Testimony on How to Expand the Role of the Private Sector in Public Transportation

Presented to the Housing & Transportation Subcommittee

of the Banking, Housing and Urban Affairs Committee of the United States Senate

by Margie Wilcox, Co-Chair of the

Paratransit & Contracting Steering Committee

Taxicab, Limousine & Paratransit Association

July 23, 2003

EXECUTIVE SUMMARY

On behalf of our country's private taxicab, paratransit, and contract service providers, we appreciate this opportunity to testify on the benefits of reinvigorating private sector participation in the provision of public transportation services funded by the Federal Transit Administration.

Industry Overview

The Taxicab, Limousine & Paratransit Association (TLPA), formed in 1917, is the national organization that represents the owners and managers of taxicab, limousine, sedan, airport shuttle, paratransit, and non-emergency medical fleets. TLPA has over 1,000 member companies that operate 124,000 passenger vehicles. TLPA member companies transport over 2 million passengers each day — more than 900 million passengers annually.

The taxicab, limousine, and paratransit industry is an essential part of public transportation that is vital to this

country's commerce and mobility, to the relief of traffic congestion, and to improving the environment. The private taxicab, limousine, and paratransit industry transports 2 billion passengers annually, compared with the 9 billion passengers transported by public transit; provides half of all the specialized paratransit services furnished to persons with disabilities; serves as a feeder service to major transit stations and airports; and provides about half of its service to transportation disadvantaged people, such as the elderly, who are either not able to drive or do not have a car.

TLPA Reauthorization Recommendations

TLPA urges the following legislative actions be included in the Senate transportation reauthorization bill to advance the public policy benefits that would be derived from a significant expansion of the role private operators play in the delivery of public transportation services.

1.**Repeal Section 5305(e)(3), the anti-private transportation operator Federal Transit Act planning provision.** The President's Reauthorization bill (SAFETEA) included the repeal of this provision (by rewriting the planning sections of the Federal Transit Act and eliminating this provision), and TLPA strongly urges the Senate to adopt this recommendation. The law and congressional intent mandate a role for the private sector in planning for public transit services, yet at the same time, this section explicitly prohibits enforcement of the law. This provision is responsible for private transportation providers being pushed away from the transit-planning table. We believe the best path to more efficient public transportation is to have all the stakeholders such as local officials, consumers, public transit operators, private transportation operators, and labor be included in the planning process. We do not advocate excluding anyone. We urge the Senate to support repeal of this section.

2.**Require DOL and DOT to amend their administration of the Federal Transit Act Labor protections to make them less of an obstacle to the efficient and effective provision of public transportation services.** There are four core actions that should be taken regarding transit labor protections: 1) The carryover of the workforce issue needs to be addressed by declaring that a change in contractors is not an event that gives rise to Section 5333(b) protections; 2) similarly, it should be made clear that there is not a required carryover of workforce in "public to private" transitions where no employees are dismissed as a result of a Federal project; 3) clarify that binding interest arbitration is not a required provision under Section 5333(b); and 4) limit the review of Federal Transit grants to be conducted by the Federal Transit Administration, eliminating the current practice of subjecting FTA grants to review not only by DOL, but by private entities (the national offices of the relevant transit labor unions). We believe the U.S. Department of Transportation is fully capable of administering its grant program without outside assistance.

3.**Direct FTA to issue a private sector participation policy.** There is ample, indisputable evidence that the Private Sector Participation Guidance, developed and promoted by the Reagan and Bush Administrations, was a great success, increasing competitive contracting of public transit services from $10 million to $500 million per year in the course of one decade. Since the Clinton Administration rescinded this Private Sector Participation Guidance in 1994, consideration of the private sector has stagnated. Requiring the FTA to conduct a rulemaking to reestablish private sector participation guidance to implement the private sector provisions of the statute would result in increasing the efficiency and effectiveness of public transit operations to the benefit of all transit riders.

4.**Include President Bush's New Freedom Initiative Program in the Senate reauthorization bill and**

include language making private operators eligible subrecipients for the program. The President's New Freedom program will provide greater mobility for disabled persons. The program, which would be administered through the FTA, would authorize funding to qualified organizations (community groups or directly to taxicab companies) for use in enhancing local transportation services for disabled persons by working with private taxicab service providers to fund the purchase, promotion, and operation of taxi-vans that meet federal accessibility requirements. The service would enhance the ability of disabled persons to reach work, schools, and other places in the community.

5.**Require that FTA's special needs programs: Job Access and Reverse Commute, New Freedom, and Section 5310, utilize the same planning and eligibility guidelines and definitions.** Each one of these special needs programs has a slightly different target audience, JARC is geared toward unemployed and welfare to work individuals; New Freedom is intended for disabled individuals whose needs cannot be met by Americans with Disabilities Act accessible transportation options; and Section 5310 assists private non-profit groups and certain public bodies in meeting the transportation needs of elders and persons with disabilities. However, there are such similarities and potential synergies among the programs that TLPA urges that the Senate require that each program be required to have uniform planning and eligibility requirements using the JARC planning and eligibility requirements as the model of the uniform guidelines.

6.**Require an MPO to have an eligible private transportation operator be appointed as a voting member of the MPO if the public transit operator is a voting member.** Under President Bush's FY 2004 Federal Budget proposal and the Administration's Reauthorization bill, the local transit planning process will be greatly strengthened with more funding and with a clear mandate to reach a local consensus on issues. Because the traveling public benefits equally from using privately-provided and publicly-provided mass transit services, private transit operators should have an equal voice with public transit operators in planning and designing local transit services. As stated above, we believe the best path to more efficient public transportation is to have all the stakeholders be included in the planning process.

TLPA LEGISLATIVE INITIATIVES

More detailed explanation for each of the TLPA legislative initiatives listed in the Executive Summary follows.

Background of the Federal Transit Act and Its Private Sector Participation Provisions

The Urban Mass Transit Act of 1964 was the congressional response to the dismal condition of the private sector transit industry in the 1960's. In the decade just prior to the enactment, 243 transit companies were sold and another 194 were abandoned. These sales and abandonments had a profound effect on transit labor and transit services. Between 1945 and 1960, transit employment fell from 242,000 employees to 156,000

employees. Although mass transit had been generally viewed as a local, rather than a national issue, many members in Congress viewed the federal mass transportation program as a necessary step to preserve both transit jobs and transit services. One of the principal features of the 1964 Act was to provide federal funding for local public bodies to acquire financially troubled private transit companies.

Private Enterprise Requirements in the Federal Transit Act

Since its inception, the Federal Transit Act has recognized the importance of private sector participation in Federal Mass Transportation program. Section 5323(a)(1)(B) [formerly 3(e)]; Section 5303 (e & f) [formerly 8(e)]; Section 5304(d) [formerly 8(h)]; Section 5306(a) [formerly 8(o)]; and Section 5307(c) [formerly 9(f)] mandate private sector participation in programs assisted by federal transit grants. (When discussing the Federal Transit Act, it is sometimes confusing because one person may refer to Section 16(b)(2), Section 8(o), or Section 13(c), while another person may refer to Section 5310(d), Section 5306 (a), or Section 5333(b). Both people are referring to the same provisions of the Act, but the citations are different because in July 1994, after thirty years, Public Law 103-272 repealed the Federal Transit Act and related transit provisions and reenacted them as chapter 53 of title 49, United Sates Code.)

Although the private enterprise participation requirements had been the law for nearly two decades (1964 -1984), contracting of services to private operators was a minimal $10 million per year in the early 1980s. Then in 1984, in response to President Reagan's call for a greater private sector role in addressing community needs, the Federal Transit Administration issued the Private Enterprise Participation (PEP) Policy that called

for the use of private providers in transportation wherever practical. The reason given for this policy was that injecting competition into the provision of public transit services would result in lower costs for quality services. It was also thought that in addition to real cost savings, contracting out some services would limit the growth in transit agencies' own costs for providing services.

Success of the PEP Policy is well documented. From 1984 through 1990, the amount of privately contracted transit bus service increased by 62.5%. The amount of privately contracted paratransit service increased by 135% from 1984 to 1991. The FTA Private Enterprise Participation Policies helped encourage competition and has provided a framework for the transit communities to meet the requirements in the Federal Transit Act of 1964, as amended, that private transportation companies are included, to the maximum extent feasible, in the planning and delivery of transit services. The FTA private enterprise policy was very successful in that competitive contracting reduced public costs in three ways:

- Directly through lower service costs that typically ranged from 20 percent to 40 percent
- Indirectly though "ripple effect" impacts on services that have not been competitively contracted. For example, San Diego began contracting in 1979, and as a result of the PEP Policy has converted 38 percent of its bus system to competitive contracting at an average cost saving of 30 percent. "Ripple effect" savings have reduced the costs of non-competitive service by 25 percent per vehicle hour. In fact, through 1996, as a result of competitive contracting, San Diego system-wide bus costs per vehicle hour were $475 million less than if costs had risen at the industry rates experience by those agencies that do not contract.
- Private sector contractors pay local, state and federal taxes and the taxes paid by private operators benefit the public good.

There are numerous examples in addition to San Diego Transit where the impetus of the FTA PEP Policy resulted in innovative services utilizing private operators. A few follow below.

- In Phoenix, AZ, the transit agency saved a significant amount of money by eliminating Sunday bus service and replacing it with a shared-ride taxi service.
- Ann Arbor Area Transit Authority eliminated its late night bus service and replaced it with a shared-ride taxi service.

•Transit Authorities in Dallas and Houston expanded service to growing suburban areas by contracting for express bus service.
•Denver Regional Transit District is required by state law to contract out 35 percent of its fixed route service, which it does at cost savings of 41 percent.
•Indianapolis contracts 70 percent of its bus system experiencing a cost per hour reduction of 22 percent.
•The City of Las Vegas contracts out its entire system. Costs per vehicle hour dropped by 33.3 percent.
•Foothills Transit outside Los Angeles contracts out its entire system to private operators. Its ridership has risen by over 50 percent, it has added 57 percent more service, and its fares have dropped by 37 percent.

An often-quoted fallacy is that the savings to the transit agency are because the contract workers are paid a lower wage that the public transit employees. However, studies have shown that the lower contractor costs result from administrative efficiencies, improved management of the work force, more productive work rules, better utilization of equipment and facilities, improved maintenance practices, and labor compensation consistent with competitive market rates.

Rescission of the PEP Policy

In 1993, in the early days of the Clinton/Gore Administration, a great deal of Administration governmental reform policy was based on a book entitled "Reinventing Government" by David Osborne and Ted Gaebler. The book specifically cited the FTA Private Enterprise program for its efforts to achieve competition and efficiency in the delivery of government services. In a letter protesting the rescinding of the PEP Policy by the Clinton Administration, Osborne stated, "I believe the Private Enterprise Policy is indeed a model program. It simply requires local authorities to determine and consider the alternatives, public and private, in reaching transit objectives." He continued, "The injection of competition into public monopolies is a fundamental principle not only of "Reinventing Government," but of the Administration's National Performance Review, run by Vice President Al Gore. I serve as a senior advisor on the Performance Review.

We are actively trying to increase, not decrease, the amount of competition in federally funded services." Osborne's words fell on deaf ears. The PEP Policy was rescinded. Since the rescission of the PEP Policy in 1994, there have been no significant incentives to continue the more effective use of resources that result from the consideration of competitive contracting in the provision of public transportation.

TLPA Legislative Program to Revitalize the Participation of Private Transportation Providers to the Planning and Delivery of Public Transit Services

The infusion of competition into the provision of public transit services is important for a number of reasons including: (1) the need to guard against inequitable government subsidized competition, (2) to guarantee efficiency and effectiveness in the expenditure of Federal mass transportation assistance through competition, and (3) to prevent duplicative expenditures. The following five legislative initiatives are designed to increase the participation of private operators to the maximum extent feasible as is called for in the statute.

Repeal the Anti-Private Sector Federal Transit Planning Certification Provision

The Planning Program provisions applicable to transit and metropolitan planning agencies are found in Section 5303-5306 of Title 49 United States Code - Transportation. Section 5306(a) states: "A plan or program required by Section 5303, 5304, or 5305 of this title shall encourage to the maximum extent feasible the participation of private enterprise." Under Section 5306(c), the private enterprise participation requirements are defined as:

- Section 5306(c)(2) requires each recipient of a grant shall develop, in consultation with interested parties, including private transportation providers, a proposed program of projects or activities to be financed;
- Section 5306(c)(3) requires each grant recipient to publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials, have the opportunity to examine

the proposed program and submit comments on the proposed program and the performance of the recipient;
•Section 5306(c)(6) requires each grant recipient to consider comments and views received especially those of private transportation providers in preparing the final program of projects.

Unfortunately, the experiences of private operators with transit agencies and Metropolitan Planning Organizations (MPOs) for the past twelve years under ISTEA and TEA-21 are that these private enterprise participation provisions are being ignored, because Section 5305(e)(3) of the title states that:

> The Secretary may not withhold certification [that each metropolitan planning organization in each transportation management area is carrying out its responsibilities under applicable laws of the United States] based on the policies and criteria a metropolitan planning organization or mass transportation grant recipient establishes under Section 5306(a) of this title for deciding the feasibility of private enterprise participation.

Section 5305(e)(3) discriminates directly against private transportation operators. The power and role of MPOs were greatly enhanced with the enactment of ISTEA in 1991 and even more so with the enactment of TEA-21 in 1998. In the transit portion of TEA-21, the MPO is required to be certified at least every three years, and it has to certify that it complies with all applicable laws and regulations except one. That one exception is the private sector provision of the Federal Transit Act.

This anti-competitive, anti-private sector provision should be repealed from the Federal Transit Act because the only sections of the Act that save the taxpayers' money are the Private Sector provisions of the statute that require grant recipients to consider the utilization of the private sector in the provision of public transit service. In addition, the enforcement of Section 5305(e)(3) effectively neutralizes the private sector

participation requirement and removes the likelihood that the MPO will make a decision that allows for competition in public transit.

After the passage of TEA-21, the Federal Transit Administration and Federal Highway Administration issued a memorandum on how their field offices should proceed with the planning requirements of the law. The document serves as a reminder to transit operators, state DOTs, and Metropolitan Planning Organizations to ensure a basic level of compliance with TEA-21's statutory language. There are eight requirements covered in the memorandum including the following:

> Consultation with transit users and freight shippers and service providers: "Before approving a long-range transportation plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, **private providers of transportation**, representatives of public transit, and other interested parties with a reasonable opportunity to comment on the long-range transportation plan, in a manner the Secretary deems appropriate." (Emphasis added)

The law mandates a role for the private sector, yet at the same time, Section 5305(e)(3) explicitly withdraws any enforcement of the mandate. By hiding behind Section 5305(e)(3), many agencies do

not consider the role the private sector could play in improving the quality and cost effectiveness of transportation services in their area. The study published by the Transportation Research Board in

2001, “Contracting for Bus and Demand-Responsive Transit Services” reported that 40 percent of all federal transit aid recipients do not currently contract at all. The Administration's Reauthorization bill repeals this anti-private sector federal transit planning certification provision. We urge that the Senate's reauthorization bill also repeal this provision.

Amend DOL Administration of the Federal Transit Labor Protection Provisions

In April 2001, the House Subcommittee on Highways and Transit of the Committee on Transportation and Infrastructure heard testimony from Anthony Downs, a senior fellow at the Brookings Institution who was asked to provide a report on the "Future of U.S. Ground Transportation from 2000 to 2020." In his testimony, Downs stated,

> To a great extent, two types of archaic institutional structures hamper approaching future ground transportation rationally and efficiently. First, existing means of governance in most metro areas are not capable of managing regional growth so as to create consistently higher densities in new-growth areas…**The second major institutional roadblock lies in the regulations that govern public transit. Existing authorities bolstered by transit unions want to maintain monopolies of very inefficient large-scale systems that cannot achieve flexible approaches to serving low-density residential areas. Yet such areas will comprise the vast majority of all new areas we are likely to build in the next two decades… Imaginative management of public transit funds would encourage bidding for new types of services by private entrepreneurs. But the political power of transit unions and established institutions makes that unlikely**..." (emphasis added)

Mr. Downs is not the first learned individual to recognize the role unions play in stifling innovation in public

transit because of the hold Section 5333(b)-transit labor protection (formerly Section 13(c)) gives them over transit agency management. Section 5333(b) adversely impacts transit operations in a variety of ways, but two are of particular concern to private operators, including paratransit operators:

- restrictions on delivering transit services in a manner that makes the most business sense, particularly the roadblocks that 5333(b) present to any legitimate competitive contracting efforts; and
- financial liability for 5333(b) claims, often in connection with changes in contractors, regardless of whether the action involved has any real connection to a Federal project or grant.

Private operators' concerns about Section 5333(b) arise not out of its original intent, but rather out of how it has evolved and been expansively interpreted by the Department of Labor over the years. As the legislative history reflects, the original Section 13(c) was designed by Congress to protect transit workers from adverse impacts in employment that might result from Federal grants and to protect the collective bargaining rights of employees of private transit companies when those companies were purchased by public entities with Federal funds. Clearly, given these congressional objectives, Section 5333(b) has been interpreted and applied far beyond its original intent. Transit operators are being repeatedly frustrated in their efforts to provide additional and cost effective transit for the people they serve due to the threat of labor protection impediments and costs. Some unions have used Section 5333(b) to block contracting action, and to impose large costs that reduce or eliminate the efficiencies in contracting for services. In April 2001, this Subcommittee heard testimony from public transit officials representing Sacramento, Little Rock, Las Vegas, Boston, New York, and Chicago — six dissimilar cities, but all burdened and asking for relief from the Section 5333(b) labor protections. Peter Stangl, Chairman and CEO of the New York Metropolitan Transit Authority, summed up the concerns of these six public transit representatives by stating

"Current labor protection requirements, the "13(c)" provisions of the Federal Transit Act,

> apply to both capital and operating budgets. A grant recipient's union must approve both our capital and operating assistance requests before FTA can proffer grants. Such sign-off provisions give extraordinary control over a transit organization to the unions and can be used to undermine more traditional channels for resolving labor/management disputes. The net effect of 13(c) is to deprive transit operators of the ability to achieve reasonable productivity. Most critically, the regulations do nothing to advance legitimate federal interests."

The scope and nature of the 5333(b) protections required in "change in contractor" cases have continued to be a subject of major debate. The Department of Labor has become increasingly sympathetic to the efforts of the transit unions to include in 5333(b) protections a requirement that contractors providing transit services for a Federal grantee hire the workforce of the preceding contractor, and adopt the terms of the existing collective bargaining agreements. The provisions sought essentially provide a guaranteed right of continued employment, a "carryover" of the then-effective collective bargaining agreement, and if read literally, recognition of the existing union representative.

Compounding the difficulty with the Department of Labor's position is the fact that FTA grantees are faced with inconsistent, and sometimes directly conflicting, imperatives from the Federal agencies that play a major role in their funding. Specifically, grantees are being told by the FTA that they must conduct periodic competitive procurements for transit services and award to the successful proposer under FTA's procurement principles; only then to be told by the Department of Labor that they cannot take any action that would change the existing work force or their unions. These conflicting Federal directives cannot be reconciled, leaving grantees in the untenable position of trying to decide which agency to believe and whose rules to follow.

A required carryover could have a significant adverse impact on contracted services in the paratransit area. In particular, the potential economic benefits of competitive contracting could be lost if labor costs are effectively "locked in" from one contractor to the next.

The Department of Labor had previously held that when a contract for a fixed length has been properly terminated in accordance with its terms, impacts which occurred solely as a result of the expiration of the bid contract were not to be considered "as a result of" a Federal grant, and thus would not give rise to 5333(b) protections for affected employees. One major exception to the general rule was where the applicable 5333(b) protections already in place explicitly required the carryover of employees and/or the collective bargaining agreement.

The transit labor unions have been more aggressively pursuing 5333(b) provisions requiring a carryover of the workforce and collective bargaining agreement, both in the context of negotiation over the terms to be included in 5333(b) agreements and in the form of 5333(b) claims filed under applicable existing 5333(b) protections.

Section 5333(b)'s roots can be traced back to late 19th century rail labor law. These protections basically provide that should a union member covered by a labor agreement lose his or her job through the actions of a federal grant, that union member is entitled to compensation of up to six years full salary. This onerous penalty, once widespread across the United States, now only applies to two industries: Amtrak and public transit.

Following are four core actions for how Section 5333(b) labor protection provided for in the Federal Transit Act can be effectively changed to make the transit labor protections less of an obstacle to the efficient and effective provision of public transportation service.

1.The carryover of workforce issue needs to be addressed in the Senate bill. This could be achieved by simply declaring that a change in contractors is not an event that gives rise to 5333(b) protections. In fact, a 1994 certification for the Regional Transportation Commission of Clark County, Nevada, the Department of Labor agreed with the grantee that "neither Section 13(c)(1) nor (c)(2) provide guaranteed jobs, but rather ensure that rights achieved through collective bargaining with an employer are preserved and that the process for negotiating labor contracts is continued with the employing entity." The Department of Labor went on to state that 13(c)(1) and (c)(2) "standing alone do not operate to create new employment relationships with a third party, nor do they require the hiring of a predetermined workforce."

2.The Department of Labor's previous position that there is not a required carryover of workforce should also extend to "public to private" transitions where no employees are dismissed as a result of a Federal project. Without such a declaration the universe of situations in which a carryover of a workforce and its labor contract will be required can continue to expand. Such expansion will have a significant impact on transit systems that rely on private contractors for their paratransit operations, and could have a significant impact on the private contractors' ability to provide such operations, and even on their willingness to contract with public transit operators to provide such service.

3.Some FTA grantees have objected to binding interest arbitration provisions in 5333(b) agreements. The Department of Labor has found such objections "insufficient", and in effect have frustrated attempts by grantees to use different forms of dispute resolutions (such as fact finding) for interest disputes other than binding interest arbitration. The Department's action to deny the objections to interest arbitration is in *direct conflict* with judicial precedent, which has clearly held that interest arbitration is *not* a required provision of 5333(b) terms. ATU v. Donovan 767 F. 2d 939(D.C. Cir. 1985). By denying grantees' ability to object to interest arbitration, grantees continue to be bound to interest arbitration that need not be legally included in 13(c) provisions. Recent efforts to bind contractors to the 5333(b) terms of grantees, would likewise require contractors to be subject to binding arbitration in interest dispute with their workforce.

4.It is suggested that the review of all FTA grants should be limited to the review by the Federal Transit

Administration. There is no statutory requirement that these grants should be reviewed by the DOL and therefore the practice should be statutorily ended. Transit labor protection was enacted with the implementation of the Federal Transit Act in 1964 and the subsequent regulations that were promulgated over the years resulted in federal transit grants not only being reviewed by the DOT, but eventually by the DOL. Currently, ALL federal transit grants are not only reviewed by the DOL, but those grants are actually reviewed by private entities that have veto power, the national union organization that would be applicable to that particular public transit authority.

We believe implementation of these recommendations would go a long way toward bringing a more level playing field to the competitive bidding process at many transit agencies. We urge the Senate to include language requiring these changes in the reauthorization legislation.

Need For Private Participation Requirements

There is ample, indisputable evidence (see pages 3-5 of this testimony) that the Private Sector Participation Guidance, developed and promoted by the Reagan and Bush Administrations, was a great success raising the amount of contracting, in just ten years, from $10 million per year to over $500 million per year. Public transit agencies, private operators, local governments, and most importantly, the public itself can realize significant benefits from contracting some public transportation services to private operators.

- Benefits for the riding public include increased levels of transportation services, increased convenience, and improved service quality.
- Private operators typically realize increased income, productivity and exposure in their communities.
- Benefits for public transit agencies typically include cost savings, the ability to serve a greater number and types of trip needs, and allow a more productive allocation of union labor.
- Local governments typically realize cost savings and a higher level of public transit services.

However, since the rescission of the Reagan-Bush Private Enterprise Participation policies in 1994 by the Clinton Administration, the private sector has been relegated to the back burner and is not even an afterthought in the minds of many transit and government officials.

•Currently, 40 percent of all public transit agencies do not contract any services. Even though there is a legislative requirement to utilize private operators to the maximum extent feasible, a very alarming 30 percent of these transit agencies are led by general managers who state unequivocally that they never consider contracting.

•Only three of the Federal Transit Administration Regional Administrators were regional administrators when the guidance was in place, so even high-placed FTA officials have basically dropped private operators from their purview. It has been many years since FTA officials have been instructed to assure consideration of the private sector in leveraging public transportation investment and to assure cooperation, not unfair subsidized competition, in the efficient use of federal transit grants.

•After FTA rescinded the Private Enterprise Participation Policy, it withdrew the private sector guidances for its Capital Program, Urbanized Area Program, Nonurbanized Area Program, Elderly and Persons with Disabilities Program, and its Competition Policy for Paratransit Activities. As the years have passed and new employees have come into transit management positions, consideration of private operators for contracting purposes is ending. Just as consideration of private operators was virtually non-existent for 20 years after the Federal Transit Act of 1964 became law (until the Private Enterprise Participation Policy was introduced in 1984); utilization and even consideration of the private sector is now declining. Also, many states have revised their guidance to operators and dropped private sector inclusion in the planning process as a result of FTA backing away from enforcing the private sector provisions in the Federal Transit Act.

•While it is true that the requirements of providing complementary paratransit service required by the ADA has increased the dollar volume of contracted transit services, the trend is for transit agencies to take contracts back in-house. Altogether, contractors provide about 15 percent of all bus and demand-responsive vehicle hours, a percentage that has changed very little during the past 5 or 6 years.

•Currently, the President's Management Agenda (PMA) promotes contracting and outsourcing as a means to bring private sector efficiencies into the federal government. Re-establishing a private sector participation policy would help FTA and DOT meet the PMA requirements.

The public private partnership approach to providing transit services is a proven tool to achieve various public objectives including cost control, enhancements of service quality and quantity, and access to capital funding. However, as there are ever-increasing demands for limited transit funds, the competitive approach offers a means to provide current or new services at a reduced cost utilizing the savings for existing transit

services. TLPA urges the Senate to require FTA to conduct a rulemaking to reestablish a private sector participation policy. The end result would be an increase in the efficiency and effectiveness of public transit operations in this country.

Include the President's New Freedom Program in the Senate Reauthorization Bill

President Bush has stated that his New Freedom Program is designed to close the mobility gap for disabled Americans who currently do not have adequate mobility options so that these persons will have "the opportunity to participate fully in society and engage in productive work." According to Secretary of Transportation Mineta, the New Freedom Program funds are intended to increase access to assistive technologies and educational opportunities, and to enhance the integration of disabled persons into the workforce and communities. The Department of Transportation is charged with responsibility for the New Freedom Program funding, underscoring the central role of transportation in achieving the goals of the program.

Today, most public transit systems are largely accessible to disabled persons as a result of public funding to meet the requirements of the Americans with Disabilities Act. However, the privately owned and funded taxicab and paratransit industry receives virtually *no* public funding to provide service to the disabled. At the same time, private operators provide an essential means of transportation for people in urban, suburban and rural areas. The industry is used on a curb-to-curb basis, to reach other transportation facilities such as bus and rail stations and airports, as well as workplaces, schools, doctors, community centers and other locations. Taxicabs are ubiquitous, operating in over 2,000 communities and providing demand-response service 24 hours per day, 365 days per year. For many people, the disabled included, taxicabs provide the essential link

between home, the community at-large and other transportation systems. Taxicabs are more broadly available than municipal paratransit services, which are generally available only with advance reservation, for limited hours and then only in city centers and in areas three-quarters of a mile from fixed route bus corridors or rail stations. Significantly greater accessibility for a larger number of disabled persons could easily be achieved, consistent with the goals of the ADA, were New Freedom Program funds made available to carry out a program designed to close the mobility gap with respect to critically important curb-to-curb transportation provided by the private taxicab and paratransit industry. The program, which would be administered by the Federal Transit Administration, would authorize funding to qualified organizations (community groups or directly to taxicab companies) for use in enhancing local transportation services for disabled persons by working with private taxi-van providers to fund the purchase, promotion and operation of taxi-vans that meet federal accessibility requirements for vans and that serve persons requiring accessible transportation to reach work, schools and other places in the community at-large. The Administration's Reauthorization bill calls for the program be modeled on FTA's Job Access and Reverse Commute Program, that is projects must be derived from a locally developed, coordinated public transit-human services transportation plan that is developed through a process that includes representatives of public, private, nonprofit transportation, human services providers and representatives of the general public.

The New Freedom Program could establish an immediate and meaningful accessible transportation safety net, making 1 million accessible taxi-van trips available per year. Assuming the program funded two-thirds of the incremental cost of acquisition and the first year of incremental operating costs, then for each $1.8 million in funding, approximately 125 additional accessible taxi-vans could be purchased nationwide. These taxi-vans would dramatically increase the service area and hours of availability of accessible transportation

service. Each could reasonably be expected to be available to transport two wheelchair passengers per hour for about 12 hours per day, thereby collectively serving 1 million disabled passengers annually who would not otherwise receive this. The U.S. Department of Labor estimates that 70 percent of employable people with disabilities are unemployed, 33 percent of these people are attributing lack of adequate transportation as a key factor in their inability to secure employment. The New Freedom Program, by creating an accessible transportation safety net in the form of taxi-vans, would be implementing a public-private partnership to help integrate passengers with disabilities into the workforce and community, thus expanding the transportation options for employable people with disabilities.

The Administration's reauthorization bill states, "subrecipient means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation service that may receive a grant under this section indirectly through a recipient, rather than directly from the Federal government." TLPA urges that the Senate include the New Freedom Program in their reauthorization legislation and to use similar language to the Administration to ensure that private operators are eligible to participate in the program.

Require that FTA's Special Needs Programs (JARC, New Freedom, and Section 5310) Utilize the Same Planning and Eligibility Requirements

In the past seven years, the Federal Transit Administration (FTA) has introduced or proposed two innovative programs designed to meet the special needs of two of the most transportation dependent groups: those with low incomes and the disabled. The Job Access and Reverse Commute (JARC) grant program is designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to employment. President Bush's proposed New Freedom Program would provide for alternative transportation

services to jobs and innovative solutions eliminating transportation barriers faced by persons with disabilities. Along with the FTA Section 5310 Elderly and Persons with Disabilities Program, JARC and the New Freedom program are FTA's special needs programs. Each one of these programs has a slightly different target audience, JARC (unemployed and welfare-to work-individuals); New Freedom (disabled individuals whose needs cannot be met by Americans with Disabilities Act accessible transportation options); and Section 5310 (assisting private non-profit groups and certain public bodies in meeting the transportation needs of elders and persons with disabilities). However, there are such similarities and potential synergies among the programs, that TLPA urges that the Senate require that each program be required to have uniform planning and eligibility requirements using the JARC planning and eligibility requirements as the guidelines. This request is also consistent with the renewed emphasis on coordination of transportation resources at the Federal level.

The issue of providing affordable, accessible, and safe transportation for human services clients has been extensively researched and promoted since the early 1970s. In October 1986, Secretary of the U.S. Department of Health and Human Services Otis Brown and Secretary of the U.S. Department of Transportation Elizabeth Dole signed an historic joint agreement on the coordination of transportation services funded by the two agencies. Every subsequent Administration has renewed this commitment to coordination. In the past 17 years, the scope and reach of coordinated transportation services has advanced to such an extent that one can find exemplary models of coordinated activities in virtually every state. However, recent changes in Federal social service programs principally the change from serving children's needs in the Aid to Families with Dependent Children program to serving the entire family's needs in the Temporary Assistance to Needy Families (TANF) program; difficulties in funding medical services, primarily the financial dilemmas states are facing with the Medicaid program; and changes in the

demographics of our country, chiefly the increasing proportion of our population age sixty-five and over, have fostered a renewed need for and commitment to coordination at the Federal level. The Administration's reauthorization bill requires any locality applying for funding for any of the three programs (NFI, 5310, & JARC) must demonstrate that they have a local, coordinated process that includes all the stakeholders: public and private operators, local governments, private non-profit organizations and riders. Having a seat at the table should give private operators an enhanced role in helping plan for and provide coordinated services. TLPA supports having one streamlined program that has uniform planning and operating requirements for recipient and subrecipient grantees.

The importance to private operators of having uniform planning and participation requirements for these special needs programs cannot be overstated. The Federal Transit Act requires that planners and grant recipients "shall encourage to the maximum extent feasible the participation of private enterprise." However, because private operators are not accustomed to federal planning and procurement processes, having to deal with different requirements for each and every program is often mind numbing. By including language in their reauthorization legislation requiring that FTA's three special needs programs utilize uniform planning and participation requirements, the Senate would further advance the private enterprise participation requirements of the Federal Transit Act.

Conclusion

Competitive contracting is a tool that is available to public transit agencies to assist them in managing their costs in these current economic times where virtually every state and locality is scrambling for dollars to overcome budget deficits. Competitive contracting not only results in lower cost for public services that are

competitively contracted, it also induces improved cost performance from the public agency. Contractors are the friends of the public transit sector. They take over the least productive routes and usually deliver a comparable or better quality of service at a lower deficit rate. There is little evidence of any significant economies of scale in the transit industry, particularly for large transit agencies, meaning there is no real economic justification for protecting transit properties from competition. Research shows consistently that unit costs of delivering bus services rise when vehicle miles increase. Thus, private firms that assist in serving high-deficit peak loads should help reduce the scale of public operations to a more cost-efficient level.

TLPA respectfully requests that the Senate consider including the association's five legislative proposals in their transportation reauthorization legislation. Thank you for this opportunity.