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1114 (9th Cir. 2001)). In *Cullen*, the Court refused to hold that the Netflix website and streaming service qualified as a public accommodation under Ninth Circuit law. *Id.* at 1024.

131. See *Cullen*, 880 F. Supp. 2d at 1023–24 (listing Ninth Circuit precedent for limiting public accommodations to physical spaces).

132. See GOREN, *supra* note 35, at 129.

(1) determine if a physical place of public accommodation is associated with the claim, and (2) if yes, determine if a sufficient nexus exists between the physical location and the alleged discrimination.¹³³ Applying this test, a California district court held that a lack of accessibility to the retail website of a brick and mortar operation qualified as discrimination under § 12182 even though the plaintiff made no allegations regarding the accessibility of the store's physical location.¹³⁴ Although a retail website is not perfectly analogous to a TNC's mobile platform, this decision provides at least some indication that TNCs could face obligations under § 12182 if a sufficient nexus existed between their mobile services and a physical location.¹³⁵

2. *Vehicles as Public Accommodations*

In light of some courts' emphasis on physical locations in assigning Title III obligations,¹³⁶ focusing on TNC drivers' vehicles may provide an alternate way to bring the companies within the scope of regulations governing public accommodations. The plaintiffs in *National Federation for the Blind* argued this exact point.¹³⁷ The plaintiffs asserted that Uber drivers' *vehicles* qualify as places of public accommodation under § 12182's service establishment category because they are physical places that passengers can touch, enter, and exit.¹³⁸ The plaintiffs also argued that even if the vehicle itself fails to qualify as a public accommodation, a strong enough connection exists between the

133. *Id.* (citing *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d at 1104, 1114–15 (9th Cir. 2001)).

134. *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 953–54 (N.D. Cal. 2006).

135. *See* GOREN, *supra* note 35, at 129. TNC drivers' vehicles could potentially satisfy the Ninth Circuit's off-site discrimination test's need for a "physical" location, but even then, the vehicles still may not qualify as public accommodations under the law.

136. *See, e.g., Cullen*, 880 F. Supp. 2d at 1023–24 (listing Ninth Circuit precedent for limiting public accommodations to physical spaces).

137. Plaintiffs' Memo, *supra* note 87, at 20 ("UberX vehicles are places of public accommodation, and Uber operates those places.").

138. *Id.* at 21.

physical vehicle and the desired transportation service for courts applying the Ninth Circuit’s nexus test.¹³⁹

TNCs can use the text of § 12182 to combat this argument. The statute prohibits discrimination by any person who owns, leases, or operates a place of public accommodation.¹⁴⁰ The fact that TNCs do not own or lease the vehicles operated by their drivers limits the applicability of § 12182 in jurisdictions that view only physical spaces as places of public accommodations.¹⁴¹ However, potential plaintiffs can still make a strong argument that TNCs *operate* these vehicles, despite a lack of ownership or strong, employer-employee connections.¹⁴² As the *National Federation for the Blind* plaintiffs articulated, Uber and other TNCs have “control over which driver is dispatched to transport each customer, the procedures that drivers must follow to cancel rides, whether drivers can cancel rides at all, and the immediate consequence that a driver’s cancelling a ride has on that driver.”¹⁴³ Additionally, the Department of Justice, in a statement of interest on this issue, made clear that “while an entity may contract out its service, it may not contract away its ADA responsibilities.”¹⁴⁴ Therefore, TNCs may not exempt themselves from ADA obligations simply because they have contracted with drivers to operate places of public accommodation instead of operating them directly.¹⁴⁵

139. *Id.*

140. 42 U.S.C. § 12182(a) (2012).

141. See *Driving Jobs vs. Driving with Uber*, *supra* note 98 (“To drive with Uber, you’ll need a car that is either 2000 or newer [or] 2005 or newer, depending on your city.”); *Drive with Lyft*, *supra* note 92 (“Your car needs to have four external door handles and at least five total seat belts. You must be a covered party on your car’s in-state insurance, and have in-state license plates.”). The use of drivers’ personal vehicles proves to be one of the most important facts to consider in applying existing ADA regulations to the TNC business model. TNCs can use their lack of a fleet not only to combat obligations as a public accommodation, but also obligations as a provider of transportation services. See discussion *supra* Part II.A.2.

142. See Plaintiffs’ Memo, *supra* note 87, at 22.

143. *Id.*

144. Statement of Interest of the U.S. at 5, *Nat’l Fed’n of the Blind of Cal. v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073, 1076 (N.D. Cal. 2015) (No. 3:14-cv-04086-NC); see 28 C.F.R. § 36.202(a) (2015).

145. Statement of Interest of the U.S., *supra* note 144, at 5; see 28 C.F.R. § 36.202(a).

D. Establishing TNCs' Obligations as Public Accommodations

Deciding that TNCs qualify as public accommodations arguably imposes more ADA obligations on the companies than finding that they qualify as “specified public transportation” providers.¹⁴⁶ Even if TNCs successfully argue that they do not “primarily” engage in the business of transporting people, providing transportation still plays a significant role in the companies’ operations.¹⁴⁷ Therefore, Title III regulations governing private entities that do *not* “primarily engage” in the business of transporting people, but do operate “demand responsive”¹⁴⁸ transportation systems provide the most likely source for establishing TNCs’ ADA obligations as public accommodations.

Under these regulations, “failure of a private entity which operates a demand responsive system to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities . . . equivalent to the level of service provided to individuals without disabilities” qualifies as discrimination.¹⁴⁹ This means that a private entity operating a demand responsive transportation system must affirmatively act to ensure that people with disabilities—even those with accessibility needs—receive the same benefits available to people without disabilities.¹⁵⁰

Specifically, the ADA requires equivalent service with respect to both response times and hours of operation.¹⁵¹ Imposing this obligation on TNCs necessarily means that they must take

146. See 49 C.F.R. § 37.171 (2015) (“A private entity not primarily engaged in the business of transporting people which operates a demand responsive system shall ensure that its system, when viewed in its entirety, provides equivalent service to individuals with disabilities, including individuals who use wheelchairs, as it does to individuals without disabilities.”).

147. See discussion *supra* Part II.A.2.

148. Title III of the ADA defines a demand responsive system as “any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.” 42 U.S.C. § 12181(3) (2012). “The term ‘fixed route system’ means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.” 42 U.S.C. § 12181(4).

149. 42 U.S.C. § 12182(b)(2)(C) (2012).

150. 42 U.S.C. § 12182(b)(2)(C); 49 C.F.R. § 37.101(e) (2015) (“These entities are required to ensure that their systems, when viewed in their entirety, meet the equivalent service requirements of §§ 37.171 and 37.105, *regardless of whether or not the entities purchase a new vehicle.*”) (emphasis added).

151. 49 C.F.R. § 37.105 (2015).

affirmative actions to add accessible vehicles to their fleets. In addition, § 12182 requires operators of demand responsive transportation systems to provide service to all users with disabilities, unlike taxi service's whose § 12184 obligations require them to provide service only to those individuals capable of riding in a standard vehicle.¹⁵² Moreover, TNCs would need to maintain an accessible fleet large enough to ensure that users requesting accessible rides wait no longer than users requesting rides without those needs.¹⁵³ Although the TNC model fails to fit perfectly under either § 12182 or § 12184, the more onerous service requirements of § 12182 and the inconsistency of courts' application of the provision to non-physical structures makes viewing TNCs as public accommodations less likely. If courts seek to establish ADA obligations for TNCs, § 12184 provides a simpler path.

III. PROPOSAL

Allowing TNCs to avoid obligations under Title III because the statute does not explicitly anticipate coverage for a business model like Uber is contrary to legislative intent and should not be accepted. When passed, the ADA sought to give individuals with disabilities the same "independence, freedom of choice, [and] control of their lives" enjoyed by all Americans.¹⁵⁴ Nothing speaks to these goals more than ensuring that people with disabilities have access to reliable and efficient transportation. Because of these aims and TNCs' important role in the transportation marketplace, establishing and defining their obligations under Title III is vitally important. Instead of waiting for courts to decide these issues, the DOT should take preemptive action and amend the coverage of its ADA regulations to include TNCs.

152. 42 U.S.C. § 12182(b)(2)(C).

153. 49 C.F.R. § 37.105.

154. Presidential Remarks on Signing the Americans with Disabilities Act of 1990, 2 PUB. PAPERS 1067, 1068 (July 26, 1990).

A. TNCs as Transportation Companies

DOT action first requires accepting the underlying conclusion that TNCs are primarily engaged in the business of transporting people and thus, are subject to regulation under § 12184.¹⁵⁵ Although TNCs' contentions that they are technology, rather than transportation companies have some merit, the most realistic source of Title III obligations for TNCs remains § 12184.¹⁵⁶ Determining that TNCs are transportation providers appropriately considers not only riders' and drivers' experiences,¹⁵⁷ but also the position TNCs hold in the marketplace. In addition to competing with each other, TNCs compete directly with other transportation providers, specifically taxi services.¹⁵⁸ Principles of fairness suggest that the ADA should impose upon TNCs roughly the same benefits and burdens that it imposes on their direct competitors. For example, 49 C.F.R. § 37.29 primarily limits taxi services' ADA obligations to not refusing service to riders that can readily be accommodated in a standard vehicle.¹⁵⁹ In contrast, § 12182 requires public accommodations to provide all people with disabilities with the same level of service it provides to people without disabilities.¹⁶⁰ Asking TNCs to adhere to a higher standard, such as § 12182's equivalent service requirement,¹⁶¹ could place them at a competitive disadvantage.

Additionally, many taxi companies have responded to competition from TNCs by creating their own applications for requesting rides

155. 42 U.S.C. § 12184(a) (2012).

156. *See supra* Part II.B.

157. *Id.*

158. *See Ride, supra* note 9 (“Everyday rides that are always smarter than a taxi.”); *Lyft – Taxi App Alternative, supra* note 84 (placing the Lyft app in the transportation app category and subtitled Lyft as a “Taxi App Alternative”). In fact, TNCs have faced a large number of lawsuits brought by taxi companies alleging violations of federal and state unfair-competition laws where TNCs fail to comply with local taxi regulations. *See e.g.*, Melissa J. Sachs, *Uber Must Face Boston Cab Companies' Unfair-Competition Claims, Judge Says: Boston Cab Dispatch v. Uber Techs*, 22 WESTLAW J. ANTITRUST 4, no. 12, Mar. 6, 2015, at *1 (“Uber Technologies must continue defending against state law claims alleging the ride-sharing service unfairly operates in Boston without complying with Massachusetts law and city taxicab ordinances, a federal judge has ruled.”).

159. 49 C.F.R. § 37.29 (2015).

160. *See* 49 C.F.R. § 37.171 (2015).

161. *See supra* Part II.B.

and completing payment.¹⁶² If courts allow TNCs to avoid Title III regulation simply because they develop and manage mobile applications, what would result for taxi services that do the same? Under these circumstances, taxi companies' express inclusion in the DOT regulations would mark one of the only differences between them and TNCs. A transportation company's choice to improve technology should have no bearing on whether it continues to qualify as a transportation provider under § 12184 or consequently, on its obligations to serve people with disabilities.¹⁶³ Likewise, a TNC's use of technology to facilitate transportation should not insulate the company from discrimination claims.

Another persuasive reason TNCs should qualify as transportation providers under the ADA, is the practical fact that this classification would impose few—if any—new burdens on TNCs. Perhaps most significantly, classifying TNCs as transportation providers subject to § 12184 would likely impose no obligation on TNCs to provide or acquire accessible vehicles.¹⁶⁴ Title III does not require private taxi services to acquire or make available *any number* of accessible vehicles.¹⁶⁵ A taxi service must purchase an accessible vehicle, only if it purchases a vehicle other than an automobile.¹⁶⁶ An integral part of the TNC business model is that drivers use their personal vehicles

162. See, e.g., *Freedom Taxi Mobile Apps*, FREEDOM TAXI, <http://www.freedomtaxi.com/freedom-taxi-mobile-apps/> (last visited Nov. 14, 2015) (Philadelphia, PA); *Need a Ride?*, YELLOW CAB, <http://www.yellowcabhouston.com/> (last visited Nov. 14, 2015) (Houston, TX).

163. Although stated in a section related to commuter rail cars rather than taxi services, the Appendix to the DOT's regulations regarding transportation for people with disabilities provides, "[t]he ADA does not stand in the way of new technology, but it does require that new technology, *and the benefits it brings*, be accessible to all persons, including those with disabilities." Section 37.85 Purchase or Lease of New Intercity and Commuter Rail Cars, 49 C.F.R. pt. 37 app. D, subpt. D (2014) (emphasis added). The legislative history of Title III's public accommodations provisions echoes a similar point: "Indeed, the Committee intends that the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, should keep pace with the rapidly changing technology of the times." H.R. Rep. No. 101-485(II), at 108 (1990).

164. See 49 C.F.R. § 37.29(b).

165. 49 C.F.R. § 37.29(b) ("Providers of taxi service are not required to purchase or lease accessible automobiles. When a provider of taxi service purchases or leases a vehicle other than an automobile, the vehicle is required to be accessible unless the provider demonstrates equivalency as provided in § 37.105 of this part. A provider of taxi service is not required to purchase vehicles other than automobiles in order to have a number of accessible vehicles in its fleet.")

166. *Id.*

to provide rides.¹⁶⁷ Because 49 C.F.R. § 37.29 triggers obligations only when a taxi service *purchases* a vehicle, imposing the same or similar regulations on TNCs would do little, if anything, to disrupt their operations.

Section 12184's prohibitions on refusing service to individuals with disabilities are also unlikely to require TNCs to make significant changes to their daily operations. Both Uber and Lyft currently have anti-discrimination policies that are consistent with the general mandates of § 12184 and closely resemble 49 C.F.R. § 37.29's more specific requirements.¹⁶⁸ Based on these existing policies, complying with 49 C.F.R. § 37.29(c) or similar discrimination prohibitions should be easily achievable by TNCs. Compliance would simply require enforcement of their existing policies.

B. Amending 49 C.F.R. § 37.29 to Include TNCs

Many of the reasons that counsel in favor of classifying TNCs as transportation providers subject to § 12184 also support a proposition that TNCs should be governed by the same narrow regulations that apply to private taxi services under 49 C.F.R. § 37.29. Holding TNCs to the same standards as taxi services is consistent with how TNCs operate in the marketplace; does not require TNCs to depart from their model of hiring drivers who operate their personal vehicles;¹⁶⁹ and places no additional obligations on TNCs than what their nondiscrimination policies already require.¹⁷⁰

167. See *Drive, It's Easy to Get Started*, *supra* note 82 (“Tell us a little about yourself and your car.”); *Uber Needs Partners like You*, *supra* note 8; *Drive with Lyft*, *supra* note 92 (“Your car needs to have four external door handles and at least five total seat belts. You must be a covered party on your car’s in-state insurance, and have in-state license plates.”); Muse, *supra* note 19.

168. Compare 49 C.F.R. § 37.29(c) (including in its definition of discrimination, “refusing to provide service to individuals with disabilities who can use taxi vehicles”), with *Uber Non-Discrimination Policy*, *supra* note 21 (defining “refusing to provide or accept services” on the basis of disability as discrimination).

169. See *Ramos v. Uber Techs., Inc.*, No. SA-14-CA-502-XR, 2015 WL 758087, at *10 (W.D. Tex. Feb. 20, 2015).

170. See *Uber Non-Discrimination Policy*, *supra* note 21; *Anti-Discrimination Policies*, *supra* note 21.

In fact, the Appendix to C.F.R. Title 37 suggests that 49 C.F.R. § 37.29 may already extend to TNCs.¹⁷¹ The interpretive guidance for the regulations governing taxi services provides that “[f]or purposes of this section, other transportation services that involve calling for a car and a driver to take one places (e.g., limousine services, of the kind that provide luxury cars and chauffeurs for senior proms and analogous adult events) are regarded as taxi services.”¹⁷² Undoubtedly, the core of a TNC’s function consists of calling for cars and drivers.¹⁷³ Of course, even if the regulation can be construed to apply to TNCs in its current state, the DOT can resolve any remaining ambiguity by amending the text of 49 C.F.R. § 37.29 to expressly include TNCs within the scope of its coverage or issuing interpretive guidance to that effect. By taking this action, the DOT would help ensure the extension of efficient and cost effective transportation to many people with disabilities and give plaintiffs like those in *Ramos* and *National Federation of the Blind* an opportunity for recourse when TNCs fail to live up to that standard.¹⁷⁴

C. The Limits of § 12184 and 49 C.F.R. § 37.29

Despite the potential gains for many people with disabilities, § 12184 and 49 C.F.R. § 37.29 only prohibit TNCs from refusing service to individuals capable of riding in the available vehicle.¹⁷⁵ These provisions do not provide any protections for individuals with mobility impairments that prevent them from riding in standard vehicles.¹⁷⁶ The federal laws most apt to govern TNCs still do not go far enough to guarantee truly equitable service to all passengers with disabilities. However, the notable limitations of the ADA do not necessarily indicate that more robust regulations are needed to

171. See Section 37.29 Private Providers of Taxi Service, 49 C.F.R. pt. 37 app. D, subpt. B (2014).

172. *Id.*

173. UBER 2016, *supra* note 74; LYFT, *supra* note 74.

174. See Zara, *supra* note 86 (“For too long, people with disabilities have needed to rely on others for their transportation needs. With ridesharing options like Uber, *millions more* can now get to work on their own, visit friends, or enjoy an evening out. Uber helps to level the playing field and fulfills the promise of creating a more equal America for the disabled.”) (emphasis added).

175. 42 U.S.C. § 12184 (2012); 49 C.F.R. § 37.29(c) (2015).

176. 42 U.S.C. § 12184; 49 C.F.R. § 37.29(c).

improve people's access to accessible and efficient transportation. Faced with the gap in federal law, some cities and states, and even TNCs themselves, have proactively worked towards providing accessible rides through TNC platforms.¹⁷⁷

1. The Partnership Model

In several cities, Uber uses its platform to connect passengers with accessibility needs to a third-party paratransit service instead of one of its own drivers.¹⁷⁸ Users with accessibility needs in these cities can request wheelchair accessible vehicles (WAVs) by selecting the aptly named, UberACCESS or UberWAV service options.¹⁷⁹ Portland, Oregon provides one example.¹⁸⁰ From April 24, 2015, through August 2015, Uber and Lyft operated in Portland as part of a four-month, regulatory pilot program that represented the interests of TNCs, the city, and the existing ride-for-hire industry.¹⁸¹ The city planned to use the trial as an opportunity to collect data from TNCs and other transportation providers that could later inform the re-drafting of the city's own ride-for-hire regulations.¹⁸² Part of the bargain allowing Uber to operate in Portland required a commitment by the company to provide wheelchair accessible rides.¹⁸³ Satisfying this demand required Uber to depart from its usual model of providing transportation via its drivers' personal vehicles and supplement its capacity by partnering with a private paratransit provider.¹⁸⁴

177. See, e.g., Lizzy Duffy, *Uber, Lyft Launch in Portland Friday*, OR. PUB. BROAD. (Apr. 24, 2015, 11:22 AM), <http://www.opb.org/news/article/uber-lyft-launch-in-portland-friday/> (Portland); Zara, *supra* note 86 (listing several cities where Uber has partnered with paratransit services).

178. Zara, *supra* note 86.

179. Amelia Templeton & John Rosman, *Uber's Wheelchair-Accessible Option In Portland Doesn't Work 9 to 5*, OR. PUB. BROAD. (May 18, 2015, 7:59 PM), <http://www.opb.org/news/article/ubers-wheelchair-accessible-option-in-portland-doesnt-work-9-to-5/>.

180. Duffy, *supra* note 177.

181. *Id.*

182. *Id.*

183. Templeton & Rosman, *supra* note 179.

184. *Id.*

2. *Negative Implications of the Partnership Model*

Forging partnerships with paratransit and other accessible transportation providers would undoubtedly allow TNCs to provide more equitable service to people with disabilities by adding a fleet of accessible vehicles to their networks.¹⁸⁵ However, this type of contractual arrangement may bolster some of the arguments TNCs make to distinguish themselves from transportation providers under the ADA.¹⁸⁶ Despite appearing to move toward ADA compliance, Uber's delegation of wheelchair accessible transportation to third-party entities highlights the severability of the technology and transportation functions of TNCs' services.¹⁸⁷ As TNCs become less involved in the transportation aspect of their services, arguments that they do not "primarily engage" in transportation become more plausible.¹⁸⁸

In addition to these potential issues, some evidence also suggests that the partnership model does little to offer riders with accessibility needs a standard of service equivalent to that enjoyed by app users without those constraints.¹⁸⁹ Under a partnership model, TNCs must rely exclusively on their partner provider's existing supply of WAVs.¹⁹⁰ This reliance creates a problem in any city where the supply of existing, accessible vehicles already fails to meet the demand for accessible rides.¹⁹¹ Riders with disabilities need "more

185. Mallory, *UberACCESS: Expanding Transportation Options*, UBER (Sept. 2, 2014), <http://newsroom.uber.com/chicago/2014/09/uberaccess-expanding-transportation-options/> ("Until now, transportation options have been limited for those who may require additional assistance. Today, Uber Chicago is announcing a new platform that will allow those needing an extra hand or even access to wheelchair accessible vehicles to request safe and reliable rides at the tap of a button.").

186. See *supra* Part II.A.2. (discussing the merits of TNCs arguments that they do not qualify as "specified public transportation providers" with obligations under § 12184); *supra* Part II.C. (discussing the merits of TNCs arguments that they do not qualify as "public accommodations" with obligations under § 12182).

187. See *Ramos v. Uber Techs., Inc.*, No. SA-14-CA-502-XR, 2015 WL 758087, at *10 (W.D. Tex. Feb. 20, 2015) ("Uber contends that it 'merely provide[s] a platform for people with particular skills or assets to connect with other people looking to pay for those skills or assets.'").

188. See discussion *supra* Part II.A.2.

189. Templeton & Rosman, *supra* note 179.

190. *Id.*

191. See *id.* ("This issue is not new. It's not an issue exclusive to Uber, . . . 'Wheelchair-accessible service in the private-for-hire industry has been quite limited and quite unreliable for years now in Portland.'") (quoting Bryan Hockaday, staffer to the Transportation Commissioner).

wheelchair-accessible vehicles on the road, not more access to an already limited supply.”¹⁹² For example, during Portland’s pilot program, app users often received the message, “No WAV Cars available.”¹⁹³

Under the partnership model, Uber and other TNCs can do little to correct supply issues on their own.¹⁹⁴ The actual burden of meeting a standard of “equitable” service falls on the partnering transportation provider, and not the TNC.¹⁹⁵ Shifting this burden to the transportation partner makes sense given that paratransit and taxi companies control their fleets. This control arguably places them in a better position to increase and direct the supply of accessible vehicles than TNCs. Ironically however, the unrelenting competitive force of TNCs in the broader transportation marketplace has significantly crippled growth for traditional transportation providers.¹⁹⁶ Under the partnership model, TNCs push their accessibility obligations onto the same companies they may ultimately run out of business.¹⁹⁷ This type of arrangement unfairly allows TNCs to avoid accessibility obligations, fails to truly increase the supply of accessible ride options, and creates too fragile of a long-term solution.¹⁹⁸ For these reasons, some would like to see TNCs move away from the partnership model and towards providing their own accessibility services, even if the ADA does not require them to do so.¹⁹⁹

D. Filling § 12184’s Accessible Transportation Gap

Although § 12184 paired with TNCs’ participation in paratransit partnerships may not fully satisfy the ADA’s goals of equitable

192. Issie Lapowsky, *Uber’s Business Isn’t Built to Help Disabled People*, WIRED (Aug. 14, 2015, 7:00 AM), <http://www.wired.com/2015/08/uber-disability/>.

193. *Id.*

194. *See* Templeton & Rosman, *supra* note 179 (“The contractor Uber works with to provide wheelchair vans, First Transit, has no drivers working on the Uber platform during the day on weekdays, and has just one van driver working on call from five p.m. to one a.m.”).

195. *See id.* (noting that TNCs must rely on existing paratransit providers because it does not own its own fleet).

196. Lapowsky, *supra* note 192.

197. *Id.*

198. *Id.*

199. *Id.*

service, broader market forces and state and local governments may be able to bring TNCs into compliance with not only the letter of the law, but also its spirit.²⁰⁰ The market for accessible transportation is large and growing.²⁰¹ More than seventeen million Americans have mobility impairments, and that number is expected to rise.²⁰² Given this potential, TNCs already have an economic incentive to take the lead on meeting the unmet demand for accessible rides.²⁰³ Some disability advocates have proposed that TNCs could work towards this goal by actively recruiting drivers that already own wheelchair-accessible vehicles.²⁰⁴ The benefits of this type of proposal, as opposed to the partnership model, are two-fold. First, recruiting private owners of accessible vehicles adds to the supply of accessible vehicles on the road and available for on-demand transportation.²⁰⁵ Second, recruiting these drivers could provide additional income opportunities to people within the disabled community.²⁰⁶

Uber has already started to act on this plan.²⁰⁷ Following its Portland pilot program, Uber began incorporating peer-to-peer WAV service into its platform in that city.²⁰⁸ Although it continues to work in partnership with a paratransit company, Uber also works to recruit drivers who already own wheelchair accessible cars.²⁰⁹ As a result of its efforts thus far, Uber has doubled WAV service.²¹⁰ For other TNCs to make this type of proposal work, they will need to ensure that their mobile platforms allow individual drivers with accessible vehicles to identify themselves and connect with passengers that

200. *Id.*

201. Nelson, *supra* note 10 (“If Uber invests more heavily in paratransit . . . there will be a big market waiting.”).

202. *Id.*

203. *Id.*

204. Templeton & Rosman, *supra* note 179; Lapowsky, *supra* note 192.

205. Lapowsky, *supra* note 192.

206. Templeton & Rosman, *supra* note 179; Lapowsky, *supra* note 192.

207. Brooke, *Expanding WAV Reliability in Portland*, UBER (Sept. 14, 2015), <https://newsroom.uber.com/pdx/2015/09/expanding-wav/>.

208. *Id.*

209. *Id.* Drivers of accessible vehicles receive additional training and their vehicles must pass inspections to ensure they comply with the ADA. *Id.* Although a ride-for hire service is not required to supply accessible vehicles under Title III, if it chooses to do so, those vehicles must comply with the ADA’s accessibility specifications. 49 C.F.R. § 37.161 (2015).

210. Brooke, *supra* note 207.

request WAV service.²¹¹ This connection is not possible if the TNC's system funnels all WAV requests to a third party provider.²¹²

Other advocates have similarly proposed that TNCs incentivize drivers to purchase accessible vehicles.²¹³ Some taxi companies either offer bonuses to drivers for each trip serving a passenger who requires an accessible vehicle, or choose to subsidize WAV drivers' insurance.²¹⁴ Uber already offers new drivers incentives to purchase vehicles from select manufacturers.²¹⁵ It and other TNCs could do the same for wheelchair-accessible vehicles.²¹⁶ Part of what makes this incentive plan especially appealing is that it makes economic sense for TNCs regardless of whether they are acting in response to a legal obligation.²¹⁷ The key to success is fashioning a solution that works in concert with TNCs' regular operations—private individuals driving their personal vehicles—instead of imposing obligations that require the companies to deviate from their standard business model. Combining § 12184 and 49 C.F.R. § 37.29's nondiscrimination obligations with economic incentives that increase the number of accessible vehicles on the road strikes the appropriate balance. Coupled, these measures could substantially improve transportation options and protections for people with disabilities, while also allowing TNCs to continue their operations unburdened by cumbersome regulations.

CONCLUSION

The rapid and disruptive success of technology-focused transportation services like Uber and Lyft has brought efficient and

211. See Lapowsky, *supra* note 192.

212. See *id.* According to a quadriplegic Uber driver in Los Angeles, "Uber didn't even know he was driving a wheelchair-accessible vehicle until he happened to pick up an Uber executive at the airport by chance." *Id.*

213. See *id.*

214. Nelson, *supra* note 10.

215. Lapowsky, *supra* note 192.

216. *Id.*

217. Nelson, *supra* note 10. ("If Uber invests more heavily in paratransit . . . there will be a big market waiting.")

cost effective mobility to millions.²¹⁸ Regrettably, these services are leaving people with disabilities behind. Worse, the text of the ADA—the United States’ landmark civil rights legislation for people with disabilities—fails to impose clear and adequate obligations on this new industry. TNCs make a weak but credible argument claiming their business model falls outside the scope of Title III. Courts have not resolved this issue but could easily find that TNCs are subject to § 12184 and 49 C.F.R. § 37.29, the same regulations covering their most direct competitors: taxi companies.

Instead of waiting for courts to define the law, the DOT should preemptively amend its regulations or issue interpretive guidance to include TNCs in the scope of Title III’s coverage. This outcome would extend ADA protections to any individual seeking to use a TNC’s service who is capable of riding in their driver’s car. Despite this gain, however, such an action would do little to promote truly equal service for those with greater accessibility needs. The availability of accessible, on-demand transportation is a longstanding problem that federal disability law and the traditional transportation industry are ill-equipped to resolve. However, with proper incentives and regulations, TNCs could play an integral role in fixing an old and persistent problem.

218. Jake, *Your Wheelchair-Accessible Vehicle Has Arrived*, UBER (Sept. 22, 2014), <http://newsroom.uber.com/philly/2014/09/your-wheelchair-accessible-vehicle-has-arrived/>.