



U.S. Department
of Transportation
**Federal Transit
Administration**

Headquarters

1200 New Jersey Avenue, SE
Washington, DC 20590

October 8, 2014

James Henly
Vice President and General Counsel
Metro-North Railroad
347 Madison Avenue
New York, NY 10017

Re: FTA Complaint No. 14-0049

Dear Mr. Henly:

This letter is to notify you that the Federal Transit Administration's (FTA) Office of Civil Rights has completed its investigation of the above-referenced Americans with Disabilities Act (ADA) complaint filed by the Village of Port Chester against the Metropolitan Transportation Authority, Metro-North Railroad (MNR). The FTA's Office of Civil Rights is responsible for ensuring that providers of public transportation comply with the ADA, Section 504 of the Rehabilitation Act of 1973, and the U.S. Department of Transportation (DOT) implementing regulations at 49 CFR Parts 27, 37, 38, and 39.

In the FTA complaint investigation process, we analyze allegations for possible ADA deficiencies by the transit provider. If deficiencies are identified, they are presented to the transit provider and assistance is offered to correct them within a predetermined timeframe. If FTA cannot resolve apparent violations of the ADA or the DOT ADA regulations by voluntary means, formal enforcement proceedings may be initiated against the public transportation provider, which may result in the suspension or termination of federal funds. FTA may also refer the matter to the U.S. Department of Justice for enforcement.

Allegations

In the Village's December 23, 2013, letter to FTA, the complainant alleged that MNR's Port Chester railroad station was recently subject to a station improvement project funded by FTA through Grant Number NY-90-X590, but upon the completion of construction, MNR failed to provide full access to the station for riders with disabilities who cannot climb stairs. The complainant focused on accessibility of the station's platforms, and contended that although MNR had included an ADA-compliant ramp to the southbound platform, it had not ensured access to the northbound platform. Riders with disabilities are therefore required to depart the train at either the preceding Rye station or the following stop at Greenwich, and secure alternative transportation back to the Village of Port Chester. The complaint went on to allege that no signs or displays at Port Chester station or on board the trains alerted passengers with disabilities that they would be unable to exit the northbound platform at the station.

Analysis

Upon receipt and review of the complaint, FTA initiated an investigation into the ADA accessibility of Port Chester station. On June 12, 2014, FTA transmitted a Request for Information letter to MNR, asking for documentation related to the station improvement project. In addition, FTA conducted a site visit of the station for further fact-finding.

On July 30, 2014, FTA received a response to its information request, where MNR documented the analysis it undertook at the design phase of the station improvement project, including a feasibility study for the inclusion of an ADA-compliant ramp and/or elevator into the scope of work to provide ADA-access to the northbound platform. MNR also detailed the history of its systemwide ADA key station plan, along with the ADA-related improvements made as a part of the station improvement project.

Alterations to Existing Facilities: Application of the 20 Percent Rule

The scope of work for this station improvement project included replacement of the northbound platform stairway connected to the platform, repair or structural supports for platforms, surface repairs to platforms, installation of detectable warnings, replacement of canopy roofs and drains, repair and replacement of platform guardrail, replacement of lighting and electrical services, PA system improvements including installation of LED signs for an ADA compliant audio-visual information system, a new shelter on the southbound platform, replacement southbound stairway leading from the platform to the parking level, a new ADA-compliant platform ramp on the southbound side, and new benches on the platforms. In total, the cost of the work performed to the platforms and station infrastructure work exceeded \$4 million.

The DOT ADA regulations at 49 CFR § 37.43(e)(1) state that “alterations made to provide an accessible path of travel to an altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20 percent of the cost of the alteration to the primary function area.” A “primary function” includes areas such as waiting areas, ticket purchase and collection areas, train or bus platforms, baggage checking and return areas, and employment areas (See Appendix D, Section 37.43). The “path of travel” includes “a continuous unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, exited, and which connects the altered area with an exterior approach (including sidewalks, parking areas and streets), an entrance to the facility, and other parts of the facility” (49 CFR § 37.43(d)). MNR argued that since the cost of an elevator or ramp to the northbound platform would require more than \$0.8 million, neither was required under this provision.

In this case, however, the concept of disproportionality was misapplied. The provision of 49 CFR § 37.43(e)(1) only applies when alterations to a primary function area trigger the requirement for additional alterations to the path of travel under 49 CFR § 37.43(a)(2). Based upon the scope of work that occurred at Port Chester station, this project included an alteration to the path of travel itself (the stairs serving the northbound platform); under 49 CFR § 37.43(a)(2), altered elements must be accessible.

Vertical Access to the Northbound Platform: Technical Feasibility

In MNR's July 30, 2014 letter to FTA, MNR indicated that, during the design of the project in 2008, it tasked its design consultant to conduct a technical feasibility analysis of options for the provision of vertical access at the station. The design consultant analyzed the extent to which it would be technically feasible to install a ramp or an elevator along the large parcel real property owned and controlled by MNR along the northbound side of the station.

MNR concluded that the topography of this real property created incline issues with a ramp, and that a retaining wall would be required, but it would be technically feasible to install the ramp if it constructed the ramp with a series of switchbacks. MNR estimated the cost of the ramp to be \$762,400, and it ultimately determined that the ramp was "impracticable."

MNR also concluded that the installation of an elevator would be technically feasible with some excavation of the real property. MNR estimated the cost of the elevator to be \$1,200,000, and it ultimately concluded that the cost of the elevator would be significantly disproportionate to the cost of the alterations to the station.

In each of these instances, MNR's documentation demonstrates that accessibility along the northbound side of the station was technically feasible. MNR's determination that a ramp would be "impracticable" due to the cost is irrelevant; the scope of work along the northbound platform involved alterations to the path of travel, and MNR was required to make that side of the station accessible to the maximum extent feasible, regardless of cost. Moreover, MNR's documentation indicates that other options for vertical access may be technically feasible. Most notably, MNR did not explore the options of installing an elevator or a ramp at the easternmost end of the northbound platform.

MNR's reliance on cost disproportionality as it relates to elevator installation is also inappropriate. MNR's scope of work included alterations to the path of travel along the northbound side of the station, and MNR was required to make that side of the station accessible to the maximum extent feasible, regardless of cost.

Finally, in its letter, MNR provided details regarding the replacement staircases used by ambulatory passengers to access the northbound platform from the street. While MNR attempts to distinguish the stairway which leads from the street level to the access staircase, from the staircase providing access to the platform, both of these staircases are part of the same path of travel. The complete replacement of the access staircase affected the usability of the facility and constituted an alteration to the path of travel itself. Cost considerations were incorrectly applied to this project, and the analysis should have hinged on the technical feasibility of incorporating ADA access to the northbound platform.

Conclusion

After considering MNR's response, FTA finds MNR misapplied the cost disproportionality provision and that the provision of vertical access for persons with disabilities is technically

feasible. By focusing its determination on disproportionality rather than technical feasibility, MNR did not ensure compliance with the ADA requirements for alterations to existing facilities.

Within 30 days of receipt of this letter, please submit a corrective action plan and expected completion date of those actions needed to provide an ADA-accessible ramp or elevator on the northbound platform at Port Chester station. FTA is available for any technical assistance inquiries and can offer further input regarding how the ADA applies in this case.

Thank you again for your cooperation with this matter. If you have any questions regarding this letter, please do not hesitate to contact John Day of my staff at john.day@dot.gov or by phone at (202) 366-1671.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Linda Ford', is positioned above the printed name and title.

Linda Ford
Director, FTA Office of Civil Rights

cc: Thomas Prendergast, Chairman and CEO, MTA
Joseph Giulietti, President, MTA Metro-North Railroad
Neil J. Pagano, Village of Port Chester
Marilyn G. Shazor, Regional Administrator, FTA Region II
Anthony Carr, Deputy Regional Administrator, FTA Region II
Aaron Meyers, Civil Rights Officer, FTA Region II
Michael Culotta, Regional Counsel, FTA Region II
Michael Kuchieski, General Engineer, FTA Region II
Monica McCallum, Regional Operations Division Chief, FTA Civil Rights Office
Jennifer Barry, Assistant Director, Planning & Design Compliance, MNR
David Knight, U.S. Department of Justice