



LEGAL ADVOCACY UNIT

2111 J Street #406
Sacramento, CA 95816
Tel: (510) 267-1200
Fax: (510) 267-1201
TTY: (800) 719-5798
Intake Line: (800) 776-5746
www.disabilityrightsca.org

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Sent via email to douglas.ito@cpuc.ca.gov; avprograms@cpuc.ca.gov

Douglas Ito
California Public Utilities Commission
Consumer Protection and Enforcement Division
505 Van Ness Avenue
San Francisco, CA 94102-3214

**RE: Protest to Cruise Application for Driverless Deployment Permit –
Tier 3 Advice Letter**

Dear Director Ito:

Pursuant to Section 7.4.1 and 7.4.2.(6) of General Order 96-B, Disability Rights California (DRC) protests the advice letter submitted by Cruise LLC on November 5, 2021. DRC is a statewide nonprofit organization that advocates for the rights of people with disabilities. We appreciate the efforts made by Cruise thus far to consider the needs of riders with disabilities. However, the program described in Cruise's Passenger Safety Plan (PSP) fails to meet the ADA's standard for nondiscrimination by Title III entities. Allowing Cruise to operate its program as currently designed would result in the exclusion of riders with disabilities—particularly those with multiple sensory disabilities and those who use wheelchairs—from Cruise's services. We respectfully request that the Commission require Cruise to address the issues raised in this letter before beginning operation. We have submitted a copy of this letter to Cruise concurrently with our submission to the Commission.

A. Cruise must commit to providing WAVs.

Section 2.3.2 of Cruise's PSP discusses plans to provide rides in its "purpose-built vehicle, the Origin, that is specifically designed" for the AV ride-hailing service. Cruise states that it is "exploring" a wheelchair accessible version of the Origin, but stops short of making any commitments.

If Cruise ultimately declines to provide WAVs, it will be in violation of the ADA. Title III of the ADA prohibits discrimination by private entities who provide public transportation services. Section 12184(a) states:

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.¹

Recent federal court decisions indicate that a private transportation company's refusal to provide WAV service, even though not expressly required by the ADA, can still constitute a violation of Title III's broad anti-discrimination mandate.²

Even private entities who are not subject to section 12184 but operate a demand responsive system³ must still operate their systems so that, when viewed in its entirety, the 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."⁴ If Cruise declines to include WAVs in

¹ 42 U.S.C. § 12184(a)

² See *Namishnak v. Uber Techs., Inc.*, 444 F. Supp. 3d 1136, 1143 (N.D. Cal. 2020) ("Uber's fixation on whether WAVs are specifically required by statute is unavailing in light of the broad language of the ADA. [internal citation omitted] A covered entity under Section 12184 is subject not just to the narrow requirements associated with the purchase of new vehicles, but the statute's broader anti-discrimination mandate.").

³ In its advice letter, Cruise does not expressly identify its AV program as a demand responsive system. We interpret its app-based ride-hail service to be a demand responsive system as that term is defined in the ADA: "The term 'demand responsive system' means 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).

⁴ 42 U.S.C. § 12182(b)(2)(C)(i)

its AV fleet, it will need to find a way to provide equivalent service to riders with wheelchairs who cannot use non-WAV AVs due to their disability. Cruise has provided no explanation in its PSP or advice letter for how it will do that.

A lack of commitment to WAVs at this stage will result in the exclusion of people with disabilities from a service that should be born accessible. Inaccessible transportation is a critical and widespread problem for people with disabilities. Cruise's plans to design a vehicle specifically for its AV program presents an opportunity to do for transportation what the ADA is designed to do: embrace accessibility from the ground up. This principle is no less true for a new type of vehicle than it is for a new building. We urge Cruise to demonstrate what an accessible AV transportation service can look like by including WAVs in its fleet.

B. Cruise must provide auxiliary aids and services to ensure effective communication for people with multiple sensory disabilities.

Title III of the ADA requires covered entities to provide auxiliary aids and services where necessary to prevent exclusion, denial of services, segregation, or different treatment to people with disabilities.⁵ Auxiliary aids and services include measures taken to ensure communication is effective for people with sensory disabilities, like providing an ASL interpreter to someone who is deaf or translating written materials into Braille for someone who is blind.

Cruise's PSP explains that communication will be provided in a variety of formats, including aurally for people who are blind/low vision and in text for people who are deaf/hard of hearing. While a good start, these are insufficient to meet the communication needs of people with disabilities. Cruise must continue working with the disability community to address two foreseeable issues:

1. Reliance on text alone may not be effective for people who are deaf/hard of hearing.

Many people who are deaf/hard of hearing communicate primarily in American Sign Language (ASL). Contrary to common misconception,

⁵ 42 U.S.C. § 12182(b)(2)(A)(iii)

ASL is not a signed version of English; it is its own unique language with its own vocabulary, syntax, and grammatic structure. In fact, many people whose primary language is ASL are not fluent in written English and have limited English proficiency. For these individuals, Cruise's reliance on text interfaces may not provide effective communications. DRC can attest that one of the most common requests for help we receive from deaf/hard of hearing clients is for disputes related to Title III entities' refusal to engage ASL interpreters. Cruise must take steps to ensure that ASL interpreters are available to assist with communication between deaf riders and staff, especially in emergency situations where miscommunication can have serious consequences.

2. Lack of effective communication for people who are deafblind.

Cruise's reliance on aural communication for blind riders and text communication for deaf riders fails to address the communication needs of riders who are deafblind (i.e., people who have both a hearing disability and a vision disability). Cruise must provide appropriate auxiliary aids and services to ensure effective communication for people whose disabilities makes text alone or aural communication alone ineffective.

C. Cruise must provide anti-discrimination and disability competence training for all staff.

Section 5.5.1 of the PSP describes the different levels of customer support available to riders and the training different staff receive. Missing from this section is any discussion of training on how to serve riders with disabilities and the legal requirements of antidiscrimination laws like the ADA and the Unruh Civil Rights Act.

DRC can attest that, even when a company's stated policies comply with the law, lack of training for staff frequently creates barriers to access for people with disabilities. The Commission must require Cruise to describe what training it will provide to staff. That training should include best practices for serving riders with disabilities, identifying when a rider has made a request for a reasonable accommodation, responding to those requests appropriately, and the company's internal grievance procedure.

D. Cruise's method of collecting feedback from riders will obscure potential ADA violations.

To ensure that the AV program is accessible, Cruise must change how it tracks complaints about accessibility. Section 5.4 of the PSP explains that a complaint may be categorized in multiple ways, but apparently “inaccessibility” is not one of those categories. In the example provided, Cruise says that a complaint about (lack of) accessibility could be categorized as a mobile app complaint and a pickup experience complaint. The result of such a categorization is that it will be difficult—perhaps even impossible—to determine from the data compiled how many accessibility complaints riders submitted in a given period because they would be categorized as other types of complaints. This system obscures the prevalence of accessibility complaints, allowing those complaints to be hidden under other categories. Cruise must create a separate category for accessibility or develop another way to reliably track and evaluate the experiences of disabled riders. Without that information, Cruise cannot ensure that its program operates in a way that gives disabled riders service that is equivalent to the service that riders without disabilities enjoy.

Conclusion

We thank Cruise and the Commission for its attention to this letter. To discuss this letter further, please contact Zeenat Hassan at (510) 267-1225 or zeenat.hassan@disabilityrightscal.org. We look forward to working with you on accomplishing the Commission's goal of expanding the benefits of AV technology to all Californians, including people with disabilities.

Sincerely,



Zeenat Hassan
Staff Attorney II

Autumn Elliott
Litigation Counsel

CC: Prashanthi Raman (prashanthi.raman@getcruise.com)
Aichi Daniel (aichi.daniel@getcruise.com)