



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

Headquarters

East Building, 5<sup>th</sup> Floor – TCR  
1200 New Jersey Avenue, SE  
Washington, DC 20590

December 13, 2013



Re: FTA Complaint No. 13-0225

Dear 

This letter responds to your complaint filed against the Delaware River Port Authority's (DRPA) Port Authority Transit Corporation (PATCO) alleging discrimination on the basis of disability. The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring that providers of public transportation are in compliance with the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, and the Department of Transportation's (DOT) implementing regulations at 49 CFR Parts 27, 37, and 38.

In the FTA complaint investigation process, we analyze allegations for possible ADA deficiencies by the transit provider. If FTA identifies what may be a violation, we provide technical assistance to assist the public transit provider in complying with the ADA within a predetermined timeframe. If FTA cannot resolve apparent violations of the ADA or the DOT ADA regulations by voluntary means, formal enforcement proceedings may be initiated against the public transit provider which may result in the suspension or termination of federal funds. FTA also may refer the matter to the U.S. Department of Justice for enforcement.

Each response to a particular complaint is developed based on the specific facts and circumstances at issue. A determination resulting from a review of these facts is not intended to express an opinion as to the overall ADA compliance of that transit provider.

### **Allegations**

In your complaint, you allege generally that DRPA/PATCO's station elevators and escalators are frequently inoperative. Attached to your complaint is a news article that highlights the equipment breakdowns and issues surrounding a DRPA/PATCO contract to maintain the equipment in working order.

### **Relevant ADA Requirements**

The DOT ADA regulations in 49 CFR §37.161 describe a transportation provider's obligation to maintain elevators in working order and to accommodate individuals when an elevator is out of service as follows:

- (a) Public and private entities providing transportation services shall maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible to and usable by individuals with disabilities. These features include, but are not limited to, lifts and other means of access to vehicles, securement devices, elevators, signage and systems to facilitate communications with persons with impaired vision or hearing.
- (b) Accessibility features shall be repaired promptly if they are damaged or out of order. When an accessibility feature is out of order, the entity shall take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.
- (c) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

Under the DOT ADA regulations, an “accessible facility” is by definition one that is accessible to persons with disabilities, including those who use wheelchairs. Escalators are not required by the ADA. Any accessible multilevel station would need to include an elevator or other feature such as a ramp to provide access to wheelchair users.

Rail systems that existed prior to the ADA, such as DRPA/PATCO, which opened in 1969, were required to identify “key” stations that would be made accessible by July 26, 1993, with extensions available through July 26, 2020. These stations were selected through a public process using criteria established under 49 CFR §37.47(b) of the DOT ADA regulations, which considered such factors as passenger boarding, transfer stations, and proximity to major activity centers. DRPA/PATCO has 13 stations, five of which were designated as “key” stations in its 1992 plan submitted to FTA. In addition to these five accessible stations, DRPA/PATCO recently installed elevators at two additional stations to make them fully accessible as well. It has adopted an institutional goal to go beyond the minimum ADA requirements and make all its stations accessible by 2017.

### **Analysis**

In response to your complaint, the FTA Office of Civil Rights sent an information request to DRPA/PATCO on October 18, 2013, and received a detailed response. Subsequent to our initiation of the investigation, the FTA oversight office conducted an onsite Triennial Review of DRPA as required by 49 U.S.C. §5307. The Triennial Review examines grantees’ compliance with federal requirements in 18 key areas, including the ADA and the maintenance of federally funded equipment. Because of the timing of the investigation and the already scheduled Triennial Review, FTA was able to examine your allegations more closely through the onsite Triennial Review and supplement the complaint investigation.

### ***Elevator/Escalator Maintenance***

The fact that you and other customers with disabilities encountered an unusual number of elevator/escalator outages around the time of your complaint in August 2013 is not in dispute. Over the past summer, DRPA/PATCO experienced significant problems with the operation of its escalators, in particular. From May to July, DRPA/PATCO conducted its annual safety

inspections of its elevators and escalators. This inspection resulted in the closure of an abnormally high number of escalators in July 2013. In August 2013, escalators at DRPA/PATCO's stations were functional only 55.8% of the time. Compounding the problem was an administrative error that caused an elevator/escalator maintenance contract to lapse on July 31. Despite these issues, DRPA/PATCO reported that during 2012 and 2013 at least 97% of the elevators were in operation.

DRPA/PATCO has subsequently taken steps to address escalator/elevator maintenance. On September 20, 2013, DRPA/PATCO executed an emergency contract with the firm that manufactured most of DRPA/PATCO's elevators and escalators to perform the maintenance of the system's elevators and escalators. Subsequently, DRPA/PATCO executed a contract with the Southeastern Pennsylvania Transportation Authority (SEPTA) for maintenance of the elevators and escalators until it is able to enter into a long-term service contract with a maintenance and repair vendor. It has also enhanced oversight, monitoring, and documentation of elevator and escalator performance internally.

While recognizing DRPA/PATCO's progress, FTA did make a Deficiency finding in the Triennial Review report regarding the agency's failure to keep federally funded equipment in good operating order. Beginning on January 2, 2014, DRPA/PATCO is asked to submit to FTA a monthly maintenance report on the availability of elevators and escalators, reasons for any failures, corrective actions and schedules to correct any failures. Such reports will be submitted until DRPA/PATCO documents achievement of its goals of 97 percent and 90 percent operability for its elevators and escalators, respectively, for three consecutive months.

#### ***Accommodations When Elevators Are Out of Service***

Even with the best preventative maintenance, elevators do sometimes break down unexpectedly or need to be taken out of service for scheduled maintenance. Because elevators, unlike escalators, are explicitly considered "accessibility features" under the DOT ADA regulations, transit providers must take steps to accommodate customers when they are out of service.

While the DOT ADA regulations at 49 CFR §37.161(b) do not prescribe a particular method for accommodating individuals when an elevator is out of order, the method must be reasonable and effective. Appendix D to §37.161(b) is instructive:

The rule also requires that accommodations be made to individuals with disabilities who would otherwise use an inoperative accessibility feature. For example, when a rail system discovers that an elevator is out of order, blocking access to one of its stations, it could accommodate users of the station by announcing the problem at other stations to alert passengers and offer accessible shuttle bus service around the temporarily inaccessible station.

DRPA/PATCO informed FTA that "PATCO does not own or operate buses and therefore cannot offer bus shuttle service to accommodate passengers when an elevator is out-of-service." The agency does, however, alert customers to elevator outages by, for example, posting website notifications of outages and placing signs at stations directing individuals to the nearest alternative accessible station.

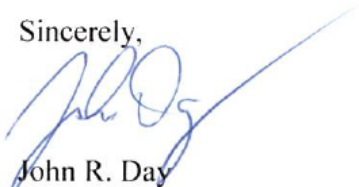
FTA is concerned that the apparent lack of accommodation is ineffective and may leave customers stranded at stations or lead them to avoid taking DRPA/PATCO altogether for fear of being stranded. Website updates and station signage announcing outages are very helpful and in many cases will provide customers the opportunity to make alternate arrangements. However, some customers may not have other transportation options and elevators do, of course, break down unexpectedly without time for advance notice to the public. An agency may decide to deliver on-call service, for example, arranging service with a nearby ADA paratransit provider or other provider that has accessible vehicles; owning and operating accessible buses is not a prerequisite for accommodating customers under 49 CFR §37.161(b).

FTA made a Deficiency finding in the Triennial Review report regarding this provision of the ADA regulations. By January 31, 2014, DRPA/PATCO is asked to submit to FTA its procedures for accommodating individuals with disabilities who would otherwise use an inoperative elevator to reach their desired station. DRPA/PATCO must demonstrate that the procedures are reasonable and effective, and explain how DRPA/PATCO is ensuring that customers will not be stranded, consistent with the regulations.

### **Conclusion**

The investigative portion of this complaint has concluded and, therefore, we are closing your complaint as of the date of this letter. DRPA/PATCO has taken some steps to help prevent recurrence of the problems with elevators and escalators that occurred over the summer. FTA will now monitor DRPA/PATCO's progress in addressing the two deficiencies through the Triennial Review process, as described above, to ensure full compliance with the ADA. If you have any questions, please contact Dawn Sweet at (202) 366-4018 or via e-mail at [dawn.sweet@dot.gov](mailto:dawn.sweet@dot.gov). Any further correspondence should reference FTA Complaint No. 13-0225. Thank you for bringing your concerns to our attention.

Sincerely,



John R. Day  
ADA Team Leader  
Office of Civil Rights

cc: DRPA/PATCO  
FTA Region 3