



January 20, 2009

Office of Technical and Informational Services
Architectural and Transportation Barriers Compliance Board
1331 F Street, N.W., Suite 1000
Washington, DC 20004-1111

RE: Comments to Access Board Docket Number 2007-1

Chair and Members of the Board:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comment on the Architectural and Transportation Barriers Compliance Board's (the Board) Draft Revisions to the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buses and Vans, published November 19, 2008, at 73 FR 69592.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including transit systems; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

General Comment

APTA appreciates the Board's efforts to implement the Americans with Disabilities Act and provide accessibility for all. Through your efforts, persons with disabilities have consistent access to all manner of public facilities that was unheard of before the ADA. We also appreciate the Board's history of partnership not only with persons with disabilities but with the various industries responsible for providing that access, and the comprehensive record of thorough research that has long been the hallmark of the Board's well-respected efforts. Board personnel continue to participate fully in APTA's accessibility standards development process, helping vehicle manufacturers, service providers, and persons with disabilities reach consensus on ever-evolving standards to ensure continued and improved accessibility. The Board's iterative efforts to gather public comment on these proposals prior to drafting a Notice of Proposed Rulemaking are commendable and consistent with your history of cooperation and consensus building. It is in this spirit of cooperation that we offer the following comments and offer our services to assist in improving access to transit services for persons with disabilities by conducting research, providing information, or otherwise assisting in the Board's continuing efforts.

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We believe the Board should note APTA's continuing work on access standards development. The standard setting process allows full and free participation of interested parties, incorporates extensive vetting of proposals to ensure the kind of issues raised throughout our comments are answered in a consensus setting, and ensures the standards do not outstrip or lag behind the industry's ability to meet them. Access Board staff are currently participating at all levels of the APTA Accessibility Standards program, and their involvement is constructive and welcome. As an alternative to continuing the rulemaking process, the Board could and should continue to participate and support the setting of industry standards to address its perceptions of shortcomings in the current accessibility rules.

The Access Standards for Transportation Vehicles Should Not Exceed Those for Architectural Standards

In responding to the Board's 2007 draft, we noted it would be of little use to a person with disabilities to be able to board a public transit vehicle with a 36" clear path when the compliant building the person is going to need only provide 32" doorways. We asked if the Board proposed to further modify the recently adopted architectural standards and the public rights-of-way (PROW) guidelines currently under development, as well as those applicable to buses and vans. We continue to believe that any changes should be concurrent (with a full concurrent public comment opportunity) to avoid unnecessary and unhelpful cost impacts on public transportation providers prior to implementation of similar changes in buildings, other public accommodations, and those PROW. Absent changes to the architectural and PROW standards, we believe that, at the conclusion of the careful study and analysis recommended above, the Board will conclude that the minimal incremental improvements to accessibility, if any, that would result from the proposed changes would be overwhelmed by the associated costs. The net effect is likely to be less transportation availability for persons with or without disabilities. Additionally, we note the Department of Justice has proposed updates to facilities standards and we believe the Board's guidelines should also be consistent with the evolving DOJ rules.

One example of the issues raised when only one aspect of accessibility is addressed arises under draft section T203.2.1. The requirement that lifts or ramps be deployable to all surfaces presupposes that all stops are at formal bus stops with curbs and sidewalks or on roadways. In fact, with no PROW standards applicable, bus, lift, and ramp manufacturers cannot reasonably be required to provide devices that account for the myriad possibilities of an unregulated world. In a related note, the Board should specifically allow for emergency equipment that would not otherwise comply with the ramp or lift requirements, to ensure designers are not unduly limited in ensuring emergency egress of passengers with disabilities.

The Definition of a Common Wheelchair Should Not Be Abandoned

The proposed rule abandons the concept of a common wheelchair, relying on an allusion to "some transit agencies" using the standard to deny service to persons with disabilities. This is short-sighted, since it is that definition that allows designers to ensure that mobility devices are readily transportable on public transit vehicles and vehicle designers to ensure their designs will serve passengers with disabilities. Abandoning this definition would create substantial uncertainty over the transportability of mobility aids among vehicle manufacturers, suppliers, transit agencies, wheelchair providers, and wheelchair users and foster disputes over compliance. Rather than eliminating this vital information, the Board should augment it with additional guidance on maneuverability. Abandoning the concept of a common wheelchair hurts transit agencies, manufacturers, and riders that use mobility devices who would never be

certain of whether their particular mobility device would fit in their hometown buses or those in cities they may visit.

Segways Should Not Be Ignored

The Board declined to address the use of Segways in this draft, relying instead on guidance issued by US Department Of Transportation (DOT). Introduction of Segways and similar devices continues to raise issues of safety in public transit vehicles. The guidance issued by DOT is not binding, as explained in a recent letter from DOT's Under Secretary for Policy to counsel for Amtrak, dated January 31, 2008. The substantial issues involved with Segway use on transit vehicles and the non-binding nature of DOT guidance to date strongly suggest a role for the Board in reviewing the circumstances under which Segways should or should not be allowed on transit vehicles. We urge the Board to draft guidelines on the matter and submit those guidelines to public comment. These guidelines would necessarily include specifications for securement of these devices and acknowledgement that they cannot be occupied aboard transit vehicles.

Automated Stop Announcement Requirements Should Include a Phase-in Period and Hardship and Small Fleet Exceptions

The Board asked extensive questions concerning automated stop announcements and related technology and proposed section T203 incorporating a requirement for route and stop announcement devices. Although it is true that a growing number of transit agencies are incorporating automated stop announcement technology into their systems, the ability to do so is far from universal. Automated stop announcement systems generally utilize GPS equipment to trigger the announcement as the vehicle approaches a stop. This GPS technology is currently deployed on only about half of the nation's transit buses, primarily in the biggest transit systems and would represent a substantial cost to those agencies that do not currently employ GPS systems in their fleets. While it may be feasible to add this equipment to existing fleets, it is a major undertaking, particularly for the smaller agencies, and may be of lower priority, or even undesirable, in comparison to other service improvement needs. We urge the Board to adopt a phase-in period for larger agencies, a hardship exemption that could extend that phase-in period where necessary and eliminate the requirement where impractical, and a small fleet exemption of general applicability. Given the current economic situation, rising costs, soaring ridership, and shrinking budgets, these various forms of relief are particularly important to maintaining service levels across the country.

The small fleet exemption should apply to systems operating less than 100 buses in peak service periods. These agencies are typically found in small or rural communities where less formal interactions between vehicle operators and passengers are the norm. In fact, some small and rural small agencies work with 'flag stops' that are not amenable to application of automated stop announcement systems at all. In many of these small agencies, public transportation vehicles are not even equipped with radios because of the infrastructure and cost impacts. Similarly, stop announcements make little sense in a paratransit operation, and we are not aware of any known applications for "flex service" (route-deviation) systems.

Even where automated stop announcement equipment is deployed, there should be an option to revert to oral announcements as a stopgap measure if and when the technology fails. Without the ability to revert to oral announcements, a failure of the automated stop announcement system will effectively remove a bus from service.

The Proposed Changes are Premature

Despite the Board's long history of careful research, we believe the proposed changes are insufficiently supported by technical research. We have identified several issues that should be studied further to ensure that changes made will effectively improve access for riders with disabilities.

The first of these issues is the proposed change in lift and ramp strength. Although shifting from 600 to 660 pounds will invariably help some riders, we are uncertain what the number of affected riders is. We believe the Board should study the current and any available forecasts of chair/rider/carried items total weight distributions prior to changing the load limit. If raising the load limits to 660 pounds only helps a limited number of riders but raising the load limits to 700 pounds greatly expands that number, it would be illogical to spend the money and effort to take the incremental step. Transit agencies will invest a great deal of money in the ultimate target weight so the Board should ensure that target weight optimizes the cost/benefit balance and can be relied on for many years to come.

Similarly, while we appreciate the Board's consideration of ours and others' comments on slope and have offered a logical explanation for the currently proposed 1:6 slope requirement, more work is required before abandoning the current 1:4 ratio. It is important to demonstrate that changes are required, examine the feasibility of such changes, determine the cost impacts of such changes, and determine the benefit that would accrue to our riders with disabilities. The Board should demonstrate that the long-existing 1:4 slope has become problematic, that a 1:6 slope would be widely acceptable, and if a 1:6 slope would be at all feasible given the width of existing streets, sidewalks, and other bus stop locations. Many urban bus routes operate within severely constricted areas such as one lane streets with narrow sidewalks. Adding to the length of a ramp could render such bus stops totally inaccessible to passengers using mobility devices. Like the 1:8 ratio previously proposed, the ramp will be longer than those currently in use and may interfere with axle design, ramp stowage, and other design aspects of the vehicles. It is unclear that even the 1:6 slope design could be reasonably incorporated into bus and especially van designs. The Board should make the documentation it relies on in crafting its proposals clear to the public to facilitate well-reasoned, useful comments. There is no room for supposition or guesswork in crafting a rule likely to endure for many years to come and to affect so many transit riders. Moreover, although there may be merit in 1:6 slope equipment, it is not universally used or available since it is provided by only one manufacturer. The Board should be careful not to create a monopoly situation through its actions.

We also suggest the Board engage the engineering and design communities concerning its statements on what components of lifts are "subject to wear," as well as whether allowing a reduced strength for short boarding ramps (330 pounds v. 660 pounds) is a sound standard. Given that most of the weight in a wheelchair is likely to be over the large wheels, the reduced strength could be very dangerous.

Other Points

The requirement for priority seating signs should exempt vehicles that are used solely for paratransit services.

In proposed section T505, the Board should explain that handrails, stanchions, and handholds, while accessible to patrons in wheelchairs, must also be available to those with other disabilities and those without disabilities and as such additional devices are not precluded (e.g., at above shoulder level).

While proposed section T302.5.9 allows for facing either direction on ramps and lifts, the Board should ensure its proposals on maneuver space accommodate boarding in alternative directions.

We urge the Board to neither require nor exclude particular color combinations to accommodate the contrast requirements of proposed section T702.7, except as necessary to ensure dichromatic riders can effectively read signage.

The draft requirement for a padded head rest in section T403.5, while consistent with the concept of 'passive compartmentalization' employed in Canada and several European countries, does not include other aspects of that concept. As a stand-alone requirement, it adds little to passenger safety and is, in fact, inconsistent with Federal Motor Vehicle Safety Standards (FMVSS) -compliant occupant restraints (which are not effective for rear facing passengers for crash safety, acknowledging that in environments such as large urban buses, they are primarily intended for additional wheelchair user stability). We recommend review of the evolving ISO standard and the current Canadian standard with an eye to deferring this requirement until a comprehensive, consistent standard can be established by the Access Board or more expediently through the APTA standards process.

The maximum openings in draft sections T302.5.1 and T802.3 depart unnecessarily from the FMVSS. By reducing the FMVSS standard of 5/8" to 1/2", the Board would trigger design changes without appreciable improvement of rider safety.

The proposed definition of "fixed route" in draft section T104.4 may inadvertently include commuter bus operations. We suggest the phrase "excluding commuter bus service, as defined in 49 CFR §37.3" be added to the definition to avoid inappropriately adding paratransit requirements.

The proposed definition of "remanufactured vehicle" in that same section should include the explanatory sentence "A vehicle that undergoes ordinary midlife overhaul or rehabilitation shall not be considered a "remanufactured vehicle." Midlife overhaul or rehabilitation is a universal practice contemplated and planned from the time a bus is initially purchased. It does not extend the normally contemplated useful life of the bus and is akin to scheduled maintenance in a typical passenger car. Failing to exempt this process from the definition of remanufacturing risks rendering substantial portions of transit bus fleets out of compliance at the middle of their useful life.

Transition and Eligibility Issues Must Be Addressed

In addition to prospective application of the rule, the Board must consider how best to address the twelve or more years of mixed fleets where some buses comply with the new standards while others are based on the old standards. Without transition planning, a wheelchair user could board a 'new rule' bus to a transfer location, only to find only 'old rule' buses operating on the second leg of his trip. Additionally, the impacts on paratransit eligibility must be considered. How will providers account for a passenger whose wheelchair is within the new size standard but too large to access 'old rule' buses?

Any Physical Changes Required Should Be Prospective Only

We continue to be concerned with the issue of retrospective enforcement. The Board's response – that accessibility is an agency, not a manufacturer requirement – is entirely too glib and ignores a significant problem. While the Board rejected the notion of manufacturing dates, it should alternatively look to acquisition dates as the measure of compliance. This should be included in proposed section T201. Additionally, the date selected must allow a reasonable transition period after the effective date of the regulation to allow the industry to accommodate the final changes. This accommodation includes design changes by bus manufacturers and their suppliers, changes to the manufacturing processes to incorporate those design changes, and modifications to the contractual relationships between bus manufacturers and their public transit agency clients, as well as legally required, costly, and time-consuming 'Altoona' testing of changed designs. Modification of these public contracts will involve significant time and resources since federal grant conditions and state and local contracting rules require precise, auditable accounting for these 'change orders,' price adjustment negotiations, and, in many cases, approval by boards of directors of the various transit agencies. Because the nature and extent of any physical changes ultimately proposed will drive the degree of engineering and other changes required, we recommend the Board defer selecting an 'acquired after' date until it has sufficient information to set a reasoned, reasonable date. Additionally, this approach will allow continued trade in used vehicles that have not yet reached the end of their useful lives. Small providers often obtain used vehicles as a means of *improving* accessibility of their systems and the Board's proposal would ironically curtail those improvements.

We greatly appreciate the opportunity to assist the Board in this important endeavor and reiterate our readiness to provide information, research, or other assistance necessary in continuing your efforts. For additional information, please contact James LaRusch of my staff at (202) 496-4808 or jlarsch@apta.com.

Sincerely yours,



William W. Millar
President