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August 8, 2016

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Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 2885
Fairfax, VA 22031-0885

RE: CRT Docket No. 128

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the U.S. Department of Justice's (DOJ) Supplemental advance notice of proposed rulemaking (NPRM) and request for comments on its Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, published on May 9, 2016 at 81 FR 28658.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation.

General Comments

APTA fully supports improvements to the accessibility of information for both our riders and employees with disabilities. Our members continuously strive to improve that accessibility whether required by law and regulation or not. We have reviewed the DOJ questions and offer the following comments to assist the Department in moving to a full proposal.

1. The definition of web content should not vary from industry standards. Making the definition less technical would likely render it less precise in practice, leading to confusion, differing levels of enforcement, and uneven access for people with disabilities.

3. The effective date should be extended. Public transportation agencies' projects are subject to the metropolitan planning process promulgated by the Federal Transit and Highway Administrations. While this process is designed to ensure prioritization of projects, it is far from agile. Many agencies would be unable to begin any necessary upgrades for one or more years after issuance of a final rule. We believe phased compliance, with individual agencies able to designate key data such as schedules, service alerts, and other commonly accessed information prioritized.

4. The shortage of qualified professionals continues to be an issue. Public transportation agencies will, in many cases, have to engage consultants to ensure proper implementation since smaller agencies are unlikely to have expert web content personnel on staff.

5. We are unaware of reliable, affordable real time captioning software and recommend that aspect of WCAG 2.0 be waived until such time as proper software is available at competitive prices. Insisting in real time captioning in the initial rollout of any regulation will most likely lead to agencies simply not offering live audio content at all.

7. The department should defer implementation until reliable, affordable software that does not require specific expertise can be widely fielded.

10. Small agencies, for purposes of public transportation agencies, should track federal transit administration practice - those with less than 100 buses in peak service. A small agency in a large community is at the same disadvantage as one in a small community and should receive equal consideration.

13. The criteria for reduced requirements for public transportation agencies should be the 100 bus criteria discussed above, regardless of community size.

14. A longer period is required. Small agencies are subject to state wide planning much like the process discussed in answer 3 above. With extremely limited budgets and staff, and this extensive process for securing funding, a three-year window is not sufficient for small agencies.

20-22. The definition of archived content appears sufficient. The only special treatment for archived content should be long term deferral or waiver of the requirements. The occasional request for archive content in accessible form is best handled at the individual level. To require accessibility of all archived content would be to make the project economically impossible for many public transportation agencies.

23. Public entities should bear no responsibility for the content of linked pages.

24-32. Public transportation agencies should not be required to make third party postings accessible. While many public comments and other third party content is likely to be created in Word or other easily accessed formats, some PDFs and other documents cannot be readily made accessible but removing them from an agency's web page may be contrary to public policy or law.

37. The Department should not require public entities to ensure the accessibility of social media sites beyond their control, even if those agencies offer information through those sites, provided the same information is available elsewhere in accessible form.

48-51. The Department should allow conforming alternate versions to the same extent WCAG 2.0 does. The proposed stricter limit would severely limit public agencies' ability to make content attractive and interesting, while raising the costs of administration.

52. The Department should not seek to enforce the standards for minor or temporary noncompliance. Like pornography, the public will recognize and react to egregious noncompliance without a hyper technical definition.

79-80. Public transportation agencies, like other government entities, come in all sizes. Their methods of creating and maintain web content vary, as does the extent of web content offered. Smaller agencies, or large agencies with extensive content, would likely require contracted assistance to achieve compliance. With competition from government entities across the country, the costs of these services would invariably rise.

83. Faced with noncompliance or a cost they cannot bear, public agencies are likely to simply remove content from their web pages and restrict their web presence to minimum required information. The cost threshold at which this would happen would vary with agency size. Moreover, with the federal transit administrations expanded emphasis on 'state of good repair,' agencies are likely unable to dedicate significant funding to updating content that could simply be eliminated.

85-89. The Department should not simply look to costs per page. Content varies greatly and average costs would likely be deceiving, at best. DOJ should review typical postings such as schedules, fare calculators, and other dynamic information to determine more realistic costs for public transportation agencies.

98. Simply reviewing revenue for a public transportation agency would give no useful information on potential burdens of a final rule. Agencies' varied funding sources, and the fact that no US public transportation agency can fully pay its operating costs from fare box revenue, contribute to this. DOJ should survey a cross section of agencies to gauge burdens likely to flow from a proposed rule.

119. See answer 98.

123. The Department should consult the US Access Board and utilize the Board's expertise in this area. The Access Board undertook a related rule making just last year, has a strong understanding of the challenges faced by people with disabilities, and could offer real world advice useful to the Department, public transportation agencies, and our riders and employees with disabilities.

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We appreciate the opportunity to assist DOJ in this important endeavor. For additional information, please contact James LaRusch, APTA's chief counsel and vice president corporate affairs, at (202) 496-4808 or jlarsch@apta.com.

Sincerely yours,

A handwritten signature in black ink that reads "Richard A. White". The signature is written in a cursive style with a large initial "R".

Richard A. White
Acting President & CEO

RAW/jpl:jr