



DISABILITY RIGHTS ADVOCATES FOR TECHNOLOGY
500 Fox Ridge Road, St. Louis, MO 63131
314-965-4938

May 12, 2004

Mr. Michael Winter, Director
Office of Civil Rights
Federal Transit Administration
Room 9100
400 7th St. SW
Washington, DC 20590

Re: Public Transit Access for People with Disabilities

Dear Mr. Winter,

We represent people with disabilities who are, by virtue of new developments in technology and more widespread use of the principles of universal design, finding the opportunity to more fully participate in our society and enhance the quality of their lives. Many new and exciting products are now on the market to assist people with disabilities in achieving these goals, including the iBOT wheelchair recently introduced by Johnson & Johnson, and the Segway HT. The people we represent are using these new technologies as their assistive mobility devices.

The Federal Transit Administration has issued guidance to transit agencies to "treat the Segway in accordance with policies such as those for bicycles and two wheeled scooters". The FTA considers the Segway unprotected by the Americans with Disabilities Act, because it does not meet the definition of a "common wheelchair" which must be either a three or four wheel device. The right of access to our nation's public transportation systems, by people with disabilities is in peril. We are asking the Federal Transit Administration to re-examine their current position in order to comply with Americans with Disabilities Act of 1990.

The Segway HT is an assistive device for people with mobility impairments; it is not a common wheelchair (it is not even a chair). When the regulations to implement the transportation and related provisions of the ADA, were adopted the accessibility guidelines were inclusive of, not exclusive to those with disabilities utilizing a wheelchair. There are many other assistive devices used by people with mobility impairments, including canes, crutches, and walkers (some with two wheels). Currently the use of a lift or a ramp is extended to someone unable to use stairs or to transit the gap between the platform and the vehicle. Under the ADA, allowances and accommodations must be made for people with disabilities requiring assistive devices, including the Segway HT, who use our public transportation systems.

The definition of a "common wheelchair" was intended to provide a standard of design for transportation facilities and vehicles to facilitate access for people with disabilities using wheelchairs and scooters. The iBOT, while a wheelchair, does not meet the definition of a "common wheelchair". The definition in the context of "a device which is usable indoors and does not exceed 30 inches in width and 48 inches in

length measured 2 inches above the ground, and does not weigh more than 600 lbs. when occupied" is inclusive of the iBOT, but with the inclusion in the definition of "any class of three or four wheeled devices", people with disabilities using many power wheelchairs on the market today, including the "iBOT "could be denied access to public transportation systems across the nation by virtue of their power wheelchairs having five or six wheels. Use of the definition for its intended purpose makes the number of wheels on an assistive device irrelevant.

When publishing the Final Rule regarding 28 CFR part 35 the Attorney General consistently made reference to the fact that there would be no exhaustive list of devices and services because any attempt to do so would omit the new devices that will become available with emerging technology. Because of changes in technology and the more prevalent use of universal design, use of rigid definitions, which become "sacred cows" to define what is and what isn't appropriate for use by people with disabilities would be a grave injustice.

In 1998 United States Congress recognizing that "any development in mainstream technology would have profound implications for individuals with disabilities in the United States" passed the assistive technology act of 1998. Recognizing the benefits of "universal design" born out of the disability rights movement, they said "the use of universal design principles reduces the need for many specific kinds of assistive technology devices" and they further described any assistive device as "any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities." The Segway HT was designed utilizing the principles of universal design, and there is no other product on the market today that better represents the vision of the Assistive Technology Act of 1998.

Recently, Dr. Jeffrey Rosenbluth, M.D. Director of Spinal Cord Injury medicine at the University of Utah while examining the iBOT wheelchair, commented that he was most excited about how the Segway HT could help people with incomplete spinal cord injuries, who have difficulty walking. He said "this device is very feasible for these patients and gives them more independence and freedom". Many using the HT as their assistive device suffer from, Multiple Sclerosis, Parkinson's Disease, Spina Bifida, Amputated limbs, COPD, Emphysema, and many other debilitating conditions.

We ask the Federal Transit Administration, to examine their position and issue guidance to ensure our right of access to the nation's public transportation systems, under the ADA, for people with disabilities using the Segway HT and the iBOT wheelchair.

Sincerely,

Jerry Kerr
Founder

C: Robert Ashby, Deputy Assistant General Counsel for Regulation & Enforcement,
Department of Transportation

Ceryl L. Hershey, Office of Civil Rights,
Federal Transit Administration