July 28, 2006

Docket Management Facility
U.S. Department of Transportation
400 Seventh Street, S.W.
Nassif Building, PL-401
Washington, DC 20590-0001

RE: Department of Transportation Docket Number 2006-23985

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comment on the U.S. Department of Transportation's (DOT) Notice of Proposed Rulemaking (NPRM) concerning Transportation for Individuals with Disabilities, published February 27, 2006, at 71 FR 9761. This supplements our earlier comments, dated July 20, 2006, and specifically responds to the eight additional issues described in the Notice.

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.

1. Access Standards for Bus Rapid Transit Systems

The notice seeks input on accessibility standards to be applied to Bus Rapid Transit (BRT) systems, including BRT vehicles. APTA believes BRT systems and vehicles must be accessible but that no single set of standards can be applied to the broad range of systems and equipment used in BRT.

Although some BRT vehicles are designed and operated more like light rail vehicles than typical transit buses, many BRT systems employ equipment and bus stops typical of normal bus service. These fundamental differences in systems that fall under the BRT umbrella defy application of a single set of standards. Instead, system operators should look to the characteristics of their particular system in deciding how best to make it accessible. The Department's Americans with Disabilities Act (ADA) regulations should be updated to establish this standard.

2. Review of Key Station Designations

APTA believes the proposed regulatory obligation to revisit Key Station designations based on some circumstance or combination of circumstances is unnecessary. We believe it more prudent to rely on local planning agencies (and the financial backers of major development projects) to identify necessary transit upgrades in conjunction with development activities. A new stadium or convention center will invariably require increased transit capacity and that capacity increase will invariably require full accessibility under existing rules. No change to the existing regulation is required to implement this system.

3. Treatment of "Heritage Fleets"

We believe it is acceptable, where circumstances such as those described in the NPRM exist, to operate vintage streetcar fleets that cannot be made accessible. In those circumstances, where individual vehicle accessibility cannot be achieved without compromising the structural or historic integrity of the individual vehicle, we believe it incumbent upon the system operator to ensure passengers with disabilities are fully served along the same route with accessible equipment and/or complementary paratransit services. APTA suggests provisions to this effect be added to the ADA regulations.

4. Treatment of Intercity Rail Operations Other Than Amtrak

APTA believes there should be uniform accessibility standards for intercity passenger rail service, and that standards for locally/state sponsored intercity rail operations should be consistent with the standards applied to Amtrak.

5. Vehicles for Demand Responsive Service

Since accessibility of demand responsive services are viewed in their entirety (i.e., the service, not individual vehicles, must be accessible) under the provisions of 49 CFR 37.77, vehicle acquisition practices should reflect that viewpoint.

There is no need for a separate used vehicle provision. Standards for obtaining used vehicles should mirror those for obtaining new vehicles.

6. Treatment of Segways and Other Non-Standard Mobility Devices

Standardized, predictable envelope sizes and weights are crucial to universal accessibility. Deviations from the standards without careful analysis and planning risk significant injury to riders with disabilities, other passengers, and transit employees. We note the thoughtful, articulate comments of Mr. Talbot of the U.S. Access Board (designated as item number 127 in the docket) as an excellent example of how deviation from established, proven standards, however well intentioned, can lead to disaster. We believe that in lieu of attempting to accommodate changes to mobility devices independently, the Department should defer to the Access Board in defining the envelope and weight standards applicable to wheelchairs and other mobility devices. Deference to the Access Board is not only prudent from a safety standpoint but from a practical one as well. Altering the standards for transportation vehicles or any other single aspect of access without altering the standards for other aspects fails to provide true access for persons with disabilities. In considering Segways as mobility devices, we note that even if a safe means of transporting a Segway on a bus is found and transit operators are required to allow them on board, there is no guarantee that the rider can take their

Segway onto the public streets or sidewalks at their destination since use of the devices is outlawed in some places. DOT should refrain from attempting to dictate changes to mobility device standards without reference to the Access Board. Finally, no changes to the standards should be attempted through guidance. All changes should follow the formal rulemaking process.

7. Priority Seating on All Modes of Transportation

APTA supports a universal requirement to afford priority seating to persons with disabilities and believes the ADA regulations should be updated to reflect that requirement.

8. Counting Paratransit Trips

APTA strongly disagrees with the Department's proposal to alter the existing methodology for counting missed paratransit trips. We are aware of no data that would suggest that current methods of determining capacity constraints are not effective in detecting them. They have worked for 15 years and absent a problem that is not articulated in the Department's argument, there is no need for change.

Although we agree with the Department that each leg of a trip should be considered as a "trip" for purposes of the trip denial and missed trip provisions of the regulations, we believe the practice of counting denial of one leg of a journey as two missed trips because the rider will not or can not procure alternate transportation for the denied leg is inappropriate. We believe this proposal would unnecessarily skew the data based on the availability and affordability of alternatives, giving disparate results based not on services but on the economics of the community served. A middle class community with a reasonably priced, abundant accessible taxi fleet will present better ultimate numbers than a poor, poorly served area, despite exactly the same actual level of service. Moreover, double counting reflects the reaction to partial unavailability, not the actual level of service available. Finally, the double counting system could really lead to triple counting if the rider wanted to go from home to physician to pharmacy to home, further blurring the actual service availability measure.

We believe counting more then the actual denied trip would also complicate record keeping by forcing grantees to alter their reservation systems. Many trips on paratransit are one-way but depending on how the reservation system works on the system, one might never know it. This is because of the expansion of alternative public and private transit opportunities for persons with disabilities, greater accessibility of the fixed route, reduced or free fares on fixed route and expansion of trip-by-trip eligibility of paratransit riders. The capacity of the paratransit system is therefore best measured by treating each leg separately. However, the Department's conclusion that when one leg of a round trip is denied, then two denials should automatically be counted flies directly in the face of the individual-leg-as-a-trip concept the Department purports to embrace and would significantly distort the resulting data because those numbers would no longer be a true measure of the capacity of the system.

Finally, we believe that the suggestion for operators to "keep a second, separate set of records" has the potential to lead to unnecessary, costly litigation. We do not understand why this particular metric is being singled out for re-definition at this time,

since APTA has now formally added an Accessibility component to the APTA Standards program, funded, in significant part, by FTA. Our intent is to include representatives from disability organizations and the Access Board, among others, to develop standards in this area.

We firmly believe as one of the fundamental premises of the ADA, that paratransit and fixed-route services should be as comparable as possible, including how they are counted, recorded, and reported. Some of our members have for several years been advocating for a more comprehensive data approach to paratransit services in the National Transit Database (NTD). DOT's questions on this topic should give impetus to incorporate the "counting" and related definitions into a cooperative study that thoughtfully considers all such issues from a realistic operational basis, in addition to customer service. APTA is available and willing to assist with such a study.

Final Comment

As reflected in the comments above, we believe any and all changes to the Department's ADA practices should be reflected in its regulations, after appropriate notice and comment opportunities.

Sincerely yours,

William W. Millar
President

WWM/cbo