Department of Justice seal

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**By Certified Mail and Electronic Mail**

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Department of Justice

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Re: The United States’ Investigation of the Virgin Islands Department of Public Works (VITRAN) Under Title II of the Americans with Disabilities Act, DJ# 204-90-13, USAO2001V00054

Dear Attorney Tepper:

We write to report the findings of the United States Department of Justice’s (the Department) investigation of the Virgin Islands Department of Public Works’ public transportation system (VITRAN) with respect to its compliance with the Americans with Disabilities Act (ADA). During our investigation, we assessed VITRAN’s compliance with Title II of the ADA, 42 U.S.C. §§ 12131-12150, and the regulations implementing Title II, 28 C.F.R. Part 35 and 49 C.F.R. Parts 37 and 38. Under the ADA, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132. VITRAN is a public entity under the ADA and thus subject to the statute’s nondiscrimination mandate. *See* 42 U.S.C. § 12131(1)(B).

Pursuant to 42 U.S.C. § 12133 and 28 C.F.R. §§ 35.171 and 35.190(e), the Department is authorized to investigate the allegations in this matter. Our investigation revealed violations of the ADA, and this Letter of Findings sets out our findings of fact, conclusions of law, and the actions necessary to correct those violations. 28 C.F.R. § 35.172. If we cannot secure a voluntary compliance agreement to resolve the violations, the Attorney General may bring an enforcement action in District Court. 28 C.F.R. §§ 35.173 and 35.174; *see also* 42 U.S.C. § 12133.

1. **SUMMARY OF FINDINGS**

VITRAN’s fixed-route bus system is not readily accessible to and usable by individuals with disabilities, including those who use wheelchairs. 42 U.S.C. § 12142. Specifically, VITRAN has failed to provide operable wheelchair lifts, stop announcements, and sufficient wheelchair securement devices, and has failed to allow passengers using the lift to board and disembark at designated stops, in violation of 49 C.F.R. §§ 37.161(a) and (b); 37.163; 37.165(d); 37.167(b) and (g); 38.23(a) and (d).

VITRAN’s complementary paratransit service, VITRAN Plus, fails to provide service that is “comparable to the level of designated public transportation services provided to individuals without disabilities using such system.” 42 U.S.C. § 12143(a). Specifically, VITRAN Plus does not deploy sufficient vehicles and therefore cannot meet demand. It also fails to meet a number of service criteria requirements, and engages in “operational pattern[s] or practice[s] that significantly limit[] the availability of service to ADA paratransit eligible persons.” 49 C.F.R. § 37.131(f)(3). These capacity constraints include significant untimely pickups; impermissible restrictions on companions; and unduly restrictive reservations policies and practices, including shortened phone reservation hours and the unavailability of Sunday reservations for Monday service. In some instances, VITRAN Plus charges more than double for service comparable to the fixed-route bus. *See* 49 C.F.R. § 37.131(c). Finally, VITRAN has failed to adequately train its employees “to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way . . . .” 49 C.F.R. § 37.173.

1. **INVESTIGATION**

In response to complaints received by the U.S. Attorney’s Office for the District of the Virgin Islands, the Department of Justice opened an investigation of VITRAN in August 2011. Since that time, VITRAN has cooperated with the Department’s investigation.

In September 2013, a representative from the Civil Rights Division and a representative from the U.S. Attorney’s Office for the District of the Virgin Islands conducted a site visit, inspecting VITRAN’s facilities and vehicles on St. Croix, St. Thomas, and St. John. In addition, those representatives interviewed 10 VITRAN staff, including the Operations Managers from all three islands and the VITRAN ADA Coordinator, about VITRAN policies and procedures. We also reviewed VITRAN driver logs, schedules, the Ride Guide[[1]](#footnote-1), policy guides, and other documents produced by VITRAN as well as publicly available information. Finally, the Department has continued to seek input from VITRAN users and local advocates for accessible public transportation.

1. **STATUTORY AND REGULATORY BACKGROUND**

Congress enacted the ADA in 1990 “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). In so doing, Congress found that the forms of discrimination encountered by individuals with disabilities include “the discriminatory effects of architectural, transportation, and communication barriers” and the “failure to make modifications to existing facilities and practices.” *Id*. § 12101(a)(5). Congress further determined that “discrimination against individuals with disabilities persists in such critical areas as . . . transportation.” *Id*. § 12101(a)(3). For these and other reasons, Congress enacted Title II of the ADA, which prohibits discrimination against individuals with disabilities by public entities:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity.

*Id.* § 12132. The ADA defines a “public entity” to include any local government and any department or agency of a local government. *Id*. § 12131(1)(B); 49 C.F.R. § 37.3. The Virgin Islands Department of Public Works and VITRAN are thus public entities under the ADA.

Title II of the ADA requires that public entities provide accessible transportation to people with disabilities. *See* 42 U.S.C. § 12132. Part B of Title II contains provisions that apply specifically to public entities that operate public transportation services, and defines what shall be considered discrimination for purposes of the ADA. *See* 42 U.S.C. §§ 12141-12150. Pursuant to Sections 12143 and 12149 of the ADA, the U.S. Department of Transportation (DOT) has issued regulations for Title II of the ADA, which reflect the statute’s broad nondiscrimination mandate. *See* 49 C.F.R. Parts 37 and 38. Specifically, “[n]o entity shall discriminate against an individual with a disability in connection with the provision of transportation service.” 49 C.F.R. § 37.5.

1. **Fixed Route Requirements**

The ADA requires that any vehicles acquired by public entities for their fixed-route systems on or after August 25, 1990, must be readily accessible to and usable by individuals with disabilities, including those who use wheelchairs. 42 U.S.C. § 12142; 49 C.F.R. § 37.71. VITRAN’s buses, all purchased after the effective date, are equipped with wheelchair lifts. DOT regulations require these bus lifts be maintained and repaired promptly when out of order:

(a) Public . . . entities . . . shall maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible to and usable by individuals with disabilities. These features include, but are not limited to, lifts and other means of access to vehicles, securement devices, elevators, signage and systems to facilitate communications with persons with impaired vision or hearing.

(b) Accessibility features shall be repaired promptly if they are damaged or out of order. When an accessibility feature is out of order, the entity shall take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

(c) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

49 C.F.R. § 37.161. In addition, “the entity shall establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.” 49 C.F.R. § 37.163.

When a bus lift is inoperative, the regulations specify that “the entity shall take the vehicle out of service before the beginning of the vehicle’s next service day and ensure that the lift is repaired before the vehicle returns to service.” 49 C.F.R. § 37.163(d). If no spare vehicle is available, then the “entity may keep the vehicle in service with an inoperable lift for no more than . . . three days . . . .” 49 C.F.R. § 37.163(e).[[2]](#footnote-2) However, when “a vehicle is operating on a fixed route with an inoperative lift, and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity shall promptly provide alternative transportation to individuals with disabilities who are unable to use the vehicle because its lift does not work.” 49 C.F.R. § 37.163(f).

Regulations also require that, on fixed-route systems, public transit entities announce stops at transfer points with other fixed routes, other major intersections and destination points, and intervals along a route sufficient to permit individuals with “visual impairments” or other disabilities to be oriented to their location. 49 C.F.R. § 37.167(b).

Regulations further require that fixed-route buses have at least two functioning securement locations and devices. 49 C.F.R. §§ 37.161(a), 37.165(d), and 38.23(a) and (d).

Finally, regulations require that personnel be “trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.” 49 C.F.R. § 37.173.

1. **ADA Complementary Paratransit Requirements**

Title II establishes that it is “considered discrimination” for the operator of a fixed-route system, such as VITRAN:

[T]o fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities . . . that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without using such system.

42 U.S.C. § 12143(a) *see also* 49 C.F.R. § 37.121 (“[E]ach public entity operating a fixed route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.”).

Section 37.123 of the implementing regulation lists eligibility criteria that a complementary paratransit system must meet, including that paratransit providers allow riders to travel with at least one companion and a personal care attendant (PCA). And 49 C.F.R. § 37.131 lists service criteria that a complementary paratransit system must meet. Relevant here are the “response time” requirements set forth in 49 C.F.R. § 37.131(b), the prohibition against charging more than twice the comparable fixed-route fare set forth in 49 C.F.R. § 37.131(c), and the prohibition against “capacity constraints” set forth in 49 C.F.R. § 37.131(f). With respect to response times, the regulation states, in part, that the “entity shall schedule and provide paratransit service to any ADA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day.” 49 C.F.R. § 37.131(b). Next-day service is mandatory when requested*. See* 49 C.F.R. Pt. 37, App. D, at 37.131.

With respect to “capacity constraints,” 49 C.F.R. § 37.131(f) prohibits covered entities from limiting the availability of complementary paratransit service to ADA paratransit eligible individuals including by, but not limited to, any of the following:

(1) Restrictions on the number of trips an individual will be provided;

(2) Waiting lists for access to the service; or

(3) Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons.

(i) Such patterns or practices include, but are not limited to, the following:

(A) Substantial numbers of significantly untimely pickups for initial or return trips;

(B) Substantial numbers of trip denials or missed trips;

(C) Substantial numbers of trips with excessive trip lengths.

(ii) Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists.

1. **FINDINGS OF FACT / CONCLUSIONS OF LAW**
2. **Virgin Islands Public Transportation**

VITRAN is a publicly run transportation service. It operates a fixed-route bus system and a complementary paratransit service, VITRAN Plus, on St. Croix, St. Thomas, and St. John. The 2010 Census reports that the United States Virgin Islands have a population of 106,405. In September 2011, VITRAN Plus had 571 certified riders.

As of September 2013, out of its fleet of approximately 18 30-foot fixed route buses, VITRAN had nine operational buses: four on St. Thomas, four on St. Croix, and one on St. John. VITRAN’s paratransit fleet consists of 11 paratransit vans: six on St. Croix, four on St. Thomas, and one on St. John.

1. **Violations in VITRAN’s Fixed-Route System**
2. Fixed-route bus lifts are inoperable.

While conducting our September 2013 inspection on St. Thomas, two of the Island’s only operable buses (fifty percent of the available fleet), specifically the “City Bus” and Bus 49, were observed with inoperable lifts. VITRAN’s Chief Mechanic indicated that they had been waiting on a lift part for Bus 49 for a “couple months.” The lift for the City Bus was dirty and missing the control. Further, at the time of the September 2013 inspection, VITRAN had no spare vehicles. Thus, when VITRAN discovers a bus with a broken lift, it cannot swap it out with a bus with a functioning lift. Instead, VITRAN keeps the bus with an inoperable lift in service. We find that VITRAN’s failure to maintain operable lifts and to promptly repair broken lifts is a violation of 49 C.F.R. §§ 37.71; 37.161(a) and (b); and 37.163(b), (d), and (e).

Further, the evidence shows that VITRAN has failed to “establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.” 49 C.F.R. § 37.163(b). VITRAN purported to comply with this requirement through daily pre- and post-trip inspections, to be conducted by bus operators. However, VITRAN bus operators on all three islands were observed beginning or ending their shifts without doing a pre- or post-trip inspection. Two VITRAN Operations Managers acknowledged that VITRAN bus operators did not regularly check vehicles to ensure that the lifts are functioning properly.[[3]](#footnote-3) We find that VITRAN’s failure to have a system of regular and frequent maintenance checks of lifts is a violation of 49 C.F.R. § 37.163. As one court explained:

In a bus system with relatively low lift usage, it is possible that a vehicle could go for a number of days without carrying a passenger who uses the lift. It is highly undesirable for the next passenger who needs a lift to be the person who discovers that the lift is broken, when a maintenance check by the operator could have discovered the problem days earlier, resulting in its repair. It is a violation of the regulations for MARTA to neglect to check lifts regularly and frequently . . . .

*Martin v. Metro. Atlanta Rapid Transit Auth*., 225 F. Supp. 2d 1362, 1377-78 (N.D. Ga. 2002).

1. Stop announcements are not being made on fixed-route buses.

According to VITRAN’s written responses to the Department, VITRAN does not make routine stop announcements because the bus public address systems are inoperable. Instead, VITRAN claims that it provides passengers with disabilities with route and/or stop information only upon request by the passenger. VITRAN’s failure to make routine stop announcements on the fixed-route service was confirmed by the Operations Manager on St. Thomas.

Providing fixed-route stop announcements is a requirement of the ADA. 49 C.F.R. § 37.167(b). Section 37.167(b) provides: “On fixed route systems, the entity *shall* announce stops as follows: (1) The entity shall announce at least at transfer points with other fixed routes, other major intersections and destination points, and intervals along a route sufficient to permit individuals with visual impairments or other disabilities to be oriented to their location” (emphasis added). Providing stop announcements only when requested by riders violates 49 C.F.R. § 37.167(b).

Further, the lack of fixed-route stop announcements discourages riders from using the fixed-route service. *See, e.g., Martin*, 225 F. Supp. 2d at 1371 (noting that “the [Federal Transit Administration] assessment also found that a lack of stop announcements discouraged customers of the paratransit service from using MARTA’s fixed route service.”). We spoke with current VITRAN paratransit riders who confirmed that they stopped using the fixed-route service several years ago because of a lack of stop announcements. We find that VITRAN’s failure to make stop announcements is a violation of 49 C.F.R. § 37.167(b).

1. Fixed-route buses lack adequate securement devices.

Fixed-route buses over 22 feet in length must have at least two securement locations equipped with securement devices. 49 C.F.R. §§ 38.23(a) and (d). Out of the five fixed-route buses inspected in September 2013 (all over 22 feet in length), none had two securement locations, and one lacked equipment sufficient to secure even a single wheelchair. We find that VITRAN’s lack of adequate securement devices and locations on fixed-route buses is a violation of 49 C.F.R. § 38.23(a) and (d).

Regulations also provide that a bus operator “may not deny transportation to a wheelchair or its user on the ground that the device cannot be secured or restrained satisfactorily by the vehicle's securement system.” 49 C.F.R. § 37.165(d). However, a fixed-route rider, who uses a wheelchair, was denied access to a bus by a driver when the single functioning securement location was occupied by another wheelchair user. The rider has also been refused service when he was at a stop with another wheelchair user and a bus with only one securement station arrived. The driver refused service to both riders because the driver did not want to choose which of the individuals using wheelchairs would ride. We find that these denials violate 49 C.F.R. §§ 37.165(d) and 38.23(a) and (d).

1. **Violations in VITRAN’s ADA Complementary Paratransit Service**
2. VITRAN Plus has failed to provide paratransit services at a level of service comparable to the level of service provided to individuals who use the fixed-route system.

Pursuant to 42 U.S.C. § 12143(a) and 49 C.F.R. § 37.121(a), a transit system is required to provide paratransit services to individuals with disabilities at a level of service which is comparable to the level of service provided to individuals without disabilities who use the fixed-route system. The violations concerning VITRAN Plus, VITRAN’s paratransit service, discussed below in violations 5 through 9, constitute a level of service *below* the level of service provided by VITRAN to individuals without disabilities who use the fixed-route system and are thus violations of 42 U.S.C. § 12143(a) and 49 C.F.R. § 37.121(a).[[4]](#footnote-4)

1. VITRAN Plus has failed to schedule and provide paratransit service at any time on a given day in response to a request for service made the following day.

VITRAN’s administrative office hours are 8 a.m. to 5 p.m. Pursuant to 49 C.F.R. § 37.131(b)(1), VITRAN is required to provide reservation services during its administrative office’s normal business hours, as well as during times, comparable to normal business hours, on a day when its offices are not open before a service day (*e.g.*, 8:00 a.m. to 5:00 p.m. on a Sunday before Monday service, or on a holiday prior to regular service). VITRAN’s written responses to our questions and employees’ answers during interviews indicated that on weekdays, reservation service frequently ceases at either 4 or 4:30 p.m. Further, VITRAN does not accept reservations on Sunday for Monday service, as required. Misunderstanding the requirement to permit Saturday reservations instead, several employees still reported that they do not accept reservations on Saturdays for Monday service and that riders seeking to make a reservation for Monday must call in on Friday, at the latest. On at least two separate occasions in September 2013, VITRAN Plus riders attempted to make reservations on Saturday for a Monday trip, but were informed by VITRAN that it does not accept reservations on Saturday for Monday service. We find that VITRAN’s reservation policies and practices violate 49 C.F.R. § 37.131(b)(1).

1. VITRAN Plus has failed to plan to meet 100% of demand.

Paratransit providers must “plan to meet 100% of the demand for next-day ride requests by eligible riders . . . . The regulations require a provider to rethink its plan and implement changes whenever a pattern of noncompliance develops.” *Anderson v. Rochester-Genesee Reg'l Transp. Auth*., 337 F.3d 201, 207-208 (2d Cir. 2003) (citing 49 C.F.R. § 37.131(b)). In *Anderson*, the Second Circuit found a violation of section 37.131(b) when “defendants foresaw increased demand, recognized that they failed to schedule all next-day ride requests from eligible riders, and declined to institute reforms that would allow them to meet 100% of the eligible next-day ride demand.” *Id*. at 213. Likewise, the Court in *Liberty Resources Inc. v. Southeast Pennsylvania Transportation Authority* found that the transit system violated section 37.131(b) because it “never studied what additional resources could be provided or what different methods of operation could be employed to meet 100 percent of the paratransit demand.” 155 F. Supp. 2d 242, 254-57 (E.D. Pa. 2001) *judgment vacated on other grounds, appeal dismissed*, 54 F. App’x 769 (3d Cir. 2002).

VITRAN’s performance data indicates that paratransit demand is stretching paratransit services beyond current capacity. Using the Ride Guide’s 30 minute pick-up window (15 minutes early or late) as a benchmark for timeliness,[[5]](#footnote-5) we analyzed data provided by VITRAN for a 10-day period in September 2013 regarding reservations and pickup times to determine VITRAN Plus’ on-time performance:[[6]](#footnote-6)

Late Trips on St. Croix and St. Thomas, September 19-27, 2013

|  |  |  |
| --- | --- | --- |
| Scheduled rides | 451 | 100% |
| Pickups 16-30 minutes late | 49 | 11% |
| Pickups 31-60 minutes late | 36 | 8% |
| Pickups 60 minutes or more late | 12 | 3% |
| Total late pickups | 97 | 22% |

As indicated in the above table, out of the 451 scheduled pick-ups, VITRAN was late 97 times or 22% of the time.[[7]](#footnote-7) Eleven percent of the pickups were late 31 minutes or more. *See* *Martin*, 225 F. Supp. 2d at 1371, 1380-81 (finding that evidence that MARTA’s paratransit service was untimely 15-20% of the time substantiated an ADA violation). Additionally, numerous riders complained of untimely pickups.

In addition, the data indicates that paratransit demand is increasing while VITRAN’s budget is shrinking. Ridership data provided by VITRAN shows that, since 2010, demand for paratransit service in the Virgin Islands has increased annually by approximately 5%. VITRAN also stated that it receives about 15 calls a month regarding new paratransit service. While VITRAN paratransit demand is growing an average of 5% per year, VITRAN’s total budget has declined by an average of 5% per year.

Further, as discussed below, VITRAN has implemented policies that restrain demand, including by informing riders that they may bring companions *only* when there is sufficient space, imposing age limitations on companions, and by curtailing hours when it accepts reservations, each a violation of the regulations. Despite increased ridership, untimely pickups, and other indications that VITRAN is stretched beyond its current capacity, the number of VITRAN Plus vehicles and drivers on the road has remained the same for the last three years. VITRAN Plus has recently deployed new vehicles on all three islands, but these vehicles have replaced, and not supplemented, the existing fleet. Finally, VITRAN has not hired additional drivers. As the paratransit ridership increases, in accordance with current trends in ridership and census data, the inability of VITRAN Plus to meet its demand will continue unless and until additional vehicles and drivers are added to the fleet. We find that VITRAN does not have an adequate paratransit plan and has failed to plan to meet 100% of its demand, in violation of 49 C.F.R. § 37.131(b).

1. VITRAN Plus imposes improper restrictions on companions.

The ADA and its implementing regulations require that paratransit service providers allow riders to be accompanied by a Personal Care Attendant (PCA) and at least one companion. 42 U.S.C. § 12143(c)(1)(B); 49 C.F.R. § 37.123(f)(1). Appendix D to the DOT regulations, which explains section 37.123, states:

The ADA *requires* entities to provide paratransit to one person accompanying the eligible individual, with others served on a space-available basis. *The one individual who is guaranteed space on the vehicle can be anyone--family member, business associate, friend, date, etc. The provider cannot limit the eligible individual's choice of type of companion*. The transit authority may require that the eligible individual reserve a space for the companion when the individual reserves his or her own ride. This one individual rides even if this means that there is less room for other eligible individuals. Additional individuals beyond the first companion are carried only on a space available basis; that is, they do not displace other ADA paratransit eligible individuals. A personal care attendant (i.e., someone designated or employed specifically to help the eligible individual meet his or her personal needs) always may ride with the eligible individual. If there is a personal care attendant on the trip, the eligible individual may still bring a companion, plus additional companions on a space available basis.

49 C.F.R. Part 37, App. D, Section 37.123 (emphasis added). The ADA does not place a limit on the age of a companion.

The facts indicate that VITRAN Plus imposes several inappropriate companion restrictions. First, the Ride Guide states: “You can bring your companion on any trip, *if space is available*.” 2013 Ride Guide at 5 (emphasis added). A St. Croix VITRAN reservationist confirmed this policy and noted that VITRAN does not allow reservations with companions because “there is no room” for companions. We find that this policy plainly violates the requirement that riders be allowed to bring at least one companion. *See* 42 U.S.C. § 12143(c)(1)(B); 49 C.F.R. § 37.123(f)(1).

Additionally, VITRAN reservationists on St. Thomas and St. Croix stated that companions must be over a certain age—alternatively 13, 16, or 18—while on St. John, companions of any age are allowed. More recently, a rider was told by a VITRAN driver that riders are not allowed to have “kids” as companions because of “insurance reasons.” No similar age restrictions are imposed, by policy or practice, for riders on the fixed-route bus. *See* 49 C.F.R. § 37.5. We find that VITRAN’s arbitrary age restrictions on companions violates 49 C.F.R. § 37.123(f)(1), which is meant to allow paratransit riders to bring “anyone” as a companion, regardless of age.

1. For certain trips, VITRAN Plus charges more than double the fare for a comparable trip on the fixed-route service.

DOT regulations permit VITRAN Plus to charge up to “twice the fare that would be charged to an individual paying full fare (*i.e.*, without regard to discounts) for a trip of similar length, at a similar time of day, on the entity's fixed route system.” 49 C.F.R. § 37.131(c). The St. Thomas VITRAN fixed-route service charges $0.75 for a ride “in the city,” which means within the Charlotte Amalie area. VITRAN Plus charges a fixed $2 fare, even for a ride within the same “city” area for which a fixed-route rider pays $0.75. We find that VITRAN’s practice of charging riders who use VITRAN Plus for a ride “in the city” more than double the fare charged for a similar ride on the fixed-route service violates 49 C.F.R. § 37.131(c).

1. VITRAN Plus has imposed capacity constraints.

Capacity constraints are “any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons,” including, but not limited to: substantial numbers of significantly untimely pickups for initial or return trips; substantial numbers of trip denials or missed trips; and excessively long trips. 49 C.F.R. § 37.131(f). “The capacity constraints provision was designed to provide adequate redress for systemic problems in service delivery . . . . [T]he provisions of § 37.131(f) gauge whether a provider has fulfilled its obligation to meet demand.” *Anderson v. Rochester-Genesee Reg'l Transp. Auth*., 337 F.3d 201, 209 (2d Cir. 2003) (internal quotations and citations omitted). Thus, patterns or practices that limit demand may be considered capacity constraints. *Id*. In addition to situations where transit systems are openly denying requests for paratransit, a system can also “illegally impos[e] limits on the number of paratransit riders it serves by . . . making service so poor that it discourages riders from using it.” *Martin*, 225 F. Supp. 2d at 1371.

We have concluded that numerous VITRAN Plus practices discussed above impose limits that act as capacity constraints including: the substantial numbers of significantly untimely pickups; VITRAN’s failure to operate its reservation service during the required days and times; the companion limitations; and charging more than double the fare for a comparable ride on the fixed-route service. We find that these constraints are “regular, or repeated actions, not isolated, accidental or singular incidents,” 49 C.F.R. Part. 37, App. D, § 37.131 (defining “pattern or practice”), and reflect an “operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons” and thus constitute capacity constraints prohibited by 49 C.F.R. § 37.131(f).

1. **Violations in VITRAN’s Obligation to Train Staff**
2. VITRAN does not train its staff to proficiency.

DOT regulations require that personnel be trained to assist individuals with disabilities and treat them courteously: “each public . . . entity . . . shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way . . . .” 49 C.F.R. § 37.173. In *Martin*, the Court found that the training of bus drivers was inadequate (*e.g.*, drivers did not know how to secure a wheelchair and were rude to disabled passengers) and that the lack of training was responsible for many of the paratransit service’s problems in providing reliable transportation to its customers. *Martin*, 225 F. Supp. 2d at 1369, 1379. The Court further found that the initial training to newly hired bus operators was insufficient, as was posting general orders on bulletin boards as the only means of communicating the ADA policies to bus drivers. *Id*. at 1379.

From the evidence we have gathered, it is apparent that VITRAN has not trained its staff to proficiency. VITRAN is not providing appropriate training, including training on daily inspections of the lifts and securement equipment. During the September 2013 site visits, numerous drivers were observed beginning or ending their shifts without doing an inspection, including failing to cycle the lifts. VITRAN personnel were largely unfamiliar with the Ride Guide, which contains VITRAN’s paratransit policies. VITRAN Operations Managers, a reservationist, and the VITRAN ADA Coordinator gave inconsistent answers regarding basic VITRAN Plus policies including the pick-up window; whether companions were allowed to ride and the permissible age of companions; and the hours that VITRAN Plus accepts reservations. Many VITRAN staff stated that they had not been given ADA training and were unable to recall the last time they received any training. VITRAN has not produced updated training documentation to verify that it trains its drivers on an ongoing basis.[[8]](#footnote-8) Finally, complaints from riders indicate that some fixed-route and paratransit drivers are not complying with DOT regulations and are not treating riders with appropriate courtesy and respect. We find that VITRAN staff have not been trained to proficiency, in violation of 49 C.F.R. § 37.173.

1. **RECOMMENDED REMEDIAL MEASURES**

To remedy the violations discussed above and to protect the civil rights of riders with disabilities, the following steps must be taken. VITRAN must reform the funding and operations of its fixed route and paratransit systems to address the deficiencies identified. These reforms must include substantial oversight to ensure their objectives are accomplished. At a minimum, VITRAN must:

1. Maintain, promptly repair, and keep vehicle lifts on fixed-route buses in operative condition, including by performing daily inspections and regular maintenance of vehicle lifts;
2. Make stop announcements on fixed-route buses;
3. Provide and maintain securement equipment on fixed-route buses and ensure that buses have at least two functioning securement locations;
4. Allow passengers who use a lift on fixed-route buses to board and disembark at all designated bus stops;
5. Provide paratransit services to individuals with disabilities that are sufficient to provide such individuals a level of service which is comparable to the level of service provided to individuals without disabilities who use the fixed route system;
6. Schedule and provide paratransit service to any ADA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day, including by allowing for reservations during VITRAN’s normal business hours, as well as during times, comparable to normal business hours, on a day when the entity’s offices are not open before a service day;
7. Plan to meet 100% of paratransit demand, including by ensuring that there are sufficient vehicles and drivers on the road to meet the growing demand for paratransit service;
8. Revise its policies to remove age restrictions on companions and ensure that riders are allowed to bring at least one companion;
9. Revise its fare policies so that riders who travel within “the city” are charged no more than double the fare for a comparable “in the city” fixed-bus trip;
10. Ensure that it does not impose capacity constraints, including by reducing untimely pickups, charging no more than twice the fare for a comparable fixed-route trip, and maintaining reservation service during normal hours of operation and offering weekend reservation service;
11. Train all personnel to proficiency, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way.

In addition, VITRAN must compensate individuals identified by the United States as aggrieved by VITRAN’s discriminatory practices.

1. **CONCLUSION**

We recognize your ongoing cooperation in this investigation, and we are committed to working with you to find a resolution. Please contact David Knight at (503) 727-1003 or Noah Sacks at (340) 774-5757 within 14 days of receipt of this letter to confirm that you remain interested in working cooperatively with the Department of Justice to resolve this matter. In the event we determine that we cannot secure compliance voluntarily to correct the deficiencies identified in this letter, the Attorney General may initiate a lawsuit pursuant to the ADA. *See* 42 U.S.C. § 12133. We would prefer, however, to resolve this matter by working cooperatively with VITRAN to negotiate a court-enforceable agreement that brings VITRAN into compliance with the ADA and assures the above-cited violations will not recur.

Please note that this letter is a public document, and we will share a copy of this letter with all complainants, as required by 28 C.F.R. Part 35, Subpart F. At any time, the complainants may file a private suit pursuant to Section 203 of the ADA, 42 U.S.C. § 12133, regardless of the contents of this letter and the Department’s findings in this matter.

Sincerely,

/s/ Ronald W. Sharpe /s/ Rebecca B. Bond

RONALD W. SHARPE REBECCA B. BOND

United States Attorney Section Chief

District of the Virgin Islands Disability Rights Section

cc: Therese W. McMillan, Acting Administrator, Federal Transit Administration

Dorval Carter, Chief Counsel, Federal Transit Administration

Nancy-Ellen Zusman, Office of Chief Counsel, Federal Transit Administration

Linda Ford, Director, Office of Civil Rights, Federal Transit Administration

1. The Ride Guide is the user guide provided to VITRAN Plus riders by VITRAN. The Ride Guide contains the rules and policies for VITRAN Plus. [↑](#footnote-ref-1)
2. The time limits vary with the size of the population the system serves. For the Virgin Islands, with a population of over 50,000, the relevant time limit is three days. [↑](#footnote-ref-2)
3. This is consistent with a 2012 report issued by the Community Transportation Association of America (CTAA), which states that “[i]t was determined and confirmed by the [VITRAN] Maintenance Manager that [daily pre-trip and post-trip] inspections were not being performed on a regular basis.” [↑](#footnote-ref-3)
4. As another example of VITRAN Plus imposing a restriction on paratransit riders that is not imposed on fixed-route riders, the VITRAN ADA Coordinator stated that paratransit riders are not allowed to bring cases of beverages (*e.g.*, a case of bottled water) onto the paratransit vehicle, but that no similar restriction applied to the fixed-route service. [↑](#footnote-ref-4)
5. The Ride Guide states that “VITRAN Plus buses may arrive within a 30 minute time frame, (i.e. 15 minutes early or late) . . . . When you call for a ride the call taker will give you a scheduled 30 minute pick up “window” for example, 9:00 to 9:30. The bus can arrive at any time during this window, and you must be ready to go. If the Operator arrives within the window, and you are not ready, the Operator will wait no more than five (5) minutes before leaving without you. You will have missed your trip, and be counted as a ‘no show.’” *See* 2013 Ride Guide at 6, 10. [↑](#footnote-ref-5)
6. The data was for September 18-27, 2013. We are unaware of any special holidays, extreme weather, or other “problems attributable to causes beyond the control” of VITRAN that could have contributed to untimeliness. *See* 49 C.F.R. § 37.131(f)(3)(ii). [↑](#footnote-ref-6)
7. St. Croix VITRAN was late 17% of the time, while St. Thomas VITRAN was late 27% of the time. We did not count “early” pick-ups as being untimely. When excessively early (16 minutes or more) pick-ups are included, VITRAN Plus was untimely 50% of all scheduled trips. [↑](#footnote-ref-7)
8. The 2012 CTAA Report also noted a lack of training for VITRAN staff. [↑](#footnote-ref-8)