IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DISABLED IN ACTION OF PENNSYLVANIA, Inc. : CIVIL ACTION NO.
1319 McKinley Street
Philadelphia, Pennsylvania :

PARALYZED VETERANS OF AMERICA, Inc. :
7315 Wisconsin Avenue
Room 301 West
Washington, D.C. :

AMERICAN COALITION OF CITIZENS WITH DISABILITIES, Inc. :
1346 Connecticut Avenue, N.W. :
Room 308
Washington, D.C. :

DISABLED IN ACTION OF BALTIMORE :
743 Overbrook Road
Baltimore, Maryland :

DISABLED IN ACTION OF NEW YORK, LTD. :
175 Willoughby Street
Brooklyn, New York :

DISABLED IN ACTION OF NEW JERSEY, Inc. :
440 Rutherford Avenue
Lyndhurst, New Jersey :

NATIONAL CAPITOL AREA CHAPTER OF THE NATIONAL PARAPLEGIA FOUNDATION, Inc. :
5522 Greystone Street
Washington, D.C. :

NATIONAL CAUCUS ON THE BLACK AGED :
1730 M Street, N.W.
Suite 811
Washington, D.C. :

NATIONAL CONGRESS OF ORGANIZATIONS OF THE PHYSICALLY HANDICAPPED, Inc. :
7611 Oakland Avenue
Minneapolis, Minnesota :

NATIONAL COUNCIL OF SENIOR CITIZENS, Inc. :
1511 K Street, N.W.
Washington, D.C. : CLASS ACTION

PENNSYLVANIA ASSOCIATION OF OLDER PERSONS, Inc.
Suite 411
10 South Market Square
Harrisburg, Pennsylvania

UNITED CEREBRAL PALSY ASSOCIATION OF PENNSYLVANIA
1719 North Front Street
Harrisburg, Pennsylvania

on their own behalf and on behalf of their members,

Plaintiffs

JAY NEUMAN
1460 Devereaux Avenue
Philadelphia, Pennsylvania

AL MARCUS
1319 Magee Avenue
Philadelphia, Pennsylvania

JOYCE BROCK
5466 Baltimore Avenue
Philadelphia, Pennsylvania

DEREK BOWEN
313 West Manheim Street
Philadelphia, Pennsylvania

HARRY BURNS
Mayfair House Apartments
Lincoln Drive and Johnson Street
Philadelphia, Pennsylvania

EMIL SABATINI
909 Wynnewood Road
Philadelphia, Pennsylvania

SONIA STEIN
1303 Hellerman Street
Philadelphia, Pennsylvania

on behalf of themselves and all others similarly situated,

Plaintiffs

vs.

WILLIAM T. COLEMAN, JR., Secretary
United States Department of Transportation
400 7th Street, N.W.
Washington, D.C.

ROBERT E. PATRICELLI, Administrator,
Urban Mass Transportation Administration
400 7th Street, N.W.
Washington, D.C.

NORBERT T. TIEMANN, Administrator,
Federal Highway Administration
400 7th Street, N.W.
Washington, D.C.

Individually and in their official capacities,

Defendants

COMPLAINT

"Of all inventions, the alphabet and the printing press excepted, those inventions that abridge distance have done most for the civilization of our species."

Thomas Babington Macaulay

"It is hereby declared to be the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation services; that special efforts shall be made in the planning, design, construction, and operation of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured; and that all Federal programs offering assistance in the field of mass transportation . . . effectively implement this policy."

The Federal-Aid Highway Act Amendments of 1974, § 105(a), 23 U.S.C. § 142 nt.; The Urban Mass Transportation Assistance Act of 1970, § 8, 49 U.S.C. § 1612(a).

"When this policy was first enunciated in my amendment to the 1970 Urban Mass Transportation Assistance Act,

it was hailed as the emanicipation proclamation for the handicapped.

"Heretofore, handicapped Americans were relegated to separate and unequal transit systems--systems that were very costly not only to the Government, but also to the individual user. My 1970 amendment sought to require that design and construction of all new mass transit systems, equipment, and facilities be totally accessible to the elderly and handicapped."

Statement of Congressman Biaggi on the floor of the United States House of Representatives, June 19, 1974, 120 Cong. Rec. 5309.

I. Preliminary Statement

1. This is an action by mobile disabled and elderly persons and their organizations for declaratory and injunctive relief to compel the Secretary of Transportation, the Urban Mass Transportation Administrator, and the Federal Highway Administrator to require that federal financial assistance be used only to purchase low floor, wide door, ramped buses and otherwise to assure the availability to elderly and handicapped persons of public transportation which they can effectively utilize, as the Congress has repeatedly mandated, in the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. §§ 1602(a)(1) and 1612(a); the Federal-Aid Highway Acts of 1973, as amended, 23 U.S.C. § 142 nt.; the Department of Transportation and Related Agencies Appropriations Act of 1975, § 315, Pub. L. 93-391; and the Rehabilitation Act of 1973, 29 U.S.C. § 794.

2. Defendants have completed a major nine-year $27,000,000 research and development project known as TRANSBUS to build a new generation of full-size transit buses designed and equipped to effectively accomodate mobile disabled and elderly passengers. The TRANSBUS project has produced a low floor, wide door, ramped bus which has been demonstrated to be safe,

reliable, attractive to all segments of the public, and capable of improving public transportation and increasing bus ridership and transit revenues.

3. The low floor, wide door, ramped TRANSBUS is the only technologically proven design which will assure mobile disabled and elderly persons ready access to and effective use of public transportation. Such an accessible vehicle will not be produced and put into operation unless defendants require TRANSBUS as the standard bus design for public transit operating agencies purchasing buses with federal financial assistance.

4. Instead of requiring the use of federal financial assistance to purchase only the low floor, wide door, ramped TRANSBUS, defendants have adopted policies, promulgated regulations, and engaged in practices which perpetuate major physical and structural barriers in the design of transit equipment, which exclude mobile disabled and elderly people from effective utilization of public transportation, which preclude the production of an accessible, full-size bus, and which confine mobile disabled and elderly people to prohibitively expensive, segregated transportation facilities.

5. The allegations of this Complaint are set forth as follows:

II. Jurisdiction

6. This being an action for declaratory and injunctive relief to compel officers of an agency of the United States to perform duties owed to plaintiffs, arising under the laws and the Constitution of the United States including Acts of Congress regulating commerce and providing for the protection of civil rights, the jurisdiction of this Court is invoked pursuant to Title 28, U.S.C. §§ 1361, 1331, 1337 and 1343(4). The matter in controversy exceeds $10,000, exclusive of interests and costs. Relief from agency action unlawfully withheld or unreasonably delayed, from agency action which is arbitrary, capricious or an abuse of discretion, and from agency action which is short of statutory right or contrary to constitutional right, power, privilege, or immunity is authorized by Title 5, U.S.C. §§ 701-706. Declaratory relief is authorized by Title 28, U.S.C. §§ 2201 and 2202.

7. Plaintiffs have no adequate remedy at law; they have suffered and will continue to suffer immediate and irreparable injury from the actions and inactions of defendants here complained of and therefore seek equitable relief.

III. Venue

8. This being an action against officers of the United States and of an agency thereof acting in their official capacities, with plaintiffs residing in this judicial district, venue properly lies in the United States District Court for the Eastern District of Pennsylvania under 28 U.S.C. § 1391 (e).

IV. Parties

Organizational Plaintiffs

9. DISABLED IN ACTION OF PENNSYLVANIA, Inc. is a non-profit corporation founded in 1973. Disabled in Action of Pennsylvania has a membership of over 200 persons, which includes both physically disabled and able bodied individuals. A significant number of the organization's physically disabled members reside in Philadelphia within two blocks of a bus stop and cannot obtain such basic necessities as education, employment, and medical care because buses and other forms of federally funded public transportation are inaccessible to them. Disabled in Action of Pennsylvania has among its purposes the improvement of the physical and social conditions and personal well being of disabled persons through the eradication of environmental and attitudinal barriers which keep the disabled out of the mainstream of society. Disabled in Action of Pennsylvania has established a speakers bureau and standing committees on transportation, housing, and employment to represent the interests of disabled citizens. The programs, services, and financial condition of Disabled in Action, as an organization, are adversely affected by lack of accessible public transportation. The organization suffers direct and concrete injury in the following particulars:

(a) Programs are curtailed, meetings are cancelled, and membership lost.

(b) Organizational funds are expended on costly private transport of officers and members for meetings and other official business.

(c) Disabled in Action is impeded in representation of its views and interests before public agencies such as the Delaware Regional Planning Commission, the Southeastern Pennsylvania Transportation Authority, the Pennsylvania and Philadelphia Human Relations Commission.

10. PARALYZED VETERANS OF AMERICA, Inc. is a non-profit corporation founded in 1946 and chartered by the United States Congress, 85 Stat. 317. Paralyzed Veterans of America has 29 chapters throughout the country, and 10,200 members who are spinal cord injured veterans of the United States Armed Services in World War II, the Korean War, and Vietnam. Its members are mobile in wheelchairs. Eighty-seven percent of paralyzed veterans in this country are unemployed. Among the purposes of the Paralyzed Veterans of America is the elimination of environmental barriers which restrict the ability of spinal cord injured persons to participate in occupations, and to engage in other activities available to all Americans. A significant number of the members of Paralyzed Veterans of America reside in urban areas and are denied ready access to and effective us of buses and other forms of federally financed public transportation, and are thus precluded from obtaining housing, education and training, employment, and recreation. The programs, services, and financial condition of Paralyzed Veterans of America as an organization are adversely affected by lack of accessible public transportation. The organization suffers direct and concrete injury in the following particulars:

(a) Sports and recreation programs are curtailed, meetings cancelled, and membership lost.

(b) Quadplegic veterans who cannot drive cannot be hired, even though a bus stops directly in front of the organization's accessible offices in Washington, D.C.

(c) Organizational funds are expended for rental of private vehicles for members and other disabled veterans.

Furthermore, the organization is impeded in its performance of the charge of Congress in its charter to pursue claims on behalf of veterans before the Veterans Administration and other governmental agencies by the absence of accessible public transportation.

11. The AMERICAN COALITION OF CITIZENS WITH DISABILITIES, Inc. is a non-profit corporation founded in 1974, whose membership is comprised of individuals and thirty three organizations, including National Association of the Deaf, American Council for the Blind, and National Paraplegia Foundation, which represent two million disabled persons throughout the United States. Both the individual members and the members of its constituent organizations do not have ready access to buses and other forms of federally financed mass transportation. The American Coalition of Citizens with Disabilities has among its purposes the promotion of the civil and human rights of all people with physical or mental disabilities and the elimination of discriminatory practices against disabled persons in education, employment, housing, public accomodations and transportation. Accordingly, the Coalition has a direct and concrete interest in the elimination of transportation barriers which preclude its members from obtaining housing, education, and employment, and enjoying the recreational, cultural, and social activities of their communities. The programs, services and financial condition of the American Coalition are adversely affected by the lack of accessible buses and other forms of mass transportation. The Coalition suffers direct and concrete injury in the following particulars:

(a) Programs and activities are curtailed, meetings cancelled and membership lost.

(b) Volunteers who are disabled and do not drive cannot be recruited for programs. Volunteers who are disabled are essential to the Coalition's survival, it being an organization governed, staffed,and operated by disabled persons themselves.

(c) Organizational funds are expended for rental of vans and other private vehicles to transport officers, members, staff, and volunteers.

12. DISABLED IN ACTION OF BALTIMORE, DISABLED IN ACTION OF NEW YORK, LTD., and DISABLED IN ACTION OF NEW JERSEY, Inc. are associations of physically disabled people and non-disabled people with a total membership of 470 (200, 150, and 120 respectively) persons who reside in urban areas and do not have access to buses or other forms of federally funded mass transportation. The three Disabled in Action organizations share among their purposes the elimination of discriminatory practices against disabled persons in education, employment, housing, public accomodation, and transportation. Accordingly, plaintiff organizations have a direct and concrete interest as organizations in the removal of transportation barriers which preclude its members from obtaining housing, education, and employment, petitioning local, state and federal governments on individual claims and matters affecting the physically disabled, and enjoying the recreational, cultural, and social activities of Baltimore, New York, and New Jersey. The programs, services and financial condition of the three Disabled in Action associations are all abversely affected by lack of accessible buses and other forms of mass transportation. The organizations suffer direct and concrete injury in the following particulars:

(a) Programs are curtailed, meetings cancelled, and membership lost.

(b) Organizational funds are expended for taxi, rental of vehicles and other private transportation for members.

(c) The organizations are impeded in representing organizational interests in city council hearings, state legislative meetings and other public forums.

13. NATIONAL CAPITOL AREA CHAPTER OF THE NATIONAL PARAPLEGIA FOUNDATION, Inc. is a non-profit corporation founded in 1965 with a membership of 155, primarily paraplegic and quadriplegic persons who reside in the metropolitan Washington D.C. area and who do not have ready access to buses and other forms of federally funded mass transportation. It has among its purposes the removal of architectural, housing, and transportation barriers to the handicapped; increasing employment opportunities for the handicapped; and improving and expanding rehabilitation and treatment of persons suffering spinal cord injuries. Accordingly, plaintiff has a direct and concrete interest as an organization in the elimination of transportation barriers which preclude its members from obtaining housing, education, and training, employment, and enjoying the recreational, cultural, and social activities of the Washington D.C. area. The programs, services, and financial condition of the National Capitol Area Chapter of the National Paraplegia Foundation are adversely affected by lack of accessible buses and other forms of federally funded mass transportation and the organization suffers direct and concrete injury in the following particulars:

(a) Educational programs and conferences for public officials, medical and allied health professionals, and general public are curtailed; meetings are cancelled; and membership is lost.

(b) Presentation of expert testimony to federal and local governmental bodies concerning paraplegia is impeded.

14. The NATIONAL CAUCUS ON THE BLACK AGED is an unincorporated association founded in 1970 with a membership of over 1000 elderly persons many of whom reside in urban areas and are dependent on buses and

other forms of federally funded public transportation to meet essential needs. The National Caucus on the Black Aged has among its purposes to identify and remedy discriminatory conditions affecting the social and economic well being of aged and elderly persons, especially blacks and other minorities. Accordingly, the National Caucus on the Black Aged has a direct and concrete interest in the improvement of public transportation services and the elimination of transportation barriers which preclude its members from securing health care and other basic necessities of life, and enjoying the recreational, social, and cultural activities of their communities. The programs, services, and financial condition of the National Caucus on Black Aged are adversely affected by the lack of accessible buses and other forms of federally funded mass transportation and suffers direct and concrete injury in the following particulars:

(a) Programs are curtailed, meetings cancelled, and membership lost.

(b) Organizational funds are expended for taxi fare for volunteers who cannot effectively use public transit.

15. NATIONAL CONGRESS OF ORGANIZATIONS OF THE PHYSICALLY HANDICAPPED, Inc. (COPH) is a national coalition of the physically handicapped and their organizations, founded in 1958. Its forty eight member organizations represent over 80,000 individual members in forty nine states. The disabled persons in the coalition's member-organizations do not have ready access to buses and other forms of federally financed mass transportation. The National Congress of Organizations of the Physically Handicapped has among its purposes promoting employment opportunities, legislation, equal

rights, social activity and rehabilitation of physically handicapped persons. Accordingly, COPH has a direct and concrete interest in the elimination of transportation barriers which preclude its members from obtaining housing, education, training and employment, and enjoying the recreational, cultural, and social activities of their communities. The programs, services, and financial condition of COPH and its member-organizations are adversely affected by the lack of accessible buses and other forms of mass transportation. They suffer direct and concrete injury in the following particulars:

(a) Programs and services are curtailed, meetings cancelled and membership lost.

(b) Organizational funds are expended for taxis, vans and other private transportation for members and staff who are denied the use of public transportation.

(c) Staff and volunteers who are disabled and do not drive cannot be recruited for programs and activities.

(d) Representation of organizational views and interests at various public hearings and meetings is impeded and ability to petition public agencies for redress of grievances is forestalled.

16. NATIONAL COUNCIL OF SENIOR CITIZENS, Inc. is a non-profit corporation founded in 1961 to advance the health and social welfare of elderly persons. It has a membership of 3, 500 clubs representing 3, 500, 000 individuals, the great majority of whom are retired persons. Many members are disabled, or in poor health, live on low fixed incomes in urban areas and rely exclusively on public transportation to reach essential services including medical care. PENNSYLVANIA ASSOCIATION OF OLDER PERSONS (PAOP), Inc., a non-profit corporation founded in 1969 with a statewide membership of 30, 000

elderly persons, is an independent affiliate of the National Council of Senior Citizens. Both the National Council of Senior Citizens and the Pennsylvania Association of Older Persons have a direct and concrete interest in improvement of mass transportation and elimination of transportation barriers which preclude their members from obtaining housing, health care and other services and enjoying the cultural, recreational, and social activities of their communities. The programs, services, and financial condition of the National Council for Senior Citizens and its affiliates and clubs are adversely affected by the lack of accessible buses and other forms of mass transportation by limitation of activities, loss of members and other injuries similar to those suffered by other organizational plaintiffs.

17. UNITED CEREBRAL PALSY ASSOCIATION OF PENNSYLVANIA is a non-profit corporation founded in 1952. It has twenty two affiliates and two service committees, serving over 6,000 persons and representing 10,000 persons with cerebral palsy and developmental disabilities. Persons served by United Cerebral Palsy affiliates do not have ready access to buses or other forms of federally funded public mass transportation and depend upon the affiliates for transportation. United Cerebral Palsy Association has among its purposes to promote the general welfare of persons with cerebral palsy and developmental disabilities, to assist in the establishment of centers in Pennsylvania for the educational, social, and physical betterment of individuals with cerebral palsy and other developmental disabilities, and to eliminate environmental barriers which exclude persons with cerebral palsy from education, employment and other activities available to all Pennsylvanians. The programs, services, and financial condition of United Cerebral Palsy Association of Pennsylvania and its affiliates are adversely affected by lack of

accessible buses and other forms of mass transportation. The Association and its affiliates have devoted a great proportion of their funds and resources to provide transportation for persons who cannot effectively use public transportation to participate in its workshops, clinics, educational and social programs. In recent years the financial burden of purchasing and maintaining vans, other specialized vehicles and otherwise paying for private transportation has threatened the survival of many United Cerebral Palsy affiliates. For some affiliates the cost of private transportation exceeds 23% of program costs. United Cerebral Palsy Association suffers direct and concrete injury from lack of accessible public transportation in the following particulars:

(a) Its programs and services are curtailed. In recent weeks in Philadelphia alone, nine persons lost their jobs at a UCP vocational workshop when funds for transportation ran out. Five other persons cannot come to the workshop because there is no more room in the van.

(b) Its meetings are cancelled and membership lost. Social, recreational activities have been cancelled due to lack of funds to continue to pay taxi fare for participants.

(c) Organizational funds are depleted from expenditures for costly specialized transportation services rather than to provide more and better services to adults and children with cerebral palsy.

Individual Plaintiffs

18. JAY NEUMAN, age 28, has cerebral palsy and hence limited use of his arms and legs. He is, however, fully mobile with an electric wheelchair. He lives at 1460 Devereaux Avenue in the northeast section of Philadelphia, Pennsylvania, within a block of a SEPTA bus stop.

19. Mr. Neuman is denied the use of public transportation because

the design of mass transit vehicles excludes people who otherwise enjoy independent mobility but cannot negotiate steps.

20. Mr. Neuman graduated from Philadelphia Community College and had enrolled as a part-time journalism student at Temple University. The Pennsylvania Bureau of Vocational Rehabilitation paid taxi-cab expenses for Mr. Neuman to commute to and from school, but would not do so once he found employment. Cab-fare from his home to downtown where most journalism jobs are located is $25 roundtrip. Moreover, often Mr. Neuman had to wait as much as two hours for a cab to arrive at his door, and often the cab driver would refuse to accept him as a passenger because the driver did not want the obligation of lifting him into and out of his cab. The prospect of being unable to afford to travel to work or to travel to work reliably caused Mr. Neuman to withdraw from Temple University.

21. Within the constraints of his $110 a month Supplemental Security Income, which will support only one taxi cab trip a week, Mr. Neuman is presently seeking employment. He is preparing, for example, to take a federal civil service examination, but job opportunities are severely limited because of inaccessible transportation.

22. Mr. Neuman is an active member, vice-president-elect, and chairman of the Transportation Committee of Disabled in Action of Pennsylvania, an organization devoted to securing legislative and other redress for disabled citizens. Mr. Neuman represents Disabled in Action on the Citizens Transportation Committee of the Delaware Valley Regional Planning Commission, SEPTA's Advisory Committee on the Elderly and Handicapped, and the Coalition for Equal Public Transportation Services. On June 11, 1976,

The Philadelphia Inquirer published a letter of Mr. Neuman's in the lead position on the editorial page, under the headline "For disabled, SEPTA's always closed." Recently Mr. Neuman had to attend a meeting of the organization at which presentation of testimony for public hearings was to be planned. Mr. Neuman could not afford another taxi cab ride that month so he travelled to the bus stop at Frankford and Pratt Streets where, with the consent of the driver, two passengers offered to lift him on to the No. 5 bus. While lifting him in his wheelchair one of the passengers lost his grip, the electric wheelchair fell to the ground, and Mr. Neuman himself was saved from injury only by the timely assistance of a third passenger.

23. Mr. Neuman is an avid sports fan. The municipal Veterans Stadium, where Philadelphia's major league teams play, is by operation of the applicable codes prohibiting barriers in public buildings, fully accessible. But without accessible transportation, Mr. Neuman cannot get to the stadium nor can he otherwise freely visit with friends and associates.

24. Availability of the low floor, wide door, ramped TRANSBUS to Mr. Neuman would make possible economic independence, the choice of rewarding work, the opportunity more effectively to participate in and to influence public decision, and the enjoyment of recreational and social opportunities.

25. AL MARCUS, age 58, has severe rheumatoid arthritis and osteoarthritis with the consequence, among others, that his hip joints are locked. He is, however, fully mobile with crutches. Mr. Marcus resides at 1319 Magee Avenue, Northeast Philadelphia, Pennsylvania where the S-26 bus goes right past his front door.

26. Mr. Marcus is excluded from use of public transportation because he cannot negotiate the level change in SEPTA buses.

27. Prior to developing arthritis 35 years ago, Mr. Marcus was an automobile mechanic. When his disability prevented his continued employment as a mechanic he learned electronics. Inaccessible transportation prevented employment outside his home, and from 1955 to 1965 he worked as an electrical wireman on a sub-contract basis. When the contract phased out he was obliged to take odd jobs which could be performed at his home. These jobs offer low and undependable income.

28. Mr. Marcus must rely on his wife for transportation. Mrs. Marcus works during the day in order to provide family income and as a result Mr. Marcus is confined to his home until she returns.

29. Accessible bus transportation would enable Mr. Marcus to increase his mobility and seek steady employment and be independently mobile to visit friends, attend recreational activities and go shopping. The only obstacle between Mr. Marcus and these ordinary activities is the absence of accessible public transportation.

30. When the TRANSBUS prototype was demonstrated in Philadelphia on December 16, 1974 Mr. Marcus boarded a bus for the first time in over 30 years and was given new hope of living a more productive life.

31. Availability of the low floor, wide door, ramped TRANSBUS to Mr. Marcus would make possible employment in an occupation he is trained and qualified to perform and the opportunity to enjoy the recreational, social and cultural activities of the city.

32. JOYCE BROCK, age 25, has cerebral palsy, affecting the use of her arms and legs. She maneuvers with crutches or wheelchair depending upon the distance she must travel. Ms. Brock cannot climb steps, nor is she able to drive a car because of poor eyesight. Ms. Brock resides at 5466 Baltimore Avenue, Philadelphia, Pennsylvania, which is within two blocks of public transportation.

33. Ms. Brock graduated from Pennsylvania State University in 1974 and enrolled in the University of Pennsylvania School of Social Work. Inaccessibility of public transportation to travel to school and fieldwork placement necessitated withdrawal from graduate school.

34. After long and intensive search for employment, the only job Ms. Brock was able to obtain was temporary, part-time employment as a tutor at Philadelphia Community College. Her cab fares to her job amounted to $100 a month, a prohibitive amount given a monthly salary of $162. Ms. Brock is currently unemployed and subsists on a $135 a month Supplementary Security Income payment out of which she pays for private transportation to twice weekly physical therapy treatments.

35. Although she has been able to locate numerous employment opportunities, lack of accessible transportation prevents her form interviewing for positions and accepting permanent employment.

36. Ms. Brock is denied ready access to and use of public transportation because mass transit vehicles exclude persons who enjoy independent mobility but cannot negotiate steps.

37. The result of this exclusion is to deny Ms. Brock opportunity for

employment, economic independence, and the varied opportunities of cultural and other recreational resources available to and enjoyed by her friends and neighbors who are able to travel on public transportation.

38. Availability of the TRANSBUS vehicle to Ms. Brock would make possible opportunities for employment and enjoyment of recreational and social opportunities available to others.

39. DEREK BOWEN, age 25, is a quadriplegic as a result of an injury received playing football and has limited use of his arms and hands. He is mobile with an electric wheelchair. He resides at 313 West Manheim Street, Philadelphia, Pennsylvania, which is within one block of a bus stop.

40. From 1970 to 1973 Mr. Bowen attended Philadelphia Community College. In 1975 he graduated from Temple University with a bachelor's degree in Therapeutic Recreation. Mr. Bowen does not drive . In order to attend both schools, he bought and maintained a van specially equipped with a portable ramp and relied on his father and brothers to transport him from home to his classes each day.

41. Currently, Mr. Bowen is employed part-time at Carousel House, a city recreation center for physically and mentally disabled persons. Carousel House is located a considerable distance from his home, but within one block of a SEPTA bus stop. Mr. Bowen is driven to work in his van at a cost three times that for using public transportation.

42. Mr. Bowen feels trapped in his own home. He is a sports fan but cannot attend events at the fully accessible Veterans Stadium and Spectrum without depending upon others for transport. He would also like to frequent the restaurants

and the stores at the barrier free Cedarbrook Mall which is near his home and is serviced by public bus transportation.

43. Mr. Bowen is denied ready access to and use of public transportation because the design of mass transit vehicles exclude persons who otherwise enjoy independent mobility but cannot negoitate steps. The result of this exclusion is to cause Mr. Bowen excessive expense for transportation, excessive dependence on others for transportation, and denial of opportunities for independent enjoyment of the cultural and other recreational resources available to and enjoyed by others.

44. Availability of the TRANSBUS vehicle to Mr. Bowen would make possible personal independence and would allow him to be his own man.

45. HARRY BURNS, age 33, suffered brain damage at birth causing spasticity in his right leg and arm, and later developed multiple sclerosis. Mr. Burns walks with a cane. He resides with his wife at the Mayfair House Apartments at Lincoln Drive and Johnson Street in Philadelphia, Pennsylvania, which is located within 1 block of public transportation.

46. Mr. Burns is employed as a psychologist at Hahnemann Mental Health Center in Center City Philadelphia. He is also attending classes for his Ph.D. in Psychology at Temple University. Because of transportation barriers, Mr. Burns' wife drives him to work everyday before she goes to work. Mr. Burns' must go to work an hour before his colleagues and must be picked up an hour earlier. This arrangement frequently results in problems scheduling appointments.

47. Mr. Burns must use public transportation in connection with his employment. He does so only with extreme difficulty because he cannot readily negotiate the steps onto and off of buses. Climbing steps causes excessive strain on Mr. Burns' muscles creating aches in his joints and his back causing him to significantly limit his use of public transportation.

48. At times Mr. Burns finds it impossible to board some of the high sprung SEPTA buses and on a number of occasions has been exposed to injury when boarding or riding buses. The most tragic experience took place some years ago on a winter day in Pittsburgh, when Mr. Burns attempting to climb the first high step of a bus which did not pull up to the curb, fell and suffered a fracture to his left shoulder. Because Mr. Burns requires full use of his left arm to propel himself by use of his cane, the fracture rendered him immobile for three months.

49. Mr. Burns is not only denied the opportunity to maintain a normal work schedule but also must expose himself to daily hazards because mass transit vehicles impose serious access barriers to handicapped persons otherwise independently mobile.

50. Availability of TRANSBUS vehicles would enable Mr. Burns to maintain a normal work schedule independent of his wife's employment demands and eliminate the hazards resulting from the steps in current mass transit vehicles.

51. EMIL SABATINI is seventy four years old. He has a heart condition induced by a coronary attack. His doctor advised that he avoid steps that are high, minimize step climbing in general, and climb slowly when he does use steps. Mr. Sabatini lives at 909 Wynnewood Road, in west Philadelphia, Pennsylvania, within two blocks from a SEPTA bus route.

52. Since his retirement as a steel worker Mr. Sabatini has sought to maintain as active a life as possible and not to sit idly at home. He does voluntary work with the Action Alliance of Senior Citizens and goes by SEPTA to Garden State Racetrack in Cherry Hill, New Jersey. Mr. Sabatini does not own a car and can only travel by public transportation.

53. The current standard 34 inch floor bus with one 14 inch step and two 10 inch steps inhibits Mr. Sabatini's use of public transit and his movement about town and presents significant hazards to his health. The availability of a low floor, wide door, ramped TRANSBUS would enable him to get around more often and without risk to his health and to otherwise live a freer and fuller life.

54. SONIA STEIN is seventy one years old. She has arthritis which causes her to have difficulty negotiating high steps. She lives at 1303 Hellerman Street in the near northeast section of Philadelphia, Pennsylvania a few blocks away from a SEPTA bus stop.

55. On Wednesday, June 9, 1976, Mrs. Stein set out to visit her husband in the hospital at Albert Einstein Medical Center, Northern Division. She went to the bus stop at Magee and Frontenac Streets carrying some fruit for her husband. The bus stopped, but as soon as she got her feet up on the first step her knees seemed to lock and she could not move. The bus driver said, "Lady, hurry up. People have to get off." With the assistance of other passengers she made it to the seat nearest the door and with their continued assistance she got off the bus at 13th and Tabor Road, a block from the Hospital, in pain and tears. Mrs. Stein was cared for in the emergency room at the hospital, did not get to visit her husband, and returned home by taxi cab which cost her $7.00.

56. Mrs. Stein has never driven a car; her husband cannot drive anymore because he is blind, having only peripheral vision. She is thus entirely dependent upon public transportation.

57. The availability of a low floor, wide door, ramped bus would enable Mrs. Stein to travel public transit comfortably, safely, and without embarassment.

Defendants

58. WILLIAM T. COLEMAN, JR., is the Secretary of the United States Department of Transportation (hereinafter referred to as "U.S. DOT"). In his capacity as Secretary, he is responsible for the administration of the several capital grant and planning programs, and research, development, and demonstration projects under the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1601 et seq., and the Federal-Aid Highway Acts, 23 U.S.C. § 101, et seq., which provide financial assistance to state and local public agencies for the development of public mass transportation services and the acquisition, construction, and improvement of mass transportation vehicles and facilities.

59. ROBERT E. PATRICELLI is the Administrator of the Urban Mass Transportation Administration (hereinafter referred to as "UMTA"), an agency of the United States Department of Transportation. In his capacity as Administrator, he is responsible for the administration of research, development and demonstration projects and the regulation of capital grant and planning programs for public mass transportation under the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1601 et seq., and the Federal-Aid Highway

Acts, 23 U.S.C. § 101, et seq., including the processing and approval of applications for federal financial assistance to acquire, construct, and improve transit vehicles and facilities. As such, he is empowered to establish requirements for state and local agencies in the planning and implementation of public mass transportation services, and to issue standards for transit equipment purchased with federal assistance.

60. NORBERT T. TIEMANN is the Administrator of the Federal Highway Administration (hereinafter referred to as "FHA"), an agency of the United States Department of Transportation. In his capacity as Administrator, he is responsible for the regulation and administration of capital grant and planning programs providing federal financial assistance to state and local agencies for public mass transportation under the Federal-Aid Highway Acts, 23 U.S.C. § 101, et seq. As such, he is empowered to establish requirements for state and local agencies in the planning and implementation of public mass transportation services, and to issue standards for transit equipment purchased with federal financial assistance.

V. Class Action Allegations

61. Plaintiffs bring this action pursuant to Rules 23 (b)(1) and (b)(2) of the Federal Rules of Civil Procedure on behalf of the class of all mobile disabled and elderly persons who are denied ready access to and effective use of federally financed public mass transportation by reason of physical and structural barriers in the design of transit equipment which render such persons transportation handicapped, and who would be able to effectively utilize public mass transportation if the functional capacities of mobile disabled and elderly persons were included as a basis for standards for the design and

performance of buses, other transit vehicles and facilities.

62. Twenty million Americans are aged 65 or over, and over thirteen million Americans are disabled. With increased longevity, improved rehabilitation methods, the increased availability of medical care, and the pattern of post-war birth rates, the numbers of mobile disabled and elderly persons are expected to increase dramatically in the years ahead.

63. The majority of these citizens reside in urban areas within two blocks of a bus or other mode of federally funded public mass transportation; live on low, fixed incomes; do not operate an automobile; and are dependent on public mass transportation to work, to shop, to obtain medical services, and to participate in cultural, recreational, and social activities.

64. The class of mobile disabled and elderly persons consists of persons whose functional capacities for mobility, flexibility, coordination, communication, and perception are affected by the aging process, illness, injury, congential dysfunction, or other temporary or permanent conditions including: arthritis, heart condition, cerebral palsy, blindness, paraplegia, quadripleqia and other spinal cord injuries, cystic fibrosis, multiple schlerosis, muscular dystrophy, muscolo-skeletal disorders, respiratory or pulmonary dysfunction, developmental disabilities, and neurological disorders including stroke and epilepsy.

65. The most formidable barriers imposed on the class of mobile disabled and elderly persons in the use of federally financed public mass transportation involve designs for entry to and exit from buses and other transit

vehicles and facilities that require a change in level. For instance, current design buses have a floor height above the road of about thirty-four (34) inches, requiring passengers to negotiate a first step into the bus of fourteen (14) inches plus climb two interior steps having ten (10) inch risers. Similarly, in order to gain access to other transit facilities which operate at grade or which require passage through a station or terminal, riders must climb steep steps or long stairways. Other barriers which handicap the class of mobile disabled and elderly in the use of public transportation include narrow entranceways and passageways, inadequate audio and visual information systems, and excessive vehicle vibration and jerkiness.

66. Of the estimated population of 26.5 million mobile disabled and elderly persons in the United States, approximately 13.3 million people, or 50% of the population, cannot climb or use currently designed stairways or move through entranceways, or experience substantial difficulty in doing so. U.S. DOT, UMTA, Transportation Systems Center, The Handicapped and Elderly Market for Urban Mass Transit 9, 14 (October 1973).

67. Denial of accessible public mass transportation to mobile disabled and elderly persons results in the following harms to the members of the class:

(a) deprivation of travel at the same fixed cost, to the same locations, and for the same purposes as is afforded to other members of the public;

(b) confinement to segregated, specialized transportation facilities and to private carriers which are prohibitively expensive and

which are limited in scope of service as compared to public mass transportation;

(c) increased burden in obtaining employment and education, and meeting other essential needs, and consequent dependence on public subsidies;

(d) loss of opportunities to take part in cultural and social and community activities, yielding isolation and despair; and

(e) loss of opportunities to associate, assemble, and to petition government for redress of grievances.

68. The impact of denial of accessible public mass transportation on members of the class in terms of employment alone is significant. Although 86% of the disabled people of labor force age (17-65) have the ability to work, the labor force participation rate for disabled adults is only 44%, compared to 65% for the general population. U.S. DOT, Transportation Systems Center, An Inflationary Impact Statement of the Urban Mass Transportation Administration's Proposed Elderly and Handicapped Regulation 40-43 (March 4, 1976) (hereinafter referred to as "Impact Statement II"). For an estimated 13% of the disabled population inaccessible public transportation is the major factor in their unemployment. ABT Associates, Transportation Needs of the Handicapped, 23-24 (U.S. DOT, Office of Economics and Systems Analysis, Contract No. T8-304, August 1969).

69. The employment of disabled adults resulting from accessible public mass transportation would significantly increase their standard of living and produce a substantial net economic benefit. The average annual net income for employed disabled adults is $8,000 (1976 price levels), more than double the estimated average combined payment of $3,000 per year in federal and state disability and welfare subsidies received by the

unemployed disabled individual. U.S. DOT, Impact Statement II 52-55. In addition, the reduction of governmental income support payments and generation of federal and state income taxes resulting from the disabled adults finding jobs would create a net economic benefit of $300 million to $500 million for every 100,000 disabled individuals who join the ranks of the employed. U.S. DOT, Transportation System Center, An Inflationary Impact Statement of a Program of Transportation Services to Elderly and Handicapped Persons, 82-83 (January 16, 1976) (hereinafter referred to as "Impact Statement I"); Impact Statement II, 56-57.

70. The class is so numerous that joinder of all the members is impractical. There are substantial questions of law and fact common to the entire class. The claims of the representative plaintiffs are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class. The defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

71. The questions of law and fact common to the entire class and to the claims of the representative plaintiffs include but are not limited to:

(a) Whether defendants have violated their duty under the Urban Mass Transportation and Federal-Aid Highway Acts, 49 U.S.C. § § 1602 (a)(1)(B), 1612 (a); 23 U.S.C. 142 nt., to assure accessible public mass transportation which mobile disabled and elderly persons can effectively utilize by failing to require that federal financial assistance be used only to purchase the low floor, wide door, ramped TRANSBUS;

(b) Whether defendants' failure to require that federal financial assistance be used to purchase only the low floor, wide door, ramped, TRANSBUS, and otherwise to assure the availability of public mass transportation which elderly and handicapped persons can effectively utilize, excludes mobile disabled and elderly persons from participation in, denies them the benefits of, and subjects them to discrimination under programs and activities receiving federal public mass transportation assistance in violation of the Rehabilitation Act of 1973, 28 U.S.C. § 794 and Executive Order 11914, 41 Fed. Reg. 17871 (April 29, 1976);

(c) Whether by failing to require that federal financial assistance be used only to purchase the improved, low floor, wide door, ramped TRANSBUS, defendants have violated and continue to violate their duty to improve public mass transportation under the Urban Mass Transportation and Federal-Aid Highway Acts, 49 U.S.C. §§ 1601 et seq. and 23 U.S.C. §§ 103 (e)(4), 134(a), and 142(a) and (c);

(d) Whether having developed at a cost of $27 million, a bus which satisfies the Congressional mandates to assure accessible public mass transportation and to improve public mass transportation, defendants have acted arbitrarily and capriciously, have abused their discretion, and have unlawfully withheld and unreasonably delayed the implementation of the full statutory rights of mobile disabled and elderly persons to public mass transportation which they can effectively utilize, by failing to require that federal financial assistance be used only to purchase the low floor, wide door, ramped TRANSBUS; and

(e) Whether defendants by failing to require that federal financial assistance be used only to purchase the low floor, wide door, ramped TRANSBUS, have violated the rights of mobile disabled and elderly persons to travel, to freely associate, to petition the government for redress of grievances, and not to be subjected to invidious and arbitrary classifications and exclusion from benefits extended to all other persons by governmental action as guaranteed by the Commerce Clause, the Privileges and Immunities Clause, and the First and Fifth Amendments of the Constitution to the United States.

VI. Statement of the Claim

FEDERAL PUBLIC MASS TRANSPORTATION ASSISTANCE PROGRAMS

72. In 1964, the Congress enacted the first permanent financial assistance program for public transportation. Urban Mass Transportation Act of 1964, 49 U.S.C. § 1601, et seq. It was Congress' finding that public transit systems in major cities across the country were failing, ridership was decreasing, and the industry did not have sufficient revenues to finance necessary improvements. The transit industry required federal intervention and support if it was to attract riders from other modes of transportation and to contribute to the welfare and vitality of urban areas. 49 U.S.C. § 1601.

73. The Urban Mass Transportation Act established a capital grant program to assist public transit authorities in the purchase and financing of new buses and other equipment and facilities, 49 U.S.C. § 1602, and a federal research and development program to develop technology for improving public transportation services, 49 U.S.C. § 1605. The purpose was that research and development be conducted so that the capital assistance program would support the purchase of improved equipment.

74. Congress' commitment to the maintenance and improvement of public transportation led in 1970 to the expansion of the spending authorization from $150 million annually to over a billion dollars annually under the Urban Mass Transportation Assistance Act of 1970, Pub. L. 91-453; to further expansion of this spending authorization to over $1 billion annually under the Federal-Aid Highway Act of 1973, Pub. L. 93-87, The National Mass Transportation Assistance Act of 1974, Pub. L. 93-504; and to the creation of additional federal mass transit assistance programs, including programs expending federal highway funds for buses and other mass transit equipment and

facilities, 23 U.S.C. §§ 103 (e)(4), 142 (a)(2) and (c), and a formula grant program for capital and operating expenses, 49 U.S.C. § 1604.

75. These federal public transportation assistance programs currently finance 80% of the costs for the acquisition, construction, and improvement of transit equipment operated by public transit agencies, except for one provision of the Federal-Aid Highway Act of 1973, 23 U.S.C. § 142(a)(2) and (c), which finances 70% of the costs. Defendants have made grants totaling nearly $5 billion to public transit operating agencies under the federal public mass transportation assistance programs and are authorized to expend an additional $9 billion for public transportation through 1981.

76. The principal mode of public transportation supported by these federal financial assistance programs is bus service. There are currently 50,000 transit buses in revenue operation. Buses comprise 80% of the rolling stock used in providing public transportation. Buses transport approximately 75% of the people who use public transportation. American Public Transit Association, Transit Fact Book, Tables 6 and 12 (1975). From 42% to 52% of the people living in urban areas, exclusive of suburbs, have public transportation available within two blocks of their residence. U.S. DOT, Impact Statement I, II-27.

77. Federal public mass transportation assistance programs have financed the acquisition of nearly 20,000 transit buses, replacing approximately 40% of the bus fleets used in providing public transportation. Defendants will approve federal financial assistance for the purchase of 4,000 to 7,000 full-size transit buses by public transit authorities in each of the next several years. U.S. DOT, Impact Statement II, 15.

THE DUTIES OF THE DEFENDANTS

The Mandate to Assure Accessibility

78. For six years, defendants have been under a continuing and oft repeated mandate from the Congress of the United States to assure accessible mass transportation which all mobile disabled and elderly people can effectively utilize.

79. In the Urban Mass Transportation Assistance Act of 1970, Pub. L. 91-453, 84 Stat. 962 (October 15, 1970), the first multi-billion dollar federal mass transportation assistance act authorizing defendants to make over $3.1 billion in grants and loans to States and localities for the acquisition, construction, and improvement of mass transportation equipment and facilities, the Congress declared and directed, in a section entitled "Planning and Design of Mass Transportation Facilities to Meet Special Needs of the Elderly and Handicapped", that:

i. "elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services";

ii. "special efforts shall be made in the planning and design of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured"; and

iii. "all Federal programs offering assistance in the field of mass transportation (including the programs under this chapter) should contain provisions implementing this policy." 49 U.S.C; Section 1612(a).

80. In the Federal-Aid Highway Act of 1973, Pub. L. 93-87, 87 Stat. 255 (August 13, 1973), whereby defendants were first authorized to make grants

to States and localities out of the Highway Trust Fund for the acquisition, construction, and improvement of mass transportation equipment and facilities, and wherein the spending authorization under the Urban Mass Transportation Act was increased by another $3 billion, the Congress directed, in a section entitled "Bus and Other Project Standards", that:

> "The Secretary of Transportation shall assure that projects receiving Federal financial assistance under [the Federal-Aid Highway Act of 1973] shall be planned and designed so that mass transportation facilities and services can effectively be utilized by elderly and handicapped persons who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability are unable without special efforts or special planning or design to utilize such facilities and services as effectively as persons not so affected." Section 165(b), Pub. L. 93-87.

81. In the Department of Transportation and Related Agencies Appropriations Act of 1975, Pub. L. 93-391, 88 Stat. 789 (August 28, 1974), the Congress directed that:

> "None of the funds provided under this Act shall be available for the purchase of passenger rail or subway cars, for the purchase of motor buses or for the construction of related facilities unless such cars, buses and facilities are designed to meet the mass transportation needs of the elderly and the handicapped." Section 315, Pub. L. 93-391.

82. In the National Mass Transportation Assistance Act of 1974, Pub. L. 93-503, 88 Stat. 1566 (November 26, 1974), authorizing defendants to make an additional $8 billion in federal grants and loans to States and localities for mass transportation programs and projects, the Congress amended the Urban Mass Transportation Act to direct:

> "nor shall any grant or loan funds be used to support

procurements utilizing exclusionary or discriminatory specifications." 49 U.S.C. § 1602 (a)(1)(B).

83. In the Federal-Aid Highway Act Amendments of 1974, Pub. L. 94-643, 88 Stat. 2281 (January 4, 1975), in a section entitled "Transportation for Elderly and Handicapped Persons", the Congress reiterated the requirements of the Urban Mass Transportation Assistance Act of 1970 and of the Federal-Aid Highway Act of 1973 and again declared and directed that:

i. "elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services";

ii. "special efforts shall be made in the planning, design, construction, and operation of mass transportation facilities and services so that the availability of mass transportation that they can effectively utilize will be assured";

iii. "all Federal programs offering assistance for mass transportation [including programs under the Federal-Aid Highway Act of 1973] effectively implement this policy";

iv. "[defendants] shall require that projects receiving Federal financial assistance under [the Federal-Aid Highway Act of 1973] shall be planned, designed, constructed, and operated to allow effective utilization by elderly and handicapped persons who, by reason of illness, injury, age, congential malfunction, or other permanent or temporary incapacity or disability, including those who are nonambulatory wheelchair-bound and those with semiambulatory capabilities, are unable without special facilities or special planning or design to utilize such facilities and services effectively"; and

v. "[defendants] shall not approve any program or project to which this section applies which does not comply with the provisions of this subsection requiring access to public mass transportation facilities, equipment, and services for elderly or handicapped persons." 23 U.S.C. Section 142 note.

84. In the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 357

(September 26, 1973) in a section entitled "Nondiscrimination Under Federal Grants", in exactly the language of Title VI of the Civil Rights Act of 1964, the Congress directed:

> "No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794.

85. As more fully set out below in paragraphs 122 through 142, defendants have acted wrongfully and illegally in failing to act to carry out the repeated Congressional mandate to assure accessible mass transportation which all mobile elderly and handicapped persons can effectively utilize.

The Mandate to Improve Mass Transportation

86. The pervasive substantive duty imposed by the Congress upon defendants in the Urban Mass Transportation Act, and in the mass transit provisions of the Federal-Aid Highway Act, is the duty to improve urban mass transportation. The duty to improve mass transportation is articulated in the purpose clauses of the Acts ("to assist in the development of improved mass transportation facilities, equipment, techniques, and methods . . . ", 49 U.S.C. § 1601 (b)(1); "to encourage the development, improvement and use of public mass transportation systems operating motor vehicles", 23 U.S.C. § 142(a)); and again in each of the provisions of the Acts governing the granting of federal financial assistance (e.g., "to make grants [for] the acquisition, construction, reconstruction and improvement of facilities and equipment", 49 U.S.C. § 1602 (a)(1)), the administration of planning requirements (e.g., "to make grants for . . .

activities preliminary and in preparation for the construction, acquisition, or improved operation of mass transportation systems, facilities, and equipment", 49 U.S.C. § 1607(a)), and the promulgation of regulations ("The Secretary shall issue such regulations as he deems necessary, including requirements for improving the efficiency of transit services", 49 U.S.C. § 1604 (d)(2)).

87. In addition, the Congress, in the Urban Mass Transportation Act, 49 U.S.C. § 1605, authorized the Secretary:

> "to undertake research, development and demonstration projects in all phases of urban mass transportation (including the development, testing and demonstration of new facilities, equipment, techniques, and methods) which he determines will assist in . . . the improvement of mass transportation service . . . ."

88. Defendants undertook, and have successfully completed, a nine year $27 million research and development project (called the TRANSBUS Project and described more fully below at paragraphs 90 through 111), to develop a new generation of buses which would increase bus ridership and revenues, which would improve safety, comfort, convenience, environmental acceptability, and maintenance, and which would eliminate transportation barriers to the mobile disabled and elderly.

89. As more fully set out below in paragraphs 122 through 142 , defendants have acted wrongfully and illegally in failing to require that federal public mass transportation assistance be spent only to purchase the improved TRANSBUS.

THE TECHNOLOGICAL POSSIBILITIES

90. Although defendants Secretary of Transportation and Urban Mass Transportation Administrator during the period November 1974 through March 1976, defended ten lawsuits[1] which sought to enjoin local transit operators to purchase full-size accessible buses, on the ground that such vehicles were technologically infeasible and were not produced by any manufacturer in the United States, in April 1976 defendant Patricelli admitted to Congress and to the public that as a consequence of the TRANSBUS research and development project a new generation of full-size buses can be produced which incorporates technology assuring access to mobile disabled and elderly persons.

91. On April 5, 1976, before the Subcommittee on the Handicapped of the Senate Labor and Public Welfare Committee, at oversight hearings on the implementation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, defendant Patricelli acknowledged that " . . . the

TRANSBUS program has produced prototypes of wheelchair-accessible full-size buses which have a variety of design improvements of particular benefit to handicapped individuals", including a low floor, wide door, and a ramp. Defendants Patricelli further acknowledged that " . . . the new bus designs that are about to come on the market could offer that technology".

92. On April 14, 1976, in a notice of public hearing on "Policies Regarding Urban Transit Bus Design and Performance Specifications", 41 Fed. Reg. 15735, defendant Patricelli again acknowledged:

> "The UMTA TRANSBUS research and development program, undertaken with the participation of bus operators and suppliers, has produced a number of design and performance improvements which could be incorporated into specifications for ordering full-size (35-40 foot) transit buses."

93. Simultaneously with the April 14, 1976 announcement, defendants made publicly available the technical specifications for TRANSBUS vehicles (U.S. DOT, UMTA, Transbus Procurement Requirements, Part II, Technical Specifications (April 1974) ...sed the final reports ...MTA, Analysis of Low ...OT, UMTA, Architectural ...March 1976); (3) Simpson & ...ram, Final Report ...n Applied Research and ...es Transit Systems (U.S. ...).

...n by defendants in 1967 ... technology and design

within the existing state of the art. An intensive panel study by the National Academy of Engineering, in which all major elements of the transit industry participated, documented the characteristics needed for future improved buses and articulated design, development and testing strategies. Defendants have expended $27 million on the project to achieve the following specific objectives:

i. increase bus ridership for reduced urban congestion and increase revenue to transit operators;

ii. improve safety to passengers, pedestrians and vehicles;

iii. improve environmental acceptability;

iv. improve maintenance and servicing; and

v. eliminate transportation barriers to the mobile disabled and elderly and young.

Over the course of nine years, the TRANSBUS project designed, developed, tested and evaluated nine prototype buses. Three prototype TRANSBUS vehicles were produced by each of the American bus manufacturers, American General Corporation, General Motors Corporation, and Rohr Industries; and underwent extensive engineering tests by the bus manufacturers and independent automotive authorities, including performance tests, endurance tests, energy absorbing bumper component tests, and seat component crash tests. The TRANSBUS vehicles were also placed in regular service operation in four cities (Kansas City, Miami, New York, and Seattle); publicly demonstrated across the country; and subjected to development, performance and acceptance tests.

95. The final reports on the TRANSBUS research and development

project released in April 1976, reveal that the project has been successful on all counts; it has achieved its technological objectives; and specifications for an improved, accessible, attractive, and cost-effective bus have been developed which can now be put into production.

96. The TRANSBUS project has established that it is technologically feasible to produce a bus with:

(a) a low floor (17 to 22 inches) and a suspension system that reduces the floor height of the bus to seven (7) inches above the curb;

(b) a single seven (7) inch step in the bus;

(c) a ramp which can be rapidly extended from the bus to provide "level" boarding;

(d) a forty-four (44) inch wide door; and

(e) open space in the vestibule and front areas of the bus to provide maneuvering and parking room for passengers in wheelchairs.

These features are described in U.S. DOT, UMTA, Provisions for the Elderly and Handicapped in the Design of Transbus, (1973), attached hereto as Exhibit 1 and incorporated herein.

97. As the Final Reports on the TRANSBUS project show, the low floor, wide door, ramped TRANSBUS makes technologically possible very significant improvements in mass transit, as follows.

Boarding and Alighting

98. All persons including mobile disabled and elderly persons who cannot use the current standard bus readily or at all, can board, ride and alight the TRANSBUS with ease, safety, comfort, and convenience, to wit:

(a) "The low floor and wide front door on Transbus dramatically improve boarding and alighting. This has been quantified in extensive human factors testing with elderly participants. The average speed of boarding and alighting for these individuals, ages 55 to 84, was 50 percent faster on Transbus than on a standard current production bus, used as a testing baseline. Transbus survey participants indicated that the ease of getting on and off a Transbus was the particular feature that they valued most in comparison to current buses." Booz-Allen Applied Research and Simpson & Curtin, Impact of Transbus on United States Transit Systems 31 (U.S. DOT, UMTA, TRANSBUS Document TR 75-002) (undated but released April 14, 1976) (hereinafter cited as "Impact Report").

(b) "Boarding time: halved from 3 to 1.5 seconds per passenger for expeditious ingress and egress by increasing door width from 27 to 40 inches and reducing the height of the bus floor from 28 inches to only 11 inches above curb height." A Comparison of Transbus with Current Transit Buses, prepared by Booz-Allen Applied Research and published as Appendix I in Stanford Research Institute, Transbus Report 32 (U.S. Department of Commerce, Experimental Technologies Incentives Program, March 1976).

(c) Interior design of the Transbus is based upon extensive human factors testing and incorporates improvements designed for the elderly in seats, assists, padding and lighting. Impact Report 28, Table 10.

(d) "Providing access to individuals in a wheelchair currently requires complex lift designs which restricts the use of the entrance by other passengers . . . . While TRANSBUS can be built with a lift, the low floor design also makes a simple ramp . . . feasible. A ramp can be used by all passengers. It can be rapidly deployed. The Transbus, equipped with a ramp, does not inhibit ambulatory passengers." Impact Report 28.

(e) "A ramp(in contrast to a lift) entry to transit buses appears to be desirable for wheelchair access. There are several reasons: it can be deployed much faster; wheelchairs can board much faster; once deployed able bodied passengers can use it to advantage; it is better suited to emergency exit. To design a ramp for a high floor bus does not appear feasible whereas it is feasible for a low-floor bus." U.S. DOT, UMTA, Architectural (Size) Steps for Transit Buses, Executive Summary (March 1976).

(f) "Improvement for the elderly will be significant only on the low floor Transbus design." Impact Report 57.

(g) "[F]eatures for the handicapped . . . can only be achieved on a low floor, wide door Transbus at a reasonable additional cost and without introducing significant operational problems." Impact Report 57.

99. In these findings, the TRANSBUS project confirms the expectations of the 1967-68 panel study of the National Academy of Engineering that "[a] lower floor level may be the most desirable means for improving ease of entrance and exit" and fulfills the Academy's injunction that "[a] bus should not only be easy and comfortable to use but should be one that can be used readily and without embarrassment by the physically and economically handicapped, the aged, the pregnant woman, the businessman, and the young adult." National Academy of Engineering, Design and Performance Criteria for Improved Nonrail Urban Mass Transit Vehicles and Related Urban Transportation Systems 55, 32 (U.S. Department of Housing and Urban Development, Contract No. 75, May 1968).

Quality of Ride

100. The comfort of the ride is substantially improved by TRANSBUS for all passengers including the mobile disabled and elderly:

> "[R]ide quality as perceived by the passenger is affected by all aspects of the interior environment, such as temperature, drafts, noise, lighting, as well as vibration. In engineering terms, ride quality is defined as a function of the accelerations felt by the passenger, both vertical and lateral. In extensive tests, the ride quality of Transbus has been shown to approach that of passenger cars. This improvement in ride quality results from the low center of gravity, the independent front suspension

and the tandem independent rear suspension . . . . [Transbus is] markedly superior to the current production in these [above mentioned] areas." Impact Report 30-31.

Noise

101. "Interior noise on Transbus will be 3 to 4 Dba below . . . current buses for equivalent seat positions and vehicle operating modes. Exterior noise will be reduced by about 4 Dba." Impact Report 29. This is a noise level reduction of approximately 70%. Simpson & Curtin, Transbus Public Testing and Evaluation Program: Final Report II-2, Table 2 (January 1976).

Safety

102. Passenger, traffic and pedestrian accidents, and insurance costs as well, will be substantially reduced by TRANSBUS:

(a) "Boarding/alighting accidents [will be] reduced by 20 percent due to low floor and assists built into doors". Impact Report 24.

(b) "Door-related accidents [will be] reduced by 20 percent . . . . " Impact Report 24.

(c) "On-board accident claims [will be] reduced 35 percent." Impact Report 24.

(d) "[Exterior] features . . . should reduce claims costs for traffic accidents by about 25 percent." Impact Report 23-24.

(e) "[P]edestrian accident costs are estimated to fall by 15 percent for Transbus." Impact Report 26.

(f) "Total safety and insurance costs could drop by as much as 20 percent with the greatest reduction in passenger accidents being achieved on the Transbus." Impact Report 20.

Trip-Time

103. The trip time reductions of the TRANSBUS will support improved schedule adherence and service dependability and increased driver productivity:

(a) "[T]ransbus show[s] significant increases in trip speed over the current bus. Transbus is [still] faster overall, because it possesses a wide front door and a low floor to reduce time at stops . . . . Transbus with its low floor and wide doors again is faster in . . . stop-and-go, low-speed service." Impact Report 13.

(b) "The potential for trip time reductions of up to 10 percent exists, depending on the type of route. If current routes are not rescheduled, this should result in an immediate improvement in schedule adherence. Improved bus characteristics offer the potential for increased driver productivity and/or route coverage." Impact Report 55.

(c) "Since Transbus offers superior operating speed for express/suburban service, it has the intrinsic ability to capture even larger segments of the choice market, because trip time savings of 10 percent on long express runs are perceivable by some patrons." Impact Report 17.

(d) "Improved schedule adherence . . . will be the result of the introduction of Transbus in all sizes of systems. [S]chedule adherence is the most difficult to achieve in large systems, particularly in arterial service. Increased trip speed may be used to improve dependability for tightly scheduled runs by holding running times constant, or by reducing running times to account for better speed and reallocating these minutes to recovery time, which serves as a buffer for schedule distrubances. Dependability is a prime attribute affecting the modal choice decision." Impact Report 15.

(e) "Efficient rescheduling, taking full advantage of Transbus [trip speed and entry and exit time] characteristics, could lead to a 4 to 5 percent increase in revenue miles-per-driver's-wage-dollar. Because rescheduling to improve driver productivity and to

reduce bus requirements can only be achieved under certain conditions (for instance, on a route with a 5-minute headway, reduction of round trip time from 60 to 55 minutes would save a bus), this impact is excluded from the economic impact analysis." Impact Report 16.

(g) "[Another] potential impact of higher trip speed is the potential for extension of existing routes at no extra driver cost." Impact Report 16.

Maintenance, Repair and Operating Costs

104. Maintenance, repair and operating costs will not be unfavorably affected by TRANSBUS:

(a) "On balance, the long-term maintenance and repair labor requirements should remain constant on a unit basis, but work loads will shift . . . . [T]he requirements for new support equipment and skills will be sufficiently low that introduction of the new bus design . . . will not present major capital investment requirements or training problems for the transit industry. Impact Report 54.

(b) "An increase of 1.4 cents/mile is projected for Transbus or about a 1 percent increase in total operating costs. [But] no benefits were assumed for the new design bus . . . in the area of driver productivity. This was done, despite the fact that a 4 to 10 percent increase in trip speed is projected for these new vehicles. Note that even a 4 percent improvement in driver productivity would result in an operating cost savings of 2.4 cents/mile." Impact Report 50, 48-49.

Increased Ridership

105. The TRANSBUS will increase the ridership of mass transit significantly and thereby reduce urban automobile congestion, raise new operating revenues, and contribute to local support for additional transit programs and funding:

(a) "An analysis of historical evidence from other new bus design introductions, operational factors by route and system size, and the responses to 10,000 surveys during the Transbus public demonstrations, indicates that ridership increases of up to 10% are possible with Transbus . . . . These would have a significant impact on revenue." Impact Report 57.

(b) "[R]easonable patronage impact ranges for the prototype bus systems (large, medium and small . . .), if Transbuses were to completely replace the current 35-foot and 40-foot buses in the fleet . . . are:

- 5 to 8 percent average ridership increase for large properties
- 6 to 9 percent average ridership increase for medium properties
- 7 to 10 percent average ridership increase for small properties." Impact Report 41.

(c) "Transbus, with the low floor, will have the greatest potential for achieving a lasting impact on the public, based upon the bus features selected as 'most important' by 11,000 riders and potential riders during the four city demonstrations of the Transbus prototypes." Impact Report 59.

(d) "[As] to the effect of the low floor and wide door: When the public was asked to rate 30 features of Transbus versus the current bus, the features which consistently rated highest involved the ease of boarding and alighting. In this area Transbus is superior . . . . The survey of 11,000 people in four Transbus demonstration cities indicates that these inherent features of Transbus will help to maintain the new image after cosmetic appeal mellows." Impact Report 29.

Net Cost-Benefits

106. Increased revenues at the fare-box of the low-floor, wide-door, ramped TRANSBUS just from the increased ridership by handicapped people (and not counting people who are mobile with wheelchairs, crutches or walkers) will range between $23 million and $65 million annually.

U.S. DOT, Transportation Systems Center, An Inflationary Impact Statement of UMTA's Proposed Elderly and Handicapped Regulations 59 (March 4, 1976) (hereinafter cited as "Inflationary Impact Statement II"). Thus, in addition to the increased general ridership forecast by Booz-Allen and set forth above at paragraph 105 , this increased handicapped ridership

> "would increase the total transit passenger revenues collected nationwide by 1-1/2 to 4 percent. Alternatively stated, with operating deficits on the order of 40 percent of passenger revenues, operating deficits could be reduced by 4 to 10 percent if handicapped ridership is induced." Ibid.

107. Furthermore, as to wheelchair users, "incorporating [a low-floor and a ramp] into the fleets [of fixed route bus systems] would generally be the most cost-effective means of meeting the transportation needs of wheelchair users who live within accessible distances of bus stops." U.S. DOT, Transportation Systems Center, An Inflationary Impact Statement of A Program of Transportation Services to Elderly and Handicapped Persons 36 (February 11, 1976) (hereinafter cited as "Inflationary Impact Statement I"). Defendants estimate it would cost as much as $362 million annually to provide segregated, specialized service to disabled and elderly people who are mobile with wheelchairs, crutches or walkers, compared to an annual cost of $76 million to $123 million to replace and operate the entire national fleet of buses with the accessible low-floor, wide-door, ramped TRANSBUS. Inflationary Impact Statement II, 19-23, 32-33.

108. The economic benefits of the low-floor, wide-door, ramped TRANSBUS have been fully quantified by defendants only for handicapped users and only in terms of tax and income support benefits from employment.

Even with the economic benefits to elderly users and to the general public, excluded altogether from defendants' calculation, the net cost-benefit ratio is highly favorable. The estimated total net capital and operating cost for a national fleet of low floor, wide door, ramped TRANSBUSES is $76 million to $123 million annually. The benefits from employment of the handicapped alone, measured solely in additional tax revenues and in diminished public income support payments, is $300 million to $500 million. The net cost-benefit ratio, accounting only for these benefits from the employment of handicapped people, thus is at least 2:1 and may range as high as 7:1. Inflationary Impact Statement II, 19-23, 50-57, Table 4.1.

109. There are in addition substantial benefits to all of the handicapped and elderly from the low floor, wide door, ramped TRANSBUS which are not quantifiable:

> "[M]ost of the benefits to handicapped and elderly persons receiving public transit services for the first time are expected to be of a non-economic nature. For instance, there would be social benefits resulting from enabling handicapped persons equal opportunity to work, study, and participate in recreational activities. Other social benefits would include the reduced burden of aid on the friends and relatives of the handicapped, the increased contribution to community activities of many talented and well educated handicapped persons, and the reduction of the often debilitating and productivity-inhibiting emotional burdens of physical [handicaps] on the entire community.
>
> "The psychological benefits to elderly and handicapped persons of increased . . . mobility are difficult to monetarize. The opportunity for increased mobility, if utilized, would increase the amount, and variety of social contacts, and these contacts are likely to improve an elderly or handicapped person's performance in his major roles and to enhance his self-image.
>
> "The number of handicapped persons who would use public transit for the first time as a result of [Transbus], provides a proxy for the social and psychological benefits of the program. The number of individuals who would use public transit for the

first time is estimated as 1,408,000 to 1,525,000 by 1980." Inflationary Impact Statement II, 50-52.

110. In summary of the possibilities of TRANSBUS, the Booz-Allen Impact Report 58-59 concludes:

> "[T]he potential benefits of Transbus over . . . current production buses are rider-oriented. This offers the potential for patronage improvements and greater support from local political organizations responsible for transit funding. Specific benefits are related to passenger safety, accomodation of the elderly [and the mobile disabled], and service dependability."

Defendants' Executive Summary of the Final TRANSBUS reports, U.S. DOT, UMTA, Analysis of Low Floors for Transit Buses (Jan. 1976) is attached hereto as Exhibit 2 and incorporated herein.

111. Unless defendants require--as it is their duty to require--that federal financial assistance be used to purchase the low floor, wide door, ramped TRANSBUS, the aforesaid possibilities of TRANSBUS to assure accessible transportation for the elderly and handicapped and to improve mass transit will not be realized.

THE REQUIREMENTS OF THE MARKET

112. The low floor, wide door, ramped TRANSBUS is not produced by any manufacturer in the United States because defendants, contrary to their duty under the law, have not required that federal financial assistance be used only to purchase the TRANSBUS. The low-floor, wide-door, ramped TRANSBUS will not be produced by any manufacturer in the United States until and unless defendants, as is their duty under the law, require that federal financial assistance be used only to purchase the TRANSBUS.

113. For more than thirty years the average annual market for full-size transit buses has been approximately 3500 buses. The projected annual market for the next several years is 5000 to 7000 buses. Historically this market has supported only one type of bus and because of limited market size and the large investment necessary for product development and retooling, it is capable of supporting only one. Since 1958, the single bus model on the market has been a 34-inch high floor, 27-inch wide door bus.

114. Since the enactment of the Urban Mass Transportation Act of 1964, federal financial assistance has paid 66% to 80% of the capital costs of all of the 1400 to 5000 buses purchased by transit operators annually: 80% of the capital costs since 1973 (except for a portion of bus purchases aided under the Federal-Aid Highway Act, for which federal financial assistance has paid 70% of the capital cost); 66% of the capital costs between 1965 and 1972. For twelve years federal financial assistance has supported the purchase of the single bus on the market, the 34-inch high floor, 27-inch wide door model.

115. Since 1925 the full-size transit bus industry has become ologopolistic, with dominant technological leadership exercised by General Motors Corporation. In addition, declining revenues for transit operators in the 1960's and 1970's and public takeover of private transit operations, leading to bidding and price-competition requirements, have inhibited the marketing of innovative buses.

116. Precisely because, as Congress recognized in the Urban Mass Transportation Act, 49 U.S.C.§§ 1601, 1605, there was insufficient product competition in the transit bus industry to bring into production up to date bus designs, defendants initiated the TRANSBUS project. Stanford Research

Institute, Transbus Report 5-6 (U.S. Department of Commerce, Experimental Technologies Incentives Program, March 1976).

117. Each of the three companies in the industry, American General Corporation, General Motors Corporation, and Rohr Industries, developed, manufactured, and tested three Transbus prototypes, on contract from the TRANSBUS project.

118. No one of the three is both committed to and able to produce the TRANSBUS. General Motors has invested in another high floor bus which it intends to put on the market in 1977; it will not produce a low floor, wide door, ramped TRANSBUS unless defendants require transit operators to use federal financial assistance only to purchase such a bus. Although Rohr Industries and American General are ready, willing and able to produce the low floor, wide door, ramped TRANSBUS (and Rohr Industries estimates it could bring TRANSBUS off the production line by July 1, 1979), they cannot make the retooling and component investment unless transit operators are required to buy the bus.

119. Thus the market, and the decision to produce TRANSBUS or not, is controlled by defendants. If defendants default on their duties, defined by Congress and set out above at paragraphs 78 through 89 , the market, and the decision, is controlled by the ologopolistic and uncertain industry which will not adopt the low floor, wide door, ramped TRANSBUS.

120. The afordsaid market constraints have defeated the efforts of at least two transit operators, the Southern California Rapid Transit District and the Seattle-King County Metropolitan Transit Commission, to purchase

accessible buses and thus to improve their transit services and to open them to all mobile persons irrespective of age or handicap; to wit:

(a) On October 23, 1974, the Southern California Rapid Transit District (hereinafter "RTD") resolved to purchase 200 accessible buses.

(b) On December 18, 1974 RTD sent specifications for a low floor bus, essentially the TRANSBUS design, to UMTA for approval.

(c) On March 31, 1975 UMTA approved the specifications but required a bidders' conference.

(d) On April 14, 1975 RTD convened a bidders' conference attended by all bus manufacturers. General Motors announced it would bid only on its high floor bus and would not discuss anything else. American General stated that the low floor and other features were "not beyond engineering capability" but that it could not "retool existing equipment to (such a) great extent" until and unless UMTA decided "what the ultimate specification is going to be"; the problem is "marketing and . . . direction from the federal government". Rohr Industries said the same. RTD, Transcript of Discussions With Bus Manufacturers Regarding the Furnishing of Buses Equipped to Handle the Elderly and Handicapped.

(e) Twelve days later, on April 26, 1975, RTD authorized the call for bids on 200 accessible buses.

(f) On July 25, 1975, UMTA approved finally the specifications for bid.

(g) On July 18, 1975, specifications were sent to the manufacturers for bid.

(h) In July and August, Rohr Industries and American General requested delay in opening bids and requested changes in the specifications.

(i) In December, 1975 bid opening was further delayed to seek a buyer's consortium among other transit operators to purchase TRANSBUS; the effort was not successful.

(j) On April 6, 1976, General Motors informed RTD it would not bid on the accessible bus.

(k) April 20, 1976 was bid opening day. No bids were received.

The efforts of Seattle-King County Metropolitan Transit Commission to purchase 250 accessible buses were frustrated in the same fashion.

121. Unless and until defendants execute the mandates of the Congress, set out above at paragraphs 78 through 89 , and require that all buses purchased with federal financial assistance be accessible to mobile disabled and elderly persons, the low floor, wide door, ramped TRANSBUS will not be produced by any manufacturer in the United States or placed on the market, or on the street.

THE FAILURES OF DEFENDANTS

122. Instead of acting to assure accessible mass transportation for the mobile disabled and elderly by requiring that federal financial assistance be used only to purchase the low floor, wide door, ramped TRANSBUS, defendants have:

(a) Misconstrued the Congressional mandates to require only special efforts rather than the assurance of mass transportation which elderly and handicapped persons can effectively utilize;

(b) Abdicated their responsibility to assure accessible mass transportation and instead seek to shift responsibility from themselves to local transit operators, and have promulgated regulations which merely exhort and do not direct the actions of local authorities to assure accessibility;

(c) Encouraged specialized transportation services as a substitute for universally accessible fixed route vehicles rather than as accessible feeder systems to supplement the fixed route system; and

(d) Abandoned the TRANSBUS.

Since 1970 when the Congress first enacted its oft repeated mandate

to assure accessibility defendants have misconstrued their mandate as merely requiring special efforts rather than the assurance of accessible mass transportation, as follows:

Special Efforts Rather than Assurance of Access

123. The first regulations pursuant to the Congress' mandates were promulgated by defendants on September 17, 1975. These regulations, governing the urban transportation planning process generally, referred to accessibility in only one subparagraph and required no assurance of accessibility but only that:

> "The urban transportation planning process shall . . . include special efforts to plan public mass transportation facilities and services that can be effectively utilized by elderly and handicapped persons." Title 23 C.F.R. § 450.120 (a)(5); 40 Fed. Reg. 42978 (1975).

124. The first regulations on capital grant projects purporting to discharge the Congress' mandates were promulgated on April 30, 1976. These regulations require no assurance of accessibility and in their relevant entirety provide only that:

> "The Urban Mass Transportation Administrator will grant project approvals . . . only if: (a) The urban transportation planning process exhibits satsifactory special efforts in planning public mass transportation facilities and services that can be utilized by elderly and handicapped persons; and (b) The annual element of the transportation improvement program developed pursuant to 23 C.F.R. 450.118 and submitted after September 30, 1976, contains projects or project elemants designed to benefit elderly and handicapped persons, specifically including wheelchair users and those with semi-ambulatory capabilities; and (c) After September 30, 1977, reasonable progress has been demonstrated in implementing previously programmed projects." Title 49, C.F.R. § 613.204, 41 Fed. Reg. 18234 (1976).

125. In the only other official response to the Congress' mandates, the 1972 U.S. DOT, UMTA, External Operating Manual, defendants did not require even "special efforts," but only "reasonable efforts":

> "[I]n the planning and design of mass transportation facilities and equipment, reasonable efforts should be made to insure that the elderly and handicapped will be able to effectively use the facilities. A description of these efforts must be included in the final application." External Operating Manual IIB-14 (August 1972).

126. Furthermore, defendants have misinterpreted the reach of Congress' mandate, as encompassing only those elderly and handicapped persons who already normally use mass transit rather than all mobile disabled and elderly people:

> "[W]e interpret § 165(b) as requiring that mass transit facilities and services funded under the affected provisions must incorporate features which will facilitate the use of those facilities and services by a particular group of the elderly and handicapped. The group which is of concern is those persons who normally utilize and can be expected to utilize mass transit facilities and services but, due to age or physical disability, cannot do so 'as effectively as' persons without those characteristics . . . . Such persons include, for example, those with poor eyesight, but not the blind; those who are lame, but not those confined to wheelchairs. Opinion of UMTA's Chief Counsel to UMTA's Director, Program Development (April 18, 1974).

Defendants' Abdication to Undirected Local Efforts

127. Even the requirement of special efforts has been passed on by defendants to local transit operators, without any regulations which bind or direct local transit operators.

128. The 1972 External Operating Manual does not direct or bind:

"UMTA has no blanket capital equipment policy on the elderly and handicapped, preferring to influence grant recipients through the individual efforts of the representatives . . . . UMTA's current external manual states that . . . reasonable efforts should be made to insure that the elderly and handicapped will be able to effectively use the facilities . . . . The general statement has not been followed up with any guideline or manual defining 'reasonable efforts' or suggesting the limits of UMTA acceptability. Unlike the UMTA procedure for 13(c) labor clearances, there is no way for special interest groups of federal agencies to influence each UMTA grant in the areas of special user needs. Thus those interested in UMTA's response on the subject have no basic reference point for UMTA program policy, and UMTA staff are left largely to carry out the law as they see fit, balancing feasibility with benefits, and generally having to deal with the industry's reluctance to accept costly steps with uncertain payoffs. Part of the pressure on UMTA stems from the lack of any explicit description of how UMTA carries out section 16(a) in its capital program. . . . [L]ittle in the way of service change is exacted directly in return for UMTA capital grants." Memorandum of UMTA's Director of Program Development to UMTA's Associate Administrator for Program Planning 4 (July 18, 1974).

129. Neither the September 17, 1975 nor the April 30, 1976 regulations of defendants bind or direct. The 1975 regulations require "special efforts" without more. Although an Appendix accompanying the 1976 regulations and entitled, "Advisory Information on the Urban Mass Transportation Administration's Requirements on Programing for Elderly and Handicapped Persons," contain three hortatory illustrations of a level of effort that will "satisfy" the requirements, defendants explicitly eschew any intention to set regulatory standards for local transit operators, saying in the Appendix:

(a) "UMTA will not specify a program design to meet the special efforts requirement";

(b) "The examples . . . are illustrative . . . . They are not regulatory standards or minimums, neither do they exhaust all valid approaches." Title 49, C.F.R. § 613.204, Apprendix; 41 Fed. Reg. 18234 (1976).

Substitution of Separate Specialized Systems

130. There is a proper and necessary place for vans, small-size buses, taxi-fleets and so on in an accessible transit system, namely as feeder services linked to accessible fixed routes. Defendants have not required accessible feeder services, however, for the very good reason that such services would feed fixed routes which defendants have not required to be accessible. Instead defendants have encouraged and promoted such services as a substitute for accessible fixed routes.

131. Instead of requiring that all vehicles used on fixed transit routes be made accessible by the purchase of the proven and cost-efficient low floor, wide door, ramped TRANSBUS, defendants have encouraged and promoted costly, segregated specialized transportation systems for mobile disabled and elderly people. As defendant Patricelli testified on April 5, 1976 before the Subcommittee on the Handicapped of the United States Senate Labor and Public Welfare Committee:

> "Through our Transbus program, important research and demonstrations on wheelchair access to full size buses have already been conducted; however, we are not seeking to encourage transit properties to so equip the regular fixed route transit fleet as opposed to developing special services with special vehicles."

132. Defendants' encouragement and promotion of segregated specialized transit services has not produced any significant improvement of transportation services which mobile disabled and elderly people can use, both because of the high cost of such systems and their unfavorable cost-benefit ratios and because defendants in this regard are pushing with a string--they have little power or authority to regulate van, small-bus or taxi operators directly or to regulate them indirectly by conditions on grants of financial assistance:

"UMTA has no continuing and well developed relationship with taxi, jitney and other paratransit operators, thus UMTA has had little influence on their effective integration with public transportation services, let alone their service to special groups like the elderly. Consequently, it is not clear how UMTA would alter the current state of paratransit, even with a clear strategy in hand.

"UMTA currently encourages better integration of transit, taxi, and jitney, but has no leverage to effectively carry it out to test the idea that such integration can improve services." Memorandum of UMTA's Director of Program Development to UMTA's Associate Administrator for Program Planning, 7 (July 18, 1974).

133. Thus defendants seek to influence what they cannot influence but fail to influence what they can, and must, influence.

Abandonment of Transbus

134. Defendants at a cost of $27 million have developed a bus which is accessible to the mobile disabled and elderly and improved to the fullest extent possible within the state of the art, the low floor, wide door, ramped TRANSBUS. Defendants have repeatedly announced their intention, whenever the TRANSBUS project was completed, to require that federal financial assistance be used only to purchase that bus. Nonetheless defendants have delayed, failed and refused to so require and continue to approve and to expend federal funds to finance the purchase of inaccessible buses.

135. Since the beginning of the TRANSBUS project defendants have repeatedly announced their intention when the project was completed to require that federal financial assistance be used only to purchase the TRANSBUS. On January 8, 1975, for example, defendants issued a statement entitled "Policy For Introducing Transbus Into Nationwide Service" wherein defendants said:

> "To conclude the present Transbus R & D program, UMTA will develop a performance specification for forty-foot urban transit buses which will assure minimum performance and characteristics with respect to safety, elderly and handicapped accessibility, low maintenance, high-performance and economical operations. The performance specifications will be a composite of the acceptable aspects of the three prototype buses developed under the R & D program . . .
>
> "The composite performance specification will be made available after the Transbus tests have been completed, but work on developing these specifications will begin now, concurrent with the completion of the testing and evaluation, which, is now scheduled for August 1975. This composite performance specification will allow any manufacturer to use its own styling, body construction, and manufacturing techniques in competing for the market. Except in special circumstances, grantees will be expected to use this performance specification when purchasing buses with Federal assistance."

On February 26, 1975, defendants published proposed regulations entitled "Handicapped and Elderly Services", 40 Fed. Reg. 8314, 8315, wherein they said:

> "The completion of Transbus prototype testing is currently scheduled for August 1975; the performance specification will be developed concurrently, and the first of the new buses should be in revenue service by late 1977 or early 1978. The UMTA decision to proceed with a performance specification rather than a detailed design specification has accelerated significantly the anticipated availability of the Transbus."

In affidavits in ten lawsuits defended by UMTA between November 1974 and March 1976 against claims for accessible transit, defendant Urban Mass Transportation Administrator, or his predecessor, said:

> "[A]s part of the program of research, development and demonstration projects above referred to, UMTA is carrying on a major project known as "TRANSBUS," at an estimated total cost of $27,000,000 designed to develop a new generation of buses for general use in urban mass transportation service in the United States, pursuant to

> which three prototype standard size diesel transit buses, each designed and equipped to accomodate passengers confined to wheelchairs, have been developed and built, and are presently being demonstrated and tested in actual revenue service in four major cities (Miami, New York, Kansas City (Mo.) and Seattle) to determine their safety, reliability, economy and acceptability and attractiveness to all segments of the public, including the elderly and the physically handicapped, as a result of which it is anticipated that UMTA will develop and promulgate by regulation a standard specification for use by its grantees in transit bus procurement which will provide to elderly and physically handicapped persons mass transportation service which they can effectively use." Affidavit of Frank C. Herringer, Urban Mass Transportation Administrator, April 15, 1975, Might v. Briscoe, Civ. No. A-15-CA-31 (W.D. Tex. filed March 13, 1975).

136. Defendants did not promulgate a regulation requiring that federal financial assistance be used only to purchase the low floor, wide door, ramped TRANSBUS, not in August, 1975, nor at any time since. Instead, defendants have delayed performance on their promise, refused to promulgate such regulations, and finally abandoned TRANSBUS, as follows.

137. In December 1975 defendants had completed draft Transbus Procurement Requirements, including performance specifications for the TRANSBUS, but did not promulgate them.

138. In January, 1976, defendants had prepared a draft "Policy Statement on Grants for Acquisition of Transit Buses," which included the statement "UMTA affirms its intention to require the use of this performance specification and procurement package by grantees purchasing transit buses with UMTA financial assistance, except where special circumstances justify an exception," but did not promulgate it.

139. On April 14, 1976, defendants released final Transbus Procurement Requirements, including performance specifications for the TRANSBUS, but

did not promulgate them. Instead defendants issued notice of a public hearing for May 5, 1976, on the question whether to mandate or encourage the use of TRANSBUS performance specifications for all new transit buses and announced that a decision would be furnished on or before June 14, 1976. 41 Fed. Reg. 15735.

140. On April 30, 1976, defendants promulgated final regulations entitled, "Urban Transportation Programming for Elderly and Handicapped Persons," 41 Fed. Reg. 18234, which ignored the TRANSBUS performance specifications and otherwise failed to require a low floor, wide door, or a ramp.

141. Defendants failed to furnish their decision on mandating TRANSBUS performance specifications by June 14, 1976, the appointed date or since.

142. Defendants have failed and continue to fail, in derogation of their duties under the several Acts of Congress, to require that federal financial assistance be used only to purchase the low floor, wide door, ramped TRANSBUS.

VII. The Bases for Relief

COUNT I: VIOLATION OF ACCESSIBILITY MANDATE OF THE URBAN MASS TRANSPORTATION AND FEDERAL-AID HIGHWAY ACTS

143. By failing to require that federal financial assistance be used only to purchase the low floor, wide door, ramped TRANSBUS and otherwise by failing to assure the availability to elderly and handicapped persons of mass transportation which they can effectively utilize, defendants have violated and continue to violate the Urban Mass Transportation Act, 49 U.S.C. §§ 1602 (a)(1)(B) and 1612(a) and the Federal-Aid Highway Act, 23 U.S.C. § 142 note. In addition, defendants have violated the Department of Transportation and Related Agencies Appropriations Act of 1975, § 315, Pub. L. 93-391, 88 Stat. 789 (August 28, 1974).

COUNT II: VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973

144. By failing to require that federal financial assistance be used only to purchase the low floor, wide door, ramped TRANSBUS and by otherwise failing to assure the availability of mass transportation which the mobile disabled and elderly can effectively use, defendants have excluded handicapped individuals from participation in, have denied them the benefits of, and have subjected them to discrimination under the federally assisted urban mass transit and federal aid highway programs and thus have violated and continue to violate Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and Executive Order 11914, 41 Fed. Reg. 17871 (April 29, 1976).

COUNT III: VIOLATION OF THE MANDATE OF THE URBAN MASS TRANSPORTATION AND FEDERAL-AID HIGHWAY ACTS TO IMPROVE MASS TRANSPORTATION

145. By failing to require that federal financial assistance be used only to purchase the improved, efficient, effective, safe, convenient, and accessible low floor, wide door, ramped TRANSBUS, defendants have violated and continue to violate the Urban Mass Transportation Act, 49 U.S.C. § 1601, et seq. and the Federal-Aid Highway Act, 23 U.S.C. §§ 103(e)(4), 134(a), 142(a) and (c).

COUNT IV: VIOLATION OF DUTY TO EXERCISE SOUND DISCRETION AND NOT TO WITHHOLD, UNREASONABLY DELAY OR CURTAIL STATUTORY RIGHTS

146. Having developed at a cost of $27 million, a bus which satisfies the Congressional mandates to assure accessible public mass transportation and to improve public mass transportation, defendants, by failing to require that federal financial assistance be used only to purchase the low floor, wide door, ramped TRANSBUS and otherwise by failing to assure the availability to elderly and handicapped persons of mass transportation which they can effectively utilize, have acted arbitrarily and capriciously, have abused their discretion, and have unlawfully withheld and unreasonably delayed the implementation of the full statutory rights of the mobile disabled and elderly thus making proper and necessary relief under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

COUNT V: VIOLATION OF THE CONSTITUTION OF THE UNITED STATES

147. By failing to require that federal financial assistance be used only to purchase the low floor, wide door, ramped TRANSBUS and otherwise

by failing to assure the availability to elderly and handicapped persons of mass transportation which they can effectively utilize, defendants have violated the rights of mobile disabled and elderly persons to travel, freely to associate, to petition the government for redress of grievances, and not to be subjected to invidious and arbitrary classification and exclusion from the benefits extended to all other persons by governmental action and thus have violated and continue to violate the First and Fifth Amendments of the Constitution of the United States, the Commerce Clause, and the Privileges and Immunities Clause.

VIII. Relief

WHEREFORE, plaintiffs mobile disabled and elderly persons and their organizations respectfully request that this Court:

1. Declare the duty of defendants under the statutes and Constitution of the United States, and preliminarily and permanently enjoin defendants, to require that federal financial assistance be expended only to purchase the low floor, wide door, ramped TRANSBUS;

2. Declare the duty of defendants under the statutes and Constitution of the United States, and preliminarily and permanently enjoin defendants, to take such other action as is necessary to assure the availability to elderly and handicapped persons of public mass transportation which they can effectively utilize;

3. Award plaintiffs the costs of this action pursuant to 28 U.S.C. § 2412.

4. Grant such other relief as may be necessary and proper.

PUBLIC INTEREST LAW CENTER OF PHILADELPHIA

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EXHIBIT 1

United States Department of Transportation, Urban Mass Transportation Administration, Provision for the Elderly and Handicapped in the Design of Transbus

PROVISIONS FOR THE ELDERLY AND HANDICAPPED IN THE DESIGN OF TRANSBUS

DEPARTMENT OF TRANSPORTATION
URBAN MASS TRANSPORTATION ADMINISTRATION

Booz-Allen Applied Research
Transbus, Prime Contractor

PROVISIONS FOR THE ELDERLY AND HANDICAPPED IN THE DESIGN OF TRANSBUS

INTRODUCTION

The Department of Transportation is sponsoring a competitive program to develop a new 40 foot transit bus that will set the standard for urban transportation for years to come. This new vehicle, named, TRANSBUS will contain the first basic changes made in urban transit buses in more than fifteen years. At present three bus manufacturers; AM General Corporation, General Motors Truck and Coach Division and Rohr Industries are building their versions of the new TRANSBUS, under subcontract from Booz, Allen Applied Research. Booz, Allen, the prime contractor, will be responsible for recommending the design that is destined to become the next generation transit bus.

In setting the objectives for the TRANSBUS program, the Urban Mass Transportation Administration of the Department of Transportation has chosen vehicle designs which emphasize improved service for all people. TRANSBUS will move its passengers faster. It will travel faster between stops and will have a top speed nearly 20% higher than current buses. TRANSBUS will also have wider doors and a floor only half as high as that on current buses. These features will allow riders to board and leave the bus more quickly. The achievement of a floor height only one and one half feet above the street is a major breakthrough in transit bus technology.

TRANSBUS will be a safer bus. The entire design is based on a scientific analysis of transit bus safety. TRANSBUS will have energy absorbing bumpers, break-proof windows, resilient seat backs, other soft interior surfaces, and scientifically designed safety handholds.

TRANSBUS will be quieter, cleaner, and more comfortable. Seats will be wider and there will be more knee room. The rear of the bus, once cramped at best, will be transformed into a U-shaped lounge-like area. The fume and draft free interiors will be kept at uniform comfortable temperatures in summer and winter by advanced air-conditioning and heating systems. Seated passengers will look out of panoramic, tinted windows and will have a smooth ride equivalent to that of a luxury automobile, thanks to a new wheel suspension system.

TRANSBUS models will be displayed throughout the United States. In 1974 prototype TRANSBUS vehicles will be rolling on the streets of a few selected cities to help evaluate which of the three competing prototype designs best fits the needs of urban areas.

FEATURES TO REMOVE TRAVEL BARRIER TO THE ELDERLY AND HANDICAPPED

A particularly challenging objective of the TRANSBUS program is the removal of physical travel barriers to the elderly and handicapped. New design concepts will be tested on TRANSBUS to provide access to the bus system for an individual in a wheelchair. The final versions of each of the three TRANSBUS prototype designs will feature a different approach to this design problem.

On the following pages, a brief description of each manufacturer's approach to the problem of providing access to an individual in a wheelchair is presented along with an artist's concept of the particular manufacturer's bus in operation.

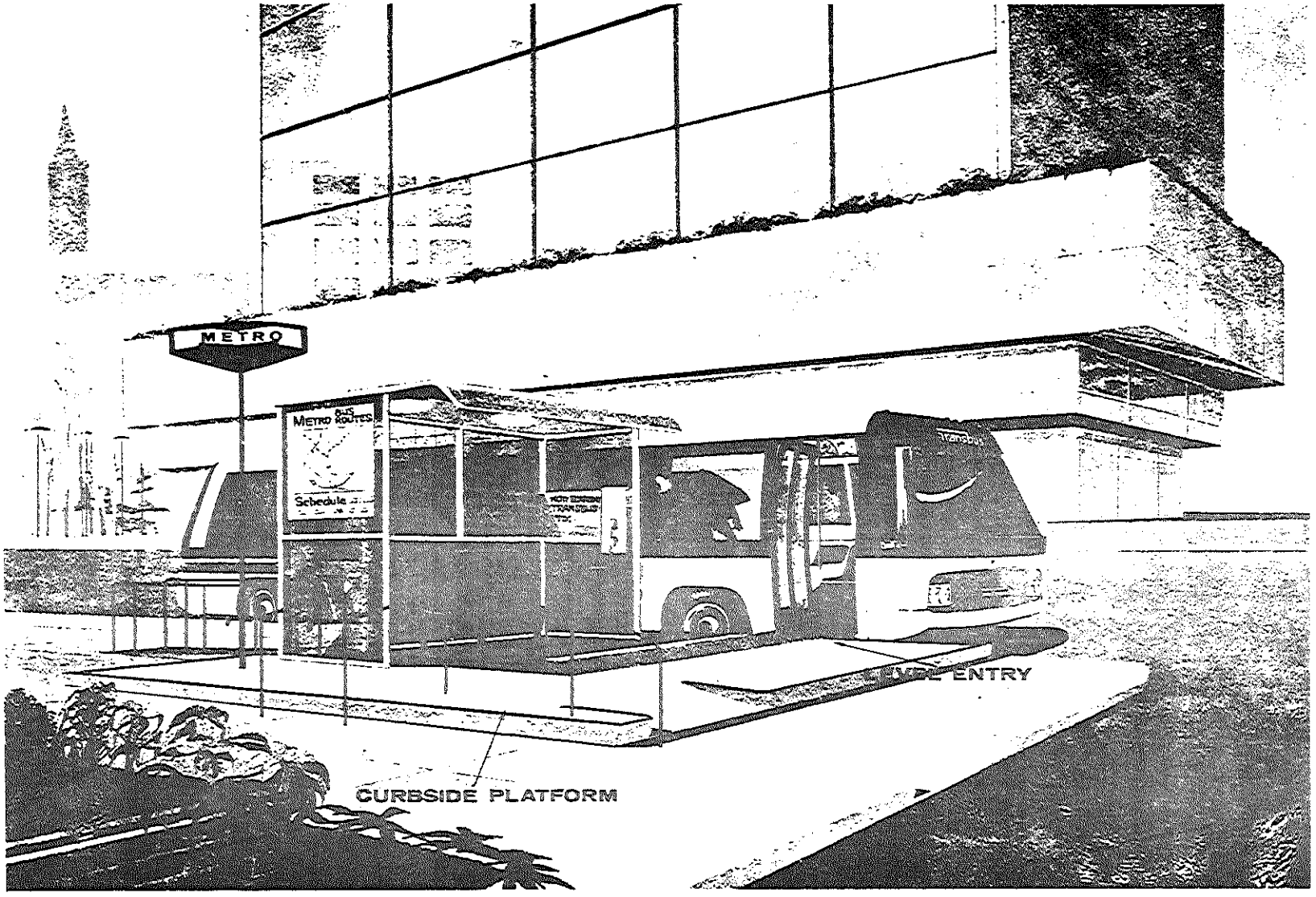
AM GENERAL CORPORATION

The AM General concept for the removal of travel barriers provides a level, wide entry to the bus floor. The concept involves a flat ramp built into the bus which bridges the gap between the bus and a curbside platform. The AM General TRANSBUS has a special feature built into the suspension system which allows the driver to adjust the height of the bus floor to any point between 17 inches and 20 inches off the ground.

Level access to the bus is provided by a curbside platform. But because of the low floor design of the AM General TRANSBUS, the curbside platform is only slightly higher above the sidewalk than a standard curb is above the street.

As shown in the accompanying drawing of the AM General TRANSBUS the required platform can be constructed so that it is accessible to all people and provides a bus shelter which is equipped with information displays and various amenities for waiting passengers. Such a total passenger waiting/boarding system would provide safety, security and convenience for all bus patrons.

Transit operators and local officials throughout the country recognize the need for new amenities such as shelters if people are to be attracted back to mass transit. The AM General concept could make boarding a bus as simple as moving through a 40 inch wide door.



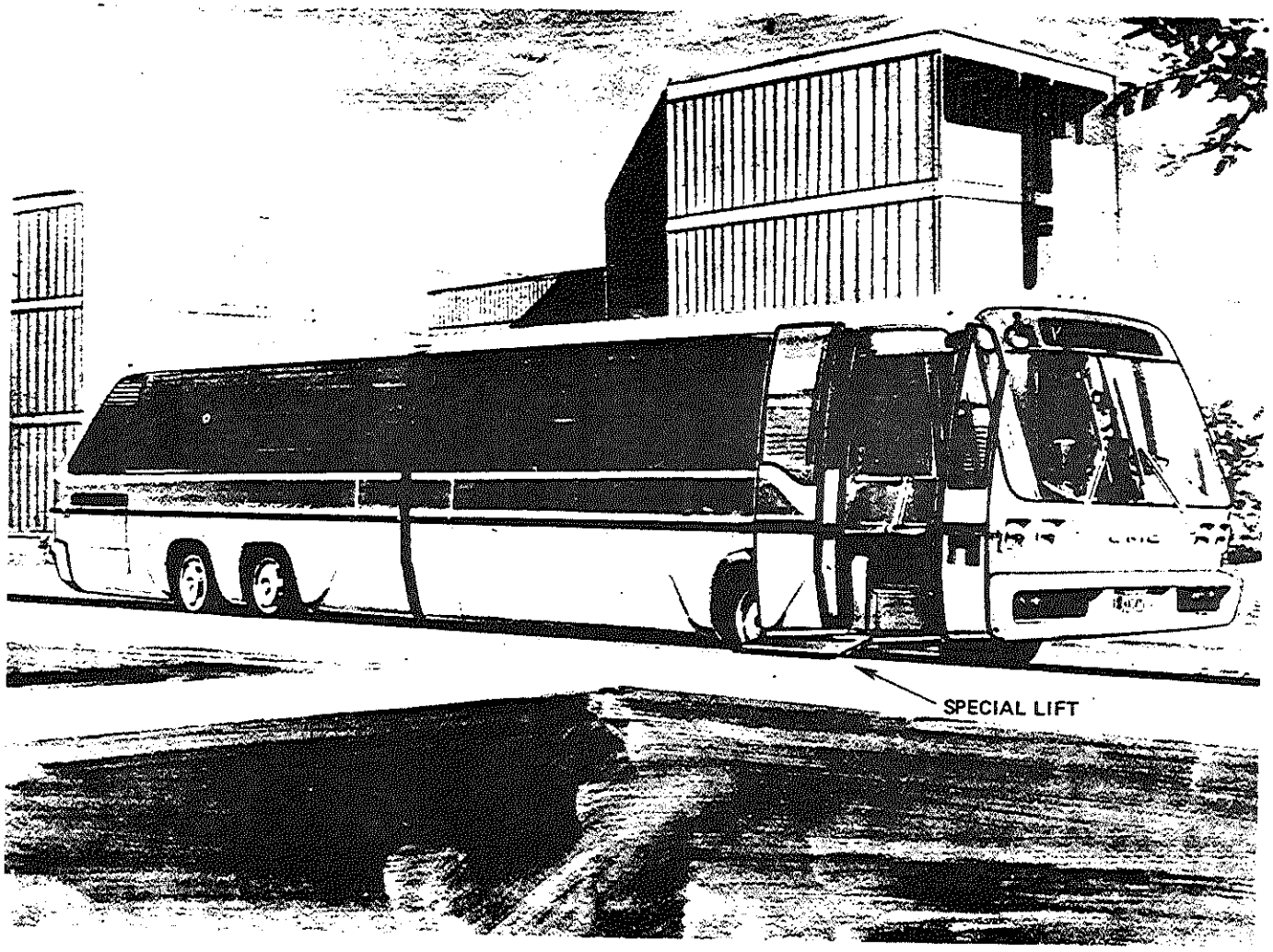
AM GENERAL TRANSBUS

GENERAL MOTORS TRUCK AND COACH DIVISION

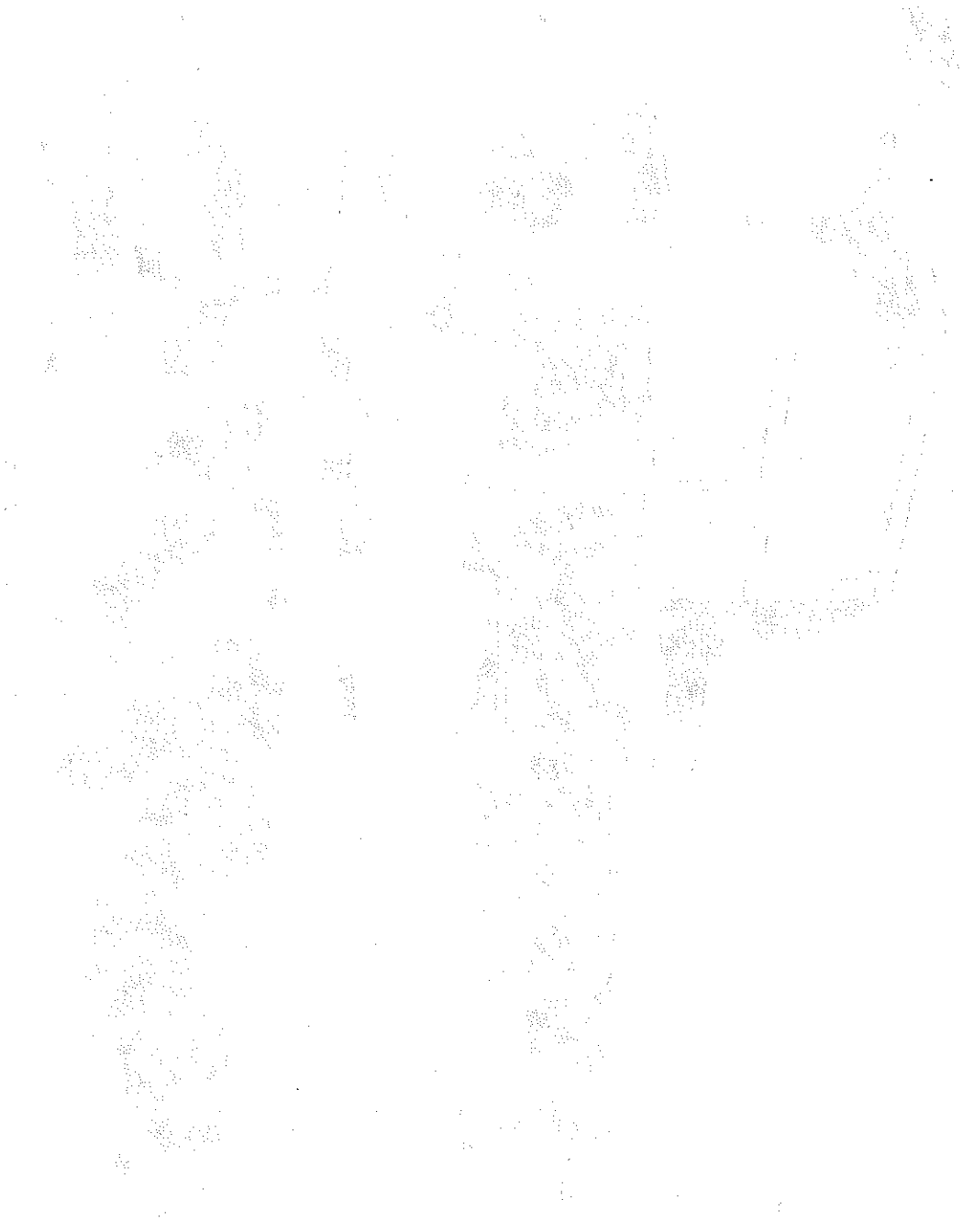
The General Motors concept for the removal of travel barriers provides a lift at the 37 inch wide front door. When not in use the lift is stored under the front step of the bus. The General Motors concept operates as follows. The bus pulls up to the stop and the special suspension system allows the driver to lower the bus and tilt it toward the boarding passengers. As the doors open, the front step projects out from the bus and lowers to the curb or ground as required. After the individual in a wheelchair has rolled on to the enlarged lower step, the curbside edge and two levers on the platform pivot upward to provide a secure restraint for the wheelchair and the step is raised to the bus floor level. When the individual in a wheelchair is in the bus, the step lowers back to its rest position and retracts. The door then closes and the bus can get underway.

The lower floor and wide door of the General Motors TRANSBUS make this concept practical for the first time. While current buses have a narrow entry door with two steps up, the General Motors TRANSBUS has a single wide boarding platform from which passengers step up to the bus floor. This wide platform/lower step combination becomes the wheelchair lift, as required.

The General Motors concept does not require any special curbside equipment and can be employed at all current bus stops.



GENERAL MOTORS TRANSBUS

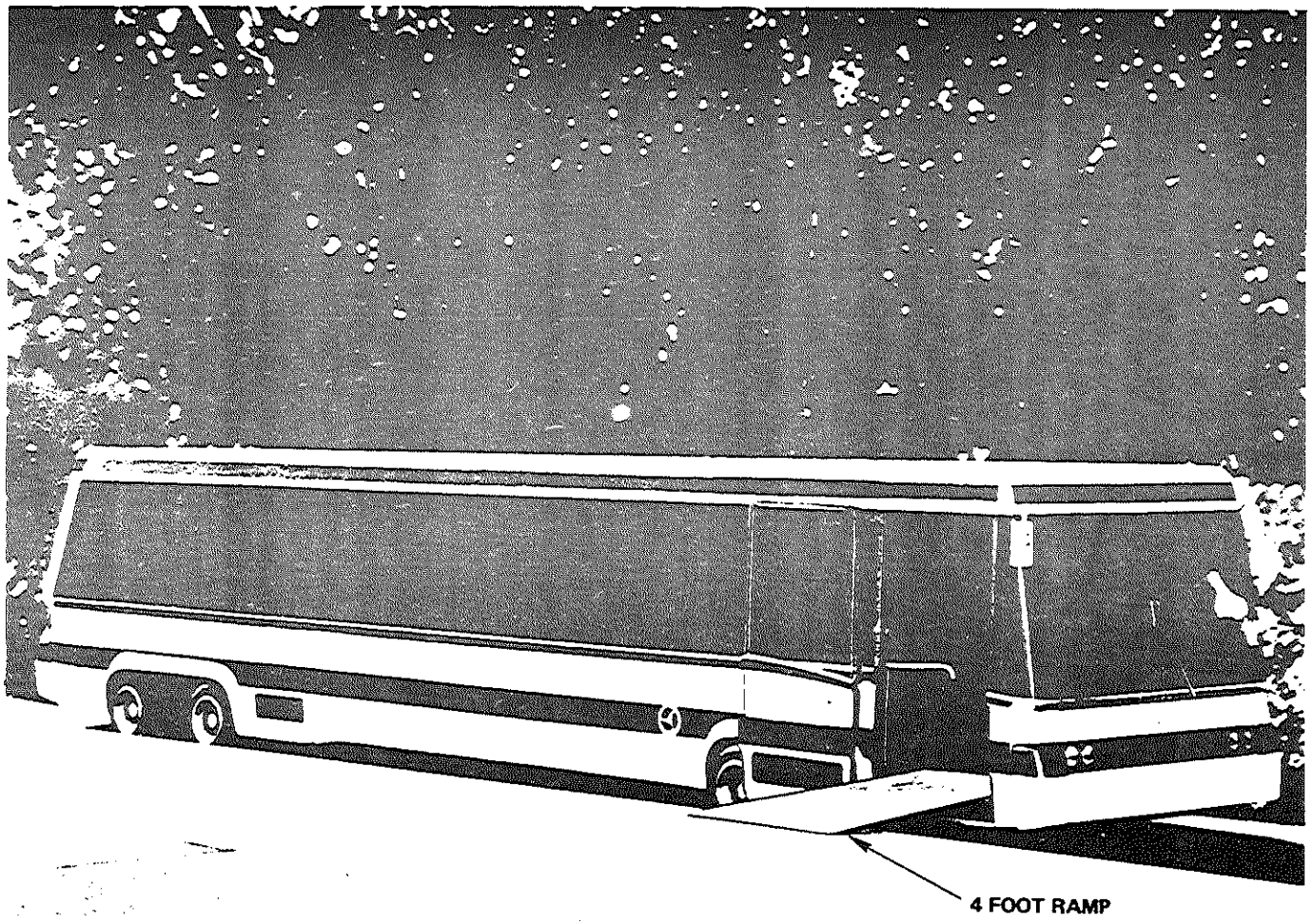


ROHR INDUSTRIES

The Rohr design has the lowest floor height of any version of the TRANSBUS. In normal operation, the floor of the bus is only 17 inches above the street. At bus stops the suspension system allows the driver to lower the floor to 13 inches above the street level which is only 7 inches above a standard curb. As the front door opens, a ramp projects out from under the bus floor and lowers to the curb. Because the ramp need only rise 7 inches its total length is only 4 feet. The ramp comes from the top of the step inside the bus and the ramp projects less than 3 feet out from the side of the bus.

The Rohr TRANSBUS needs no curbside facilities and can service all existing bus stops. If a curb is not present at the stop, the ramp angle becomes steeper than that specified for architectural design standards, but is typical of many ramps currently in place in public facilities.

A scale model of the Rohr TRANSBUS was displayed at the meeting of the President's Committee on Employment of the Handicapped in Washington, D.C., May 2, 3, and 4, 1973.



ROHR INDUSTRIES TRANSBUS

EXHIBIT 2

United States Department of Transportation, Urban Mass Transportation Administration, Analysis of Low Floors For Transit Buses, Executive Summary (January 1976)

Architectural (Size) Steps for Transit Buses

A Summary

Prepared by UMTA Research Staff

March 1976

Executive Summary

Under a Federally supported project the National Academy of Engineering (NAE) studied the characteristics needed for improved buses in the future.* Representatives from varied segments of industry and society including the major bus manufacturers and bus operators participated in this project so the results represent a blend of authoratative considerations, findings, and opinions. A major conclusion was that buses, in the future, should have low floors which would a) improve productivity by speeding the on-off flow of passengers and b) reduce physical barriers to the elderly and infirm. The Transbus specifications have drawn heavily the recommendations from the NAE study including the low floor feature.

In response to the request-for-proposals to design and fabricate prototype Transbuses both high floor and low floor designs were submitted by manufacturing firms. These were evaluated by a team of experts and subsequently reviewed by the then Undersecretary and UMTA Administrator. The decision was to pursue the low floor designs.

During the testing of the Transbuses in four US cities reactions from 11,000 transit bus riders were documented. Of the thirty major bus features investigated the greatest positive response was in favor of the low floor.

It is known that many serious passenger accidents occur in the vestibule and stairwell and the low floor results in substantial improvement in these areas. It is estimated that, in comparison to high floor buses, boarding and alighting accidents will be reduced twenty percent.

Proving ground tests of the low floor Transbus prototypes show a marked improvement in handeling, high speed maneuvering and resistance to tip over attributable largely to the lower center of gravity. This will show eventually as an improvement in safety.

A ramp (in contrast to a lift) entry to transit buses appears to be desirable for wheelchair access. There are several reasons; it can be deployed much faster; wheelchairs can board much faster; once deployed able bodied passengers can use it to advantage; it is better suited to emergency exit. To design a ramp for a high floor bus does not appear feasible whereas it is feasible for a low floor bus.

It is estimated that a modern high floor bus (interim bus) will cost more to produce than the current production "new look" bus by 5.5 percent and a modern low floor bus would cost 12.5 percent more. Modern production methods may reduce these figures. Operating costs for modern high versus low floor buses are estimated to be $1.34 versus $1.36 cents per mile but this difference probably lies within the accuracy of the estimate and is not considered to be of significance.

* "Design and Performance Criteria for Improved Non-rail Urban Mass Transit Vehicles and Related Urban Transportation Systems" National Guideway of Engineering May 1968.

Some bus operators have expressed concerns over the Transbus design. These largely boil down to a) ground clearance problems which have been resolved in the production model specifications and b) equipment packaging and fabrication techniques exhibited in the prototype Transbus vehicles which did not compair favorably to production model "new look" buses. This is not an unusual condition for prototype vehicles. It is expected that all vital problems in this category would be corrected in a production model and its normal evolution.