

**State of Emergency: Accessibility to Emergency
Communications for the Disabled in Metropolitan Areas**

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Abstract

An emergency situation places stress upon everyone involved, and often demands individuals work together to find a solution. Whether the victim, the rescuer, or simply a bystander, all parties are often panicked for survival and try to think quickly to right a wrong. Now, imagine trying to perform in an emergency in bustling New York City with one of your senses disabled. More specifically, imagine having to call for assistance during an emergency to either the police or fire department without having the ability to hear, and without public assistance available for aid. The United States has not fully progressed in terms of emergency situations and communication devices for those with disabilities. This has led to a current situation that threatens the disabled with possible unequal access to emergency communication devices in the near future.

Recent federal cases from the Southern District of New York illustrate the large disconnect that exists between the emergency communication systems available in the city and accessibility for those with disabilities. In *Civic Association of the Deaf of New York, Inc. v. City of New York*, New York City attempted to remove over 15,000 emergency call boxes located throughout the city, which would have eliminated access to emergency communications for the disabled, primarily the deaf. The court held that under the Americans with Disabilities Act (“ADA”) the City was unable to remove the call boxes without providing an alternative means of

communication for the deaf, raising questions about whether current technology has outpaced the coverage afforded by the ADA.

This article examines the discrepancies between the ADA and emergency communication systems in the United States, specifically New York City, and highlights the need for the law to be amended to require that as new technology is created for emergency communications, adaptations be made to continue accessibility for those with disabilities. The rise and use of emergency call boxes in New York City, coupled with the *Civic Association* case, demonstrates that without a major change to the ADA it is possible that certain individuals with disabilities will be unable to communicate with emergency services in the future. Changes must be made to afford all individuals the ability to access emergency communication devices.

No individual should be concerned about whether he or she will be able to access emergency services during an emergency simply because of a disability. Instead, all individuals should feel secure knowing that in the time of need they are able to access those who can provide help and ultimately relieve a stressful situation.

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I. Introduction

There is a universal need for assistance through effective communication during emergencies across the globe and particularly in the United States. An emergency typically places individuals in extremely vulnerable circumstances, and creates a dependency for assistance that can usually only be filled by an outside source, detached from the person and the situation. Whether these services come from public entities, like the United States government, or from private groups, such as local firefighter troops, every society needs effective communication methods for providing assistance to those in need. Among major industrialized nations, the United States stands at the forefront of providing emergency communication services to those in need through public assistance programs like 911 and private entities like the Red Cross. Through both its public and private entities the nation has created assistance systems that allow individuals to receive help during times of struggle, and hopefully throughout recovery as well.

However, although the United States has come far in developing emergency communication services for those in need, the nation still needs to develop in the area of providing assistance to individuals with disabilities. In a society that is constantly changing how it provides emergency services based on new technologies, the United States needs to ensure that as emergency services develop and newer methods become available, those with disabilities are still afforded access to these services. In recent years there have been vast improvements in the manner in which emergency communication is done in major metropolitan cities, with large improvements particularly occurring in New York City. With these huge changes occurring seemingly overnight, it appears there are holes developing within the emergency communication systems that the government provides and compliance with the Americans with Disabilities Act

(“ADA”). These gaps often leave individuals with disabilities unable to access services in times of emergencies.

One large example of this gap between emerging communication systems and the ADA is the recent federal case from the Southern District of New York, *Civic Association of the Deaf of New York, Inc. v. City of New York* (“Civic Association”). In *Civic Association*, New York City attempted to remove over 15,000 emergency call boxes, which would have eliminated access to emergency communications for the deaf. The court held that under the ADA the action was prohibited.¹ *Civic Association* demonstrates that to account for the inconsistencies between emergency communication systems and ADA compliance, the ADA must be amended to require that as new technology is created for emergency communications, adaptations are made to allow accessibility for those individuals with disabilities.²

II. Americans with Disabilities Act

In determining where the gaps exist between current and developing emergency communication systems and the ADA, and how these holes can be filled, it is important to understand what exactly the ADA is and what it covers. All fifty states have statutes that address disability rights that in general prohibit discrimination based on disability, and require that individuals with disabilities have access to the same goods and services as other individuals.³ The ADA is federal legislation that was enacted in 1994 to create a unified approach to disability

¹ *Civic Ass'n of the Deaf of New York City, Inc. v. City of New York*, No. 95 Civ. 8591, 2011 WL 5995182 (S.D.N.Y. Nov. 29, 2011).

² Sharona Hoffman, *Preparing for Disaster: Protecting the Most Vulnerable in Emergencies*, 42 U.C. Davis L. Rev. 1491 (2009).

³ *Id.* at 1528.

rights by “[forbidding] public and private entities from discriminating against those with disabilities.”⁴ In essence, the ADA took a unified stance against discrimination for disability and took what all fifty states were already doing and made federal legislation.

Prior to the passage of the ADA, Congress enacted the Rehabilitation Act, specifically Section 504, which stated that a qualified individual with a disability may not be discriminated against or denied benefits by programs and activities that receive federal funding.⁵ Although the Rehabilitation Act was an enormous stride in protecting those with disabilities and eliminating discrimination, the Act did not fully protect individuals with disabilities so the ADA was created to fill these inadequacies.⁶ Congress recognized that those with disabilities were being discriminated against in the workplace, all levels of education and numerous other facets of life, and enacted the ADA to try and eliminate discrimination and negative stereotypes while forcing both private and public entities to provide accommodations for those with disabilities.⁷

There are three titles within the ADA that cover different segments of life including workplace and education, and apply to different entities such as the private and public sector.⁸ The main segments of the ADA for this discussion, on emergency communications provided by the government, are Title II and Title III. Title III applies to private entities that provide a public service, an example of which would be a privately owned hospital that provides emergency

⁴ Hoffman, *supra* note 2, at 1522.

⁵ *Id.* at 1524.

⁶ *Id.*

⁷ *Id.* at 1522.

⁸ Hoffman, *supra* note 2, at 1522.

health care through an ambulance or emergency room to the public.⁹ Title II applies to public services that are run by a public entity and are used by the public, an example of which is emergency call boxes in New York City.¹⁰

An individual with a disability is covered under the ADA and can bring a suit against a private or public entity if the person can show that he or she was treated differently due to their disability, and if the treatment was based upon stereotypes or misconceptions about the disabled.¹¹ In relation to emergency communications provided by the government or state entity, a potential plaintiff would need to show that during or in an emergency a person with a disability did not have a sufficient communication with emergency services based upon their disability, and was therefore treated differently and discriminated against.¹²

Additionally, the ADA includes a compliance manual that specifically relates to public entities and providing emergency communication.¹³ Under Title II, telephone emergency services must provide direct access to individuals with disabilities who use public payphones or emergency call boxes. This requirement applies to basic emergency services, including fire, police and ambulance. Direct access means that the communication goes directly to the emergency service without going through a third party.¹⁴ Operators should be trained to recognize that silent calls may be from these services and individuals with disabilities, and be

⁹ Hoffman, *supra* note 2, at 1522.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 1523.

¹³ Hoffman, *supra* note 2, at 1523.

¹⁴ *Id.*

prepared to assist any type of person or disability.¹⁵ Under this compliance manual, the public entity is also responsible for the implementation, operation and maintenance for adequate number of telecommunication devices for the deaf (“TDD”) telephone lines and stations.¹⁶ Title II of the ADA does not require telephone emergency services be compatible with all formats for non-voice communications, rather at least one must be capable of allowing an individual with a disability to directly contact emergency services.¹⁷ With a background of the ADA and what it covers, it is easy to see where the implementation of new technology, specifically New York City emergency call boxes, has led to gaps in providing adequate access to emergency communication devices and compliance with the ADA.

III. Emergency Communication Systems in New York City

A. Emergency Call Boxes

New York City is one of the nation’s largest metropolitan areas and one of the best examples of how technology has advanced in the area of emergency communications while maintaining issues in complying with the ADA. Like most major metropolitan cities in the United States, NYC has in place numerous methods that allow citizens to contact emergency services. Currently NYC has over 10,000 emergency call boxes throughout the city that are used

¹⁵ Hoffman, *supra* note 2, at 1523.

¹⁶ *Id.*

¹⁷ *Id.*

by citizens during an emergency.¹⁸ These boxes are located sporadically throughout the city, but are usually not more than one or two blocks from one another.¹⁹

The boxes come equipped with two buttons, a red one that is used to contact the fire department and a blue one that is used to contact the police.²⁰ Some of the boxes also come equipped with levers instead of buttons that can be pulled to contact the Fire Department of New York (“FDNY”), however these boxes do not have a two-way communication system like the push button boxes.²¹ These emergency call boxes are located on every other street corner and on highways and bridges as well as in public buildings, schools, hospitals, day care centers, prisons and the United Nations buildings.²² Finally, all of the boxes are inspected and checked daily to ensure they are in proper working condition.²³

When either of the two buttons is called on the push button box, the user is automatically connected to a dispatcher and allowed to speak directly with him or her to describe the nature of the emergency and what specific services are needed.²⁴ The user’s call must be answered within ten seconds by a dispatcher, and if not, then either the fire department or the police will

¹⁸ *Civic Ass'n of the Deaf of New York City, Inc. v. City of New York*, No. 95 Civ. 8591, 2011 WL 5995182, at *2 (S.D.N.Y. Nov. 29, 2011).

¹⁹ *Id.*

²⁰ *Judge Forbids City From Removing Emergency Call Boxes*, TRANSPORTATIONACCESS.COM, <http://www.nyctransportationaccess.com/news/2011/10/judge-forbids-city-from-removing-emergency-call-boxes.html> (last visited Feb. 29, 2012).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Civic Ass'n of the Deaf of New York City, Inc. v. City of New York*, No. 95 Civ. 8591, 2011 WL 5995182, at *3 (S.D.N.Y. Nov. 29, 2011).

automatically be sent to the location of the call box depending on which button was pushed.²⁵ A call can only be canceled if the dispatcher speaks with the user and the user cancels the services, otherwise services will automatically be sent.²⁶ Finally, the emergency call boxes are supposed to come with vibrations from the buttons when one is pushed indicating to a user who is deaf or hard of sight that the box is successfully working and that the call has been made.²⁷

B. Public Payphones for Emergency Communication

Another service exists within New York City for communication during emergencies through the use of public payphones. The private entity Verizon Wireless works with the New York City Department of Information Technology to automatically report the location of the payphone to the dispatcher when an emergency call has been made.²⁸ This allows someone in an emergency to have emergency services, such as the police or fire department, sent to the user automatically even if they are unable to communicate directly with the dispatcher.²⁹ Currently the New York City Department of Information Technology and Communication runs roughly 14,500 payphones located in New York City, but they are not located in the parks, subways or in private property or buildings.³⁰ The phones are evenly distributed throughout the city, but in

²⁵ Civic Ass'n of the Deaf of New York City, Inc. v. City of New York, No. 95 Civ. 8591, 2011 WL 5995182, at *3 (S.D.N.Y. Nov. 29, 2011).

²⁶ *Id.*

²⁷ *Id.* at *4.

²⁸ *Id.*

²⁹ Civic Ass'n of the Deaf of New York City, Inc. v. City of New York, No. 95 Civ. 8591, 2011 WL 5995182, at *4 (S.D.N.Y. Nov. 29, 2011).

³⁰ *Id.*

recent years due to the heavy individual use of personal mobile telephones the installation and number of working payphones is in decline.³¹

Although there are numerous payphones throughout NYC, there is one major downfall with using them during an emergency, that being they are inaccessible to certain individuals with disabilities.³² A person who is deaf or hard of hearing must rely on speaking with a dispatcher to successfully use a payphone during an emergency.³³ Unlike the emergency call boxes, which send emergency services simply by pushing a button, a dispatcher will only send an emergency service if the user has indicated that he or she needs one.³⁴ This prevents a person with a disability from being able to independently call for services without the assistance of another during an emergency, which is often difficult to do.³⁵ The payphones do not come equipped with telecommunication devices for the deaf that enable a person who is deaf or hard of hearing to successfully communicate with a dispatcher, making them inaccessible and essentially useless during an emergency.³⁶

³¹ Civic Ass'n of the Deaf of New York City, Inc. v. City of New York, No. 95 Civ. 8591, 2011 WL 5995182, at *3 (S.D.N.Y. Nov. 29, 2011).

³² *Id.*

³³ *Id.* at *5.

³⁴ *Id.*

³⁵ Civic Ass'n of the Deaf of New York City, Inc. v. City of New York, No. 95 Civ. 8591, 2011 WL 5995182, at *5 (S.D.N.Y. Nov. 29, 2011).

³⁶ *How Those in the Deaf and Hard of Hearing Community Can Request Police/Fire/Medical Assistance from Public Pay Phones or Emergency Call Boxes*, THE MAYOR'S OFFICE FOR PEOPLE WITH DISABILITIES, <http://www.nyc.gov/html/mopd/downloads/pdf/emergency.pdf> (last visited Feb. 29, 2012).

C. New Emergency Communication Methods

In recent years, the New York City Police and Fire Departments have strived to develop a new technique to accommodate those with disabilities who are using either public payphones or emergency call boxes.³⁷ This new method is referred to as the “tapping method,” and allows users with a disability to communicate with dispatchers about an emergency through both payphones and emergency call boxes.³⁸ In an emergency, the user would use a continuous tapping pattern on the emergency call box buttons or on the payphone to indicate what type of emergency services are needed.³⁹

For example, if a person needed the NYC police, he or she would dial 911 on a public payphone, wait four seconds and then start tapping the mouthpiece of the telephone in a continuous pattern (TAP TAP TAP TAP TAP) for at least 90 seconds or preferably until the services needed arrived.⁴⁰ If a user needed emergency medical services (“EMS”) or the Fire Department then he or she would do the same thing except use a two-tap pattern (TAP-TAP pause TAP-TAP pause) to indicate that those services are needed instead of the police.⁴¹ The same tapping patterns are used on public payphones or emergency call boxes, allowing an individual with a disability to contact services in the same manner consistently throughout NYC.⁴² As previously mentioned, the NYC payphones automatically tell a dispatcher where the user is located and if dialing 911 the call is free for all users, making it more efficient for users to

³⁷ THE MAYOR’S OFFICE FOR PEOPLE WITH DISABILITIES, *supra* note 36.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ THE MAYOR’S OFFICE FOR PEOPLE WITH DISABILITIES, *supra* note 36.

⁴² *Id.*

receive assistance under this new method.⁴³ Although it appears that NYC and metropolitan areas throughout the United States have multiple methods to provide emergency services, there has been a decline in the use of these services while an increase in newer technologies that have left gaps between current systems and compliance with the ADA.

D. Decline in Use of Emergency Call Boxes in New York City

Although the emergency call box and other communication systems have been widely used in NYC for numerous years, recent changes in emergency communication services have led to a decline in their use and a gap between emergency services and ADA compliance. To begin, the heavy use of mobile phones by individuals in major metropolitan areas and across the nation has led to a decrease in the use of the emergency call boxes in NYC.⁴⁴ In 1999 there were 42,000 emergency call boxes in use and active in NYC, by 2009 that number decreased to roughly 13,000.⁴⁵ The majority of individuals now have personalized mobile phones that they use during an emergency to dial either 911 or any other service that is needed, which has led to fewer people using the emergency call boxes in NYC.⁴⁶ It costs the city on average \$7 million a year to maintain the emergency call boxes, and the city has estimated that over the next ten years it could cost them nearly \$24.8 million in maintenance, a cost they do not want to spend if individuals are using cell phones during emergencies instead of the boxes.⁴⁷

⁴³ THE MAYOR'S OFFICE FOR PEOPLE WITH DISABILITIES, *supra* note 36.

⁴⁴ Civic Ass'n of the Deaf of New York City, Inc. v. City of New York, No. 95 Civ. 8591, 2011 WL 5995182, at *4-5 (S.D.N.Y. Nov. 29, 2011).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

Additionally, because it takes a mere pushing of a button to summon a dispatcher and because after 10 seconds the dispatcher automatically sends assistance to the location of the call box, the number of false alarms for both police and fire department services has steadily risen.⁴⁸ In 2009 alone, nearly 11,000 false alarm calls came from the street emergency call boxes.⁴⁹ The call boxes were also responsible for 2.7% of the FDNY's incoming calls in 2009, and responsible for 43.3% of the malicious false alarms burdening the FDNY.⁵⁰ These false alarms create an issue for the NYC police and fire departments by taking time away from real emergencies and sending emergency vehicles through the bustling streets of NYC at incredibly fast speeds, which has a higher rate of injury to bystanders.⁵¹ Although the emergency call boxes have numerous positive effects to using them, there still exist numerous downfalls and new problems created as technology continues to develop in the area of emergency communication services.⁵²

IV. Civic Association & Case Law on Emergency Communication for the Disabled

As previously mentioned, the Civic Association case is a recent example of the manner in which cities and states are implementing new emergency communication technologies, and in doing so creating gaps in compliance with the ADA. However, prior to the ADA there have been

⁴⁸ Civic Ass'n of the Deaf of New York City, Inc. v. City of New York, No. 95 Civ. 8591, 2011 WL 5995182, at *2 (S.D.N.Y. Nov. 29, 2011).

⁴⁹ *Id.* at *7.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Civic Ass'n of the Deaf of New York City, Inc. v. City of New York, No. 95 Civ. 8591, 2011 WL 5995182, at *7 (S.D.N.Y. Nov. 29, 2011).

numerous cases and precedent that have worked to eliminate discrimination against those with disabilities in emergency communications. In order to identify the inadequacies of newer emergency communication technologies and compliance with the ADA, it is fundamental to understand the background of case law leading the most recent Southern District of New York Civic Association decision.

A. *Chatoff v. City of New York*

In 1996, the United States District Court for the Eastern District of New York held that all public entities must provide individuals who are hearing or speech impaired with the ability to access 911 emergency services.⁵³ The court held this decision as part of the ADA mandate that public entities must use forms of communication such as TDD and Baudot formats to give access to those with disabilities in public settings during times of emergencies.⁵⁴ Direct access meant that a high number of TDD phones and systems should be located throughout the city and operable for individuals with disabilities.⁵⁵ The TDD and Baudot methods were already heavily used in other major metropolitan areas across the United States, and the court indicated that if the technology exists in other parts of the country there is no justification for it not being provided in NYC, one of the nation's largest and busiest cities.⁵⁶

The court noted in its decision that the Department of Justice rules state that a person with a disability must have direct access, meaning a person with a disability should be able to contact 911 services directly and not have to use a separate seven digit number to call and

⁵³ *Chatoff v. City of New York*, No. 92 Civ. 0604 (RWS), 1992 WL 202441 (S.D.N.Y. Jun. 30, 1992).

⁵⁴ *Id.* at *2-3.

⁵⁵ *Id.*

⁵⁶ *Id.*

indicate that they are a person with a disability.⁵⁷ As the House of Representatives noted, those with disabilities must be able to contact emergency services in the same manner as those without disabilities to create equality among members of society and to provide all individuals with the same opportunity to receive help in an emergency.⁵⁸

Ultimately, in *Chatoff*, the court held that New York City had to make all of its 911 equipment accessible to those with disabilities within a certain time frame with the costs of doing so being apportioned to the city.⁵⁹ The court also held that the city must train its 911 dispatchers and any other individuals involved in emergency communication services how to better respond and interact with those with disabilities, mainly the deaf, and those involved must be trained in TDD and Baudot techniques.⁶⁰ Finally, the court held that the city must maintain all of the emergency communication systems in the city in proper working condition, including the TDD and Baudot systems and more importantly be aware of upcoming trends, changes and best practices for 911 response systems for the disabled.⁶¹ *Chatoff* stands as an excellent example of the manner in which case law is changing and how more courts are finding that public entities must provide accommodations that create equal access to emergency communications for both the disabled and non-disabled. The case was one of many that began demanding that changes be made to allow those with disabilities to contact assistance during times of emergencies.

⁵⁷ *Chatoff*, 1992 WL 202441, at *2-3.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Chatoff* at *2-3.

B. *Civic Association of the Deaf of New York, Inc. v. Rudolph Giuliani, et al*

In the most recent case spurring discourse on emergency communication systems, *Civic Association of the Deaf of New York, Inc. v. City of New York*, New York City authorities attempted to remove all emergency call boxes in the city and were ultimately prevented from doing so by a federal court in the Southern District of New York.⁶² However, prior to that ultimately prevailing case, *Civic Association of the Deaf of New York City, Inc. v. Rudolph Giuliani, et al* (“*Giuliani*”) had attempted to prevent the city from doing the same action and was unsuccessful.⁶³

The *Giuliani* case was a federal class action lawsuit originally filed in 1995 by an organization of deaf and hard of hearing New Yorkers who were concerned about the city removing the emergency call boxes and being unable to receive help from sources such as payphones during an emergency.⁶⁴ Robert B. Stulberg was the lawyer for the advocacy group Civic Association of the Deaf of New York City and represented the group against Mayor Bloomberg, the Fire Department of New York and the City itself in their original complaint.⁶⁵ Under the ADA, the class asked the Federal court to block a plan by the City of New York to remove fire alarm boxes from city streets, which would have essentially eliminated the deaf and

⁶² *Civic Ass'n of the Deaf of New York City, Inc. v. City of New York*, No. 95 Civ. 8591, 2011 WL 5995182 (S.D.N.Y. Nov. 29, 2011).

⁶³ *Civic Association of the Deaf of New York City, Inc. v. Rudolph Giuliani, et al.*, CENTER FOR CONSTITUTIONAL RIGHTS, <http://ccrjustice.org/ourcases/current-cases/civic+association+of+the+deaf> (last visited Feb. 29, 2012).

⁶⁴ *Id.*

⁶⁵ TRANSPORTATIONACCESS.COM, *supra* note 20.

hard of hearing from being able to communicate with emergency services as they are often unable to access public payphones.⁶⁶

In February of 1996, the court ruled the group of deaf and hard of hearing individuals as a class and in July of 1997 issued a ruling that the city must restore any alternations that were made to the emergency call boxes in an attempt to remove them.⁶⁷ The 1997 court order also prevented the city from removing the street alarm boxes because it violated the rights of the deaf and hard of hearing.⁶⁸ The court ruled that public payphones, the city's alternatives to alarm boxes, did not allow the deaf and hard of hearing to access emergency services from the street.⁶⁹ The court further found that asking a person with a disability to use a public payphone did not allow the user to indicate what kind of emergency he or she was having like emergency call boxes do, and could lead to a waste of resources or the wrong help being sent.⁷⁰

The court relied on Title II of the ADA, the title that focuses on the actions of public entities, and held that when the government changes an existing public service, the changes must not discriminate against people with disabilities.⁷¹ The court granted the class an injunction stopping the removal of the boxes and forcing the city to replace or fix any of the boxes that were either removed or deactivated.⁷² None of the emergency call boxes could be eliminated or shut down and any that had been removed had to be replaced. Any that were switched to one-

⁶⁶ CENTER FOR CONSTITUTIONAL RIGHTS, *supra* note 63.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Civic Ass'n of the Deaf of New York City, Inc.*, 2011 WL 5995282, at *10-13.

⁷¹ CENTER FOR CONSTITUTIONAL RIGHTS, *supra* note 63.

⁷² *Id.*

button had to be changed back to a two-button system.⁷³ Finally, the court held that in the future the city might be able to switch to a newer system for emergency communication; however that system would need to be proven effective and accessible for those with disabilities.⁷⁴

C. *Civic Association of the Deaf of New York, Inc. v. City of New York*

In the 2010 Civic Association case, New York City filed a motion asking the court to end the injunction from the Giuliani case and allow the city to remove the 15,000 accessible street emergency call boxes.⁷⁵ New York City maintained that the use of the boxes has decreased by nearly 90% over the past 15 years, nearly nine in ten calls from the boxes are false alarms and that it costs the city roughly \$9 million to maintain the boxes each year.⁷⁶ The city argued that the deaf and hard of hearing can use public payphones and the tapping system to access emergency services and save the city money that it uses every year to maintain the boxes.⁷⁷ The city also argued that the boxes result in numerous false alarms and waste the city's resources on sending emergency vehicles and create additional liabilities by having fire trucks and police cars racing through the crowded streets to emergencies that do not exist.⁷⁸

⁷³ *Civic Ass'n of the Deaf of New York City, Inc.*, 2011 WL 5995282, at *2-3.

⁷⁴ *Id.*

⁷⁵ CENTER FOR CONSTITUTIONAL RIGHTS, *supra* note 63.

⁷⁶ Javier C. Hernandez, *City Renews Effort to End Use of Street Alarm Boxes*, N.Y. TIMES (June 20, 2010), available at <http://www.nytimes.com/2010/06/26/nyregion/26alarms.html> (last visited Feb. 29, 2012).

⁷⁷ CENTER FOR CONSTITUTIONAL RIGHTS, *supra* note 63.

⁷⁸ *Id.*

The motion was argued in United States District Court Judge Robert Sweet's courtroom on June 3, 2011 and August 15, 2011 with the court ultimately finding against the city.⁷⁹ The city argued that it was currently working to establish an enhanced 911 or E-911 system to replace call boxes in the city that would effectively allow those with disabilities to use public payphones to contact emergency services and provide an effective accommodation.⁸⁰ The court held that the city did not test the proposed tapping system on public payphones to the extent that it would be feasible for it to be used as an alternative, and therefore could not be used as a reasonable accommodation and allow removal of the emergency call boxes.⁸¹ Under the ADA and Title II, a person with a disability does not have to have equal access to services as those who are not disabled, however the person must have "meaningful" access to publicly provided services.⁸² A public entity should give primary consideration to individuals who are disabled when providing services to ensure that all citizens can access the same services.⁸³

Judge Sweet determined that removing the boxes without providing an effective accessible alternative would violate Title II of the ADA by not providing a meaningful way for those with a disability to access the same emergency fire and police services as those without a disability, and the court prohibited their removal.⁸⁴ By forcing someone with a disability to rely on public payphones, which often do not work and are not located in as many places as

⁷⁹ CENTER FOR CONSTITUTIONAL RIGHTS, *supra* note 63.

⁸⁰ TRANSPORTATIONACCESS.COM, *supra* note 20.

⁸¹ *Id.*

⁸² *Civic Ass'n of the Deaf of New York City, Inc.*, 2011 WL 5995282, at *9.

⁸³ Hoffman, *supra* note 2.

⁸⁴ TRANSPORTATIONACCESS.COM, *supra* note 20.

emergency call boxes, the access to the public service is not meaningful and the accommodation is not sufficient.

Finally, the city argued that with the increased and widespread use of cell phones, alarm boxes are no longer needed as more individuals have personal phones that can be used to contact emergency services.⁸⁵ However, even if the public pay phones tell the dispatcher where the person is located, there is no way for someone who is deaf to indicate what type of service is needed and what the dispatcher should send for assistance.⁸⁶ Without being able to indicate what type of service is needed, a large risk occurs that the wrong service could be sent and a person with a disability could not be aided.⁸⁷ Judge Sweet refuted New York City's argument, stating that there was no system for either email or text message alternatives for those who are deaf or hard of hearing to contact emergency services at that time, which would have still prevented an individual with such a disability from being able to contact services without the emergency alarm boxes.⁸⁸

V. Implications from Civic Association and Predictions

The most recent decision in *Civic Association* indicates that as technology progresses in the form of emergency communications, the need to protect those with disabilities and provide them access to emergency services will remain a constant. Beginning with the Rehabilitation Act Section 504 to the most recent ADA amendment in 2008, Congress and society have indicated that the need and desire to protect those with disabilities is a priority among the nation and when

⁸⁵ TRANSPORTATIONACCESS.COM, *supra* note 20.

⁸⁶ *Civic Ass'n of the Deaf of New York City, Inc.*, 2011 WL 5995282, at *4.

⁸⁷ *Id.*

⁸⁸ TRANSPORTATIONACCESS.COM, *supra* note 20.

creating law. Specifically, Civic Association indicates to major metropolitan areas, as well as any city within the United States, that if a public entity wishes to eliminate what they deem to be an outdated form of communication to implement a newer one, an accessible accommodation must be provided or the service cannot be removed. Those with disabilities are not asking for a greater service in refusing to allow the cities to eliminate older forms of emergency communications, rather those individuals are simply asking for equality in the form of emergency accommodations.

As society continues to develop and create new technologies that are faster and easier to use for emergency services, the problem will continue to arise as how to accommodate those with disabilities. It has taken a long period for the original emergency call boxes to become outdated due to cell phones, indicating that it might take some time for cell phones or payphones to become outdated with a newer technology. However, in recent years the rate at which technology has developed in both the public and private sectors has been astronomical compared to the mid and late twentieth centuries. NYC has already been working on a tapping system that they believe will be an effective means of communication for those with disabilities, a system that Judge Sweet recognized as a future possibility. This rapid development in emergency communication technology indicates that as newer methods are developed to accommodate all individuals, special attention will need to be given to individuals with disabilities to ensure their needs are protected and they can access emergency services.

In a recent age of financial insecurity, the desire for cities to eliminate costs by any means possible has become especially prevalent. Programs and services that were once deemed a necessity are now being phased out due to an inability to pay for them. This is what has occurred in NYC and what will most likely occur in the future as resources become even scarcer. Cities

will ultimately be forced with tough decisions like how to accommodate individuals with disabilities in emergency communications and how to afford these services. Instead of trying to identify how to accommodate two distinct groups of individuals, individuals with and without disabilities, it seems plausible that resources will be placed into stream lining communication and creating a system that is affordable and accessible to all individuals. In respect to affordability, it would seem appropriate that cities within the United States will unite to create a uniform system of emergency communication accessible to all individuals. A federal system for emergency communication that can be used by all individuals, regardless of disability, is a plausible and financially responsible means to achieve the goal of assisting people in times of emergency.

As the ADA continues to be affirmed, challenges of how to incorporate individuals with disabilities into the act will be present unless the ADA is amended to include a provision that accounts for changes in emergency communication systems. The issue of how to address those with disabilities using emergency communications is a forever-present issue. When the ADA is next considered for affirmation, Congress must add a clause to the act that specifically relates to this issue of emergency communications for the disabled. Adding a clause to the ADA that requires cities to automatically include accommodations for individuals with disabilities into new emergency communication systems will alleviate ADA lawsuits while providing access to more individuals. It would not be difficult to add a clause that would force public entities to provide adequate services for the disabled, while giving them the freedom to use new technologies to achieve the goal. If an amendment is not made to the ADA, then the gaps that are currently occurring between new technologies and ADA compliance will continue and leave individuals with disabilities unable to access emergency communications.

Finally, although not related to the legal issue of how to accommodate those with disabilities. It would seem appropriate that individuals with disabilities will become more involved in the process of how to better accommodate the disabled in the time of emergencies and the issue will be moved to the forefront of disability law. It is always difficult for a group to try and make changes to a law for another group without having adequate knowledge on the subject. Civic Association clearly indicated that NYC did not have the correct information or requisite knowledge when it tried to remove the emergency call boxes. If the city asked for input from the disability community, it would have known that the proposed idea was not a proper means to accommodate individuals with disabilities. Instead of the accommodations and legal standards being developed solely by those involved in the legal field, it would make sense that more activists and individuals from the disabled community to be involved in determining what should be done to ensure that as new technology is developed the ADA is complied with.

VI. Conclusion

There will always be a need in any industrialized nation for the government or some form of public entity to provide emergency communication services to those in need. The means by which the services are to be provided will change as time progresses, however, the need to assist all will remain a constant. Specifically, the need to protect those with disabilities and give them equal access to emergency services will remain a constant thanks to Congress and Federal Laws such as the Americans with Disabilities Act. Public entities will need to provide an efficient means for those with disabilities to receive assistance and ensure that the manner and style is not substantially different from the way those without disabilities receive assistance.

In a society that depends on technology and the “newer” and “faster” forms, public entities will struggle with creating cost effective systems that are on the forefront of technology while still providing access to all individuals. The Americans with Disabilities Act must be amended to ensure that as newer forms of emergency communications are produced individuals with disabilities will be accommodated. There is no errorless manner to dictate what will come from New York City or for the nation in creating emergency communication systems for the disabled, but with assistance from influential groups the system will survive and adapt to newer technologies.