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*and*

## **The Americans with Disabilities Act–Communication Accommodations Project**

*A Resource for Voluntary Compliance with the ADA*

### **A JOINT PROGRAM OF**

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# **OBLIGATIONS OF AIRPORTS TO PROVIDE COMMUNICATION ACCESSIBILITY TO DEAF AND HARD OF HEARING PERSONS**

Thank you for your interest in the obligations of airports to provide communication accessibility to deaf and hard of hearing persons.

Airports operated by public entities are required by two federal laws to render communication accessibility to individuals with hearing impairments. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, requires federal financial recipients, including state and local governments, to provide auxiliary aids to ensure that services to deaf and hard of hearing persons are equal or equally effective to the services provided to persons with normal hearing. This obligation now applies to "all of the operations" of any state or local government which receives any form of federal financial assistance, under the Civil Rights Restoration Act of 1987 (P.L. 100-259), codified at 29 U.S.C. 794(b)(1)(A).

The mandates of Section 504 have now been extended to all operations of public entities through Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12141 et seq. The U.S. Department of Justice has issued a regulation to Title II of the ADA, 28 C.F.R. Part 35, and an Analysis thereto, 56 Fed. Reg. 35694 (July 26, 1991). Under the ADA and its regulation, as of January 26, 1992, all state and local government activities and agencies,

regardless of receipt of federal funds, will be prohibited from discrimination based on disability.

The ADA requires local and state government entities, such as airports operated by the local government, to provide auxiliary aids to ensure effective communication with deaf and hard of hearing individuals. 28 C.F.R. Section 35.160. These auxiliary aids and services must be provided except where they constitute an undue burden, or fundamentally alter the public entity's program. The Department of Justice regulation defines the term auxiliary aid and service comprehensively:

[q]ualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons (TDD'), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

28 C.F.R. 35.104.

To achieve equal access in airports, the most important auxiliary aids for deaf and hard of hearing persons will be telephone services and videotext displays.

## **PUBLIC TELEPHONE SERVICES**

It is clear that telephones at airports must be hearing aid compatible. The Telecommunications for the Disabled Act required that coin operated telephones, and other essential telephones, be hearing aid compatible. 47 U.S.C. Section 610 et seq.

Other public telephone services will now also be required. TDDs are listed among those devices considered to be auxiliary aids. 28 C.F.R. Section 35.104. Loaner TDDs must be available for use at airports with the public pay telephones where pay TDDs are not provided. Signage regarding their availability must be posted.

Some modifications are not considered to be auxiliary aids, but are considered to be structural in nature. A different standard will be applied for structural barriers. Structural barriers must be removed in existing buildings if such removal is "readily achievable." Therefore, if rendering a public telephone in an existing bank of telephones accessible

would be "readily achievable", it must be done now. Provision of a volume control on the handset would seem to be an example of a readily achievable accommodation. Provision of an outlet and shelf for loaner TDD at a pay telephone would also appear readily achievable.

The requirements are more stringent for new construction and renovation. 28 C.F.R. Section 35.151(c). These requirements are set forth in the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG), 28 C.F.R. Part 36, Appendix A.

If public pay telephones or other public telephones are provided in new construction, a certain number of them must be accessible to deaf and hard of hearing persons. The number which must be accessible for hard of hearing users are determined by the following table

Number of each type of telephone provided on each floor	Number of telephones required to comply with [regulation]
1 or more single unit	1 per floor
1 bank [two or more adjacent public telephones]	1 per floor
2 or more banks  (either visible or with signage) to the bank. . .	1 per bank. Accessible unit may be installed as a single unit in proximity

ADAAG, Section 4.1.3(17)(a).

All public telephones required to be accessible pursuant to this table must be hearing aid compatible, and equipped with a volume control. ADAAG, Section 4.1.3(17)(b). An additional 25 percent of all other public telephones must also be equipped with volume control. ADAAG, Sections 4.1.3(17)(b), 4.31.5. All telephones equipped with volume control under this law must be identified as such. ADAAG, Section 4.30.7(2).

The regulations are somewhat different for the provision of TDDs at public telephones. Newly constructed buildings and newly renovated areas will be required to provide TDDs at some public telephones. (The regulations designate TDDs as "text telephones"). The following regulation sets forth the number of text telephones required in new construction:

- (i) if a total number of four or more public pay telephones (including both interior and exterior phones) is provided at a site, and at least one is in an interior location, then at least one interior public text telephone shall be provided.

ADAAG, Section 4.1.3(17)(c); Section 10.4.1(4).

Airports have an additional obligation regarding provision of public text telephones:

Additionally, if four or more public pay telephones are located in any of the following locations, at least one public text telephone shall also be provided in that location:

- (a) a main terminal outside the security areas;
- (b) a concourse within the security areas; or
- (c) a baggage claim area in a terminal.

ADAAG, Section 10.4.1(4).

Where a text telephone is required to be provided, the regulation requires that signage identifying the telephone as such must be provided. In addition, directions to the public telephone with the TDD must be placed next to each bank of telephones which does not have a TDD, or at the entrance of the building if there are no banks of telephones.

ADAAG, Section 4.30.7(3).

The regulation anticipates that individuals with their own portable TDDs will need some accommodations to enable them to use public telephones, and requires, in new construction:

Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet. . .

ADAAG, Section 4.1.3(17)(d).

There is some flexibility in these requirements. A portable TDD may be made available in lieu of a public text telephone. Signage regarding this availability, and a shelf and outlet, must be provided adjacent to the public telephones if this means of accommodation is chosen. ADAAG, Section 4.31.9(3).

## **VISUAL ALERTING SYSTEMS**

Deaf persons are also able to utilize the ADA to ensure that they will not miss important information available to others at an airport through the public address system. Title II includes videotext displays as an example of an auxiliary aid required to be provided by public entities. 28 C.F.R. Section 35.104.

The ADAAG standard also requires provision of systems to ensure that this information is available to airport patrons who have hearing impairments:

Terminal information systems which broadcast information to the general public through a public address system shall provide a means to provide the same or equivalent information to persons with a hearing loss or who are deaf. Such methods may include, but are not limited to, visual paging systems using video monitors and computer technology. For persons with certain types of hearing loss such methods may include, but are not limited to, an assistive listening system complying with 4.33.7.

ADAAG, Section 10.4.1(6).

## **PRIVATE AIRPORTS**

Private airports must comply with all of the ADAAG provisions noted above in their new construction and renovation. Title III of the ADA, 42 U.S.C. Sections 12182, 12183, the U.S. Department of Justice regulation to Title III, 28 C.F.R. Part 36, and the Analysis thereto, 56 Fed. Reg. 35544 (July 26, 1991), specifically include private airports among those entities which are to be considered to be commercial facilities subject to the new construction and alteration requirements of that rule, as specified in the ADAAG standards. See generally, Analysis of the DOJ Regulation, at 56 Fed. Reg. 35547.

While private airports are not considered to be public accommodations responsible to comply with the general and specific requirements for existing facilities under Title III of the ADA, the retail and service establishments located at airports, such as restaurants and stores, must comply with the obligations of Title III. You may contact us for more information on those obligations.

We hope that this information is of assistance. Please let us know if you have further questions.