HRT Hampton Roads Transit
3400 Victoria Boulevard, Hampton, Virginia 23661
Phone: 757-222-6000 ~ Southside Fax: 757-222-6103
Peninsula Fax: 757-222-6195 ~ www.hrtransit.org

TESTIMONY OF MICHAEL S. TOWNES
PRESIDENT/CHIEF EXECUTIVE OFFICER, HAMPTON ROADS TRANSIT

HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE HIGHWAYS AND TRANSIT SUBCOMMITTEE HEARING ON

PROPOSED RULE FOR NEW STARTS PROGRAM

September 26, 2007

Mr. Chairman and the other distinguished members of the Subcommittee, thank you for the opportunity to present testimony to you today regarding the Notice of Proposed Rulemaking ("NPRM") for the New Starts and Small Starts programs that was published on August 3, 2007. While I am the incoming Chairman of American Public Transportation Association ("APTA"), the testimony that I present today represents my views and is not those of APTA regarding the NPRM.

On October 1, 2007, Hampton Roads Transit, the city of Norfolk, Virginia and the entire Hampton Roads region will celebrate the signing of the Full Funding Grant Agreement ("FFGA") for the $232.2 million, 7.4 mile light rail line in the city of Norfolk. I want to thank Congresswoman Thelma Drake for her strong and consistent support for this project, as well as James Simpson, Administrator of the Federal Transit Administration ("FTA"), for his commitment to making this project a reality. We have been through many peaks and valleys in the eight year process of bringing the project to this point in time. We plan on taking some time out to celebrate this momentous occasion and then proceed with the hard work of completing construction for a revenue operations date of January 1, 2010.

Turning to the NPRM, I think I speak for many transit authorities when I express my grave concerns regarding the impact of the NPRM on the future of the New Starts and Small Starts program. The NPRM raises many issues and there is not sufficient time to address each and every one of them in my testimony. Therefore, I would like to focus on the following key issues.

1. *NPRM includes provisions not included by Congress in SAFETEA-LU*

The NPRM also contains provisions that were not addressed by Congress when it adopted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU') but represent substantial changes to the New Starts program. The NPRM would amend the definition of "fixed guideway" and allow New Starts and Small Starts funds to be used for High Occupancy Toll ("HOT") lanes. FTA proposes to allow these monies to be utilized for HOT projects if the project is designed so that "in any given month" transit vehicles are using a "barrier separated" right of way and incorporating tolling resulting in 95 percent of the transit vehicles being able to maintain an average speed of not less than 5 miles below the posted speed limit for the time they are using the facility. FTA proposes to fund that portion of the construction of the HOT lane on which transit vehicles would run or where transit would benefit.

This proposed change is not found anywhere in 49 U.S.C. 5309. Congress is fully capable of amending the definition of what is a "fixed guideway" project, as was done for "corridor-based bus projects" in the Small Starts program. This change is intended to alter the purpose and focus of the New Starts program. HOT lanes are already eligible under the highway program. The only conclusion that can be drawn from this proposed change is that FTA intends to diminish the historical investment in traditional fixed guideway projects.

I would also note that there is no requirement that the transit service which served to establish the amount of section 5309 investment be maintained after the project is built. Why would FTA support funding a project where there is no ongoing commitment to maintaining transit service?

The NPRM includes the following changes to the Small Starts program that were not included in SAFETEA-LU and do not reflect neutrality as to project eligibility.

- Add a service standard of 10 minutes peak and 15 minute off peak.
- The project eligibility criteria in the statute are not incorporated into the regulation as FTA did include "substantial transit stations", "traffic signal priority/preemption", and "low floor buses", but did not incorporate ITS technology, off-board fare collection, park-and-ride lots, next bus technology, and other features.
- Establish a Very Small Starts program in the NPRM but limited eligibility to those projects that cost no more than $50 million and must be less than $3 million per mile.
- Very Small Start projects automatically receive a "medium" rating for each of the project justification criteria while all other Small Starts projects are subject to a much more rigorous review.

The NPRM does not establish a simplified project review process for all Small Starts projects as was intended by Congress and erects a process that clearly favors those advancing under the Very Small Starts program by allowing these projects to proceed with little or no demonstration that they meet the project justification criteria. From my view, this is inconsistent with the statutory provisions of SAFETEA-LU which require all projects with a project cost of $250 million or below and which seek no more than $75 million in New Starts funds to be cost effective, demonstrate their impact on land use and effect on economic development under a simplified project review process.

By not including all project eligibility criteria and adding criteria not included in the statute, FTA proposes to penalize those communities seeking to build Bus Rapid Transit projects that have a different idea regarding the goals and objectives of their projects. The lack of mode neutrality is evident as the NPRM seeks to reward lower cost bus projects and penalize cities that seek to build rail projects which are subject to a much greater and lengthier project review process. It is also very important to note that FTA seeks to include each of these provisions that were not included in SAFETEA-LU in the final rule rather than seeking a statutory change or keeping them in guidance documents.

2. Land Use and Economic Development Measures and Weights

Congress amended section 5309 in the SAFETEA-LU by emphasizing the importance of land use and economic development when it moved these criteria from the "considerations" subsection to the project justification subsection. This is the same subsection that includes cost effectiveness as a project justification factor. To the outside observer, it seems clear that the intent of Congress was to put greater weight and emphasis in the New Starts project evaluation and review process on land use and economic development. Under the current regulations, land use and cost effectiveness each receive 25 percent of the overall project weight with the other 50 percent allocated to the local financial commitment. Instead, the NPRM diminishes the weight to be given to land use by combining it with economic development as a single factor and assigning 20 percent of the weight to the combined criteria.

Moreover, section 5309 establishes separate criteria for land use and economic development which would appear to clearly indicate an intent by Congress to develop separate measures for each. Instead, the NPRM not only reduces the weight and emphasis given to land use and economic development but merges them into a single criteria rather than developing separate measures.

Furthermore, FTA states that the cost to develop a measure for economic development that is distinctive from land use is "overly costly and burdensome. I am aware that several groups, including Reconnecting America, have presented ideas for developing a means for measuring economic development but those ideas have not been well received. In response to the statement that the development of the measure would be "overly burdensome and costly," I don't recall the cost or burden on transit authorities was an issue when FTA developed the Summit software and implemented the Transportation System User Benefit ("TSUB") measure for cost effectiveness in 2002. To my knowledge, neither the financial impact on FTA nor on state and local project sponsors was considered when moving forward with TSUB. While I don't know what it cost FTA to develop the software and implement TSUB, many communities, including mine, were required to spend several hundred thousand dollars to revise travel demand models to be able to interact with Summit and capture user benefits and ridership. Moreover, there has been a considerable cost to my region to continuously modify the travel demand model resulting in many model simulations to properly interact with Summit software and satisfy the cost effectiveness criteria. If cost was not an issue at the time Summit was developed and the TSUB was introduced, I don't understand how or why FTA can raise the issue of cost at this time. I think it is very important to develop separate measures for land use and economic development to fully reflect the intent of Congress.

Finally, FTA should be rewarding communities that seek to concentrate economic development in project corridors or at stations through the use of local policies and incentives. The benefits of a project are not measured solely in terms of mobility improvements but also in their impact on shaping economic development patterns. We have seen a dramatic change in downtown Norfolk along the alignment in anticipation of the project. Furthermore, this development has occurred more quickly and with greater intensity than predicted by local economic development forecasts. I invite you to Norfolk to observe these impacts for yourselves and to meet with the downtown business community.

3. *Weight Given to Cost Effectiveness Not Consistent with SAFETEA-LU*

The decision to place land use, economic development and cost effectiveness in the same subsection was regarded by the transit industry as reflecting a clear Congressional intent to have FTA rely on a broader set of factors in justifying a project and making funding recommendations than cost effectiveness. The transit industry supported this change in the statute since it appropriately recognized how important it is to address land use and demonstrate the impact of a project on economic development when considering a substantial investment in a fixed guideway project.

Furthermore, prior to the March and April 2005 Dear Colleague letters, FTA employed a "multiple measure" approach that enabled a "medium" or "medium-high" rating for land use to offset a "medium-low" rating for cost effectiveness. Even with a "low-medium" rating on cost effectiveness, a project could obtain an overall project rating of "medium" based on receiving a "medium" or higher rating on the land use plans in the region where the project was being built. The March and April 2005 Dear Colleague letters changed FTA's policy, but were not implemented as a permanent change to the regulation. FTA has not only chosen to continue to require a 50 percent weight for cost effectiveness, which effectively trumps all of the other project evaluation and review criteria, but has also attempted to make a permanent change in the law through its inclusion of this revision in the NPRM as opposed to keeping it in guidance documents.

I hope the Committee would agree that the proposed allocation of the weights and the excessive emphasis on cost effectiveness is contrary to your intent when you adopted SAFETEA-LU in August 2005. Moreover, I hope that you would agree that the incorporation of specific weighting of the criteria should not be included in the final rule but continue to be left to guidance documents to enable FTA to shift the allocation of the weights as might be appropriate in the future.

4. *Other Factors - Focus on areas with greatest congestion reduction and use of pricing strategies and not economic development opportunity*

A final concern relates to the decision by FTA to add a number of "other factors" that it would consider in evaluating and rating projects. These "other factors" were not included in the statute. Specifically, FTA proposes that all projects be evaluated and rated based on severity of the transportation and economic problem or opportunity in the corridor, as well as, the identification of the project as a principal element of a congestion reduction or pricing strategy. With respect to the transportation or economic development problem or opportunity, FTA proposes a three-tiered rating with the highest rating given to projects with severe transportation or economic problems; the next highest rating to projects with less severe transportation or economic problems; and the lower rating for projects which are opportunities to improve transportation or economic development. A project could have its rating raised or lowered by the "other factors."

The effect of the proposed change could curtail the growth of the New Starts program to enable communities in rapidly growing areas such as the Hampton Roads region from obtaining New Starts funds since our congestion may not compare to larger cities, such as New York City, Los Angeles or Washington, DC. One of our project goals was to address congestion before it became severe as well as to shape economic development. Depending upon what factors FTA uses to judge the "severity" of the problem; this could result in many communities having project ratings lowered.

Further, the NPRM emphasizes and rewards congestion pricing in furtherance of the policy decision made by FTA. This is being promoted while a statutory criterion, such as economic development, is being minimized in the NPRM. FTA should be in the business of promoting transit use, impacting congestion by causing a shift in mode choice, and promoting permanent changes in travel patterns through good land use and economic development decisions at the local level. We have considerable evidence in the United States regarding the impact of New Starts projects in shifting travel patterns and concentrating economic development in corridors well served by transit which provide real mode choice for commuters.

Thank you for the opportunity to testify today. I appreciate the time and attention given to the NPRM by the Subcommittee. The New Starts program has been instrumental in providing transportation choices to citizens and permanently changing economic development patterns in many communities. We should be seeking to increase the Federal investment in these projects rather than looking for ways to undercut a highly effective program.

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