

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PROCEEDING BEFORE SPECIAL MASTER DONALD T. BLISS

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| LABOR/COMMUNITY STRATEGY CENTER, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | Case No. CV 94-5936 TJH (MCx) |
| |) | |
| vs. |) | |
| |) | |
| LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, <i>et al.</i> |) | MEMORANDUM AND ORDER |
| |) | IN RE NEW SERVICE PLAN |
| Defendants. |) | |
| |) | |

MEMORANDUM AND ORDER

Under Section II.C. of the Consent Decree, the Joint Working Group (“JWG”) was charged with the responsibility of developing a New Service Plan for “additional bus and transit services” for the five-year period 1999-2004. Since the JWG has failed to agree on such a plan over the past six years, the issue has been presented to the Special Master for resolution.

In a procedural order dated November 17, 2004, I directed the parties to submit separate proposals to satisfy the New Service Plan provisions of the Consent Decree. I have reviewed the proposals and commentary in connection with the parties’ submissions, including the Bus Riders’ Union Five-Year Plan for Countywide New Bus Service (the “BRU Plan”), the Update of MTA New Service Plan (the “MTA Plan”), the Declaration of Roderick T. Goldman in Opposition to Plaintiffs’ New Service Plan Submission (“Goldman Decl.”), Plaintiffs’ Response to the MTA’s Updated New Service Plan (“BRU Response”), the Declaration of Deborah Orosz in Support of Plaintiffs’ Response to the MTA’s Updated New Service Plan (“Orosz Decl.”), the

Declaration of Erica Teasley Linnick in Support of Plaintiffs' Response to the MTA's Five-Year Plan ("Linnick Decl."), Plaintiffs' Reply to the MTA's Response to the BRU New Service Plan, and the Declaration of Erica Teasley Linnick in Support of Plaintiffs' Reply to MTA's Response to the BRU New Service Plan.

This Memorandum and Order sets forth my conclusions concerning the New Service Plan requirements of the Consent Decree, my analysis of each party's proposed plan, and New Service Plan Criteria that will establish the parameters of the New Service Plan that the MTA is obligated to implement to fulfill its Consent Decree responsibilities.

INTRODUCTION

In signing the Consent Decree in October 1996, the Labor/Community Strategy Center *et al.* (the "BRU") and the Los Angeles County Metropolitan Transportation Authority *et al.* (the "MTA") (collectively "the parties") agreed to "share a strong common commitment to the improvement of bus service for transit-dependent populations of Los Angeles County." Consent Decree at 3. The much-discussed settlement culminated several years of litigation and contained three main components: reduced fares, reduced overcrowding, and the implementation of a plan to enhance county-wide mobility for the transit-dependent.

Two of the main components are set out in detail in the Consent Decree. The fare provisions of Section III of the Consent Decree were very specific and have been implemented with relatively little controversy. *Id.* at 8 - 10. *See also* Order on Motion to Extend the Consent Decree dated August 26, 2004 ("Extension Order") at 10 ("The MTA has more than fulfilled its Section III obligations under the Decree.") The load factor compliance provisions aimed at reducing overcrowding mandated by Section II.A of the Consent Decree have been the subject of

lengthy proceedings leaving the MTA with ongoing obligations under the 1.25 and 1.20 Remedial Plan. *See generally* Memorandum Decision II and Final Order on Remedial Service Plan to Meet 1.25 and 1.20 Load Factor Target Requirements of January 12, 2004 (“1.25/1.20 Remedial Plan Memorandum and Final Order.”)

The final component, described in Section II.C. of the Consent Decree, contemplated the development and implementation of a 50-bus, two-year Pilot Project comprised of services designed to “meet the needs of the transit-dependent areas for access to jobs, education and health services.” Consent Decree at 7. This was to be followed by the development and implementation of a five-year plan for “additional bus and transit services” with the same goal of improving the transit dependent community’s access to jobs, education and medical services throughout the county (the “New Service Plan.”) *Id.* The Consent Decree provides little detail with respect to the contours of a New Service Plan.

Instead of setting forth detailed criteria on a New Service Plan, the Consent Decree envisioned the active and cooperative involvement of the Joint Working Group (“JWG”), consisting of representatives of the BRU and the MTA, in the development of the plan. Regrettably, despite many years of effort, the JWG has failed to reach agreement on a plan, and separate New Service Plan proposals have been presented to the Special Master for resolution. With the Consent Decree presently set to expire in fewer than nineteen months, it is essential that the MTA put in place a New Service Plan that meets the requirements of Section II.C. The MTA’s success in this regard will be important in addressing general compliance with the Consent Decree and possibly relevant in other pending proceedings before the Special Master.

THE PILOT PROJECT AND PROCEDURAL BACKGROUND

A more detailed background of the events leading up to the implementation of the Pilot Project is set forth in the order entitled "In Re: Five Year Plan – Stage I: Preliminary Views" dated May 18, 1999 ("Preliminary Views") and need not be repeated at length here. *See* Preliminary Views at 2. Only a brief recitation of the relevant facts is necessary.

In August 1997, the JWG approved an 18-line Pilot Project which was adopted by the MTA Board of Directors in October 1997. *Id.* Despite Board approval for the full Pilot Project, the MTA decided to divide the Pilot Project into two phases. *Id.* In March 1998, the MTA implemented Phase I, consisting of two express lines, four modified local lines, and six community circulator lines. *Id.* The implementation of Phase II of the Pilot Project proved more elusive -- by June 1998, the MTA budget did not include any funding for Phase II. *Id.*

After some delay due to the ongoing load factor proceedings, Plaintiffs filed a motion on October 20, 1998, seeking a finding that the MTA's implementation of the Pilot Project was "untimely and inadequate" and therefore in violation of the Consent Decree. *Id.* at 3. While the Special Master declined to find the MTA in violation of the Consent Decree, both parties were directed to submit New Service Plan proposals. *Id.* After evaluating each plan, the Special Master issued the Preliminary Views on May 18, 1999. The Preliminary Views essentially were guidelines intended to facilitate agreement by the JWG on a New Service Plan, which was the preferred path envisioned by the Consent Decree.

After the issuance of the Preliminary Views, the parties' versions of subsequent events widely differ. According to the BRU, the MTA has continually "stalled" New Service Plan discussions, preventing the JWG from sufficiently discussing or agreeing on the details of a New

Service Plan.¹ In contrast, the MTA asserts that it has been operating a New Service Plan since 1997 that includes JWG-developed bus services. *See* Goldman Decl. at 3. Regardless of the perspective, it does not appear that the parties have made much progress since the Preliminary Views of 1999. *See* Extension Order at 9 (“Since [the Preliminary Views], the parties apparently have neither reached agreement on a New Service Plan, nor re-directed the issue to the Special Master for resolution.”) Currently, 11 lines of the original 18-line Pilot Project are still in operation.²

On November 2, 2004, the parties informed the Special Master that the JWG had reached a “state of impasse” on the development of the New Service Plan. Letter to Special Master Bliss from Roderick Goldman and Deborah Orosz dated November 2, 2004 at 1 (“November 2, 2004 Letter.”) Therefore, on November 17, 2004, I directed the parties to submit New Service Plan proposals that are the subject of the analysis here.

While, as described below, some progress has been made in the development of a New Service Plan, regrettably the JWG has been unable to fulfill the role contemplated for it in the Consent Decree. Some background may be helpful in understanding the basis upon which the Special Master, reluctantly and belatedly, is now required to decide how this very important component of the Consent Decree is to be implemented.

A. **The Initial BRU Plan**

The Preliminary Views responded to the parties’ widely different initial New Service Plan proposals. The Initial BRU Plan had five major components spread over two phases: (1) a

¹ BRU Response at 8 *citing* Exhs. 1 – 3, 8, and 11-13 of Linnick Decl.

² The current Pilot Project lines are Lines 5, 167, 214, 218, 305, 422, 550, 601, 602, 603, and 605.

network of regional bus service focused on five freeways requiring 168 buses; (2) implementation of the Rapid Bus network described by Regional Transportation Alternatives Analysis presented in November 1998 by Booz-Allen & Hamilton Inc. ("RTAA") over a period of three years and requiring about 200 buses; (3) Phase II of the Pilot Project requiring 56 buses; (4) an allocation of 120 buses along with a plan to reduce headways and extend service hours, serving to connect the regional and local services; and (5) shuttle service in five of the canyon areas requiring 50 shuttles. Preliminary Views at 4 – 5. In total, the Initial BRU Plan would have required 544 buses and 50 shuttles. *Id.*

B. The Initial MTA Plan

The original MTA New Service Plan consisted of two elements: (1) the continuation of the twelve routes then operating under the Pilot Program set up by Section II.C.2 of the Consent Decree (Lines 104, 108, 128, 167, 205, 218, 422, 559, 601, 602, 603, and 605); and (2) initiation of the remaining six routes authorized but not implemented in the Pilot Project. *Id.* at 4. The Initial MTA Five-Year Plan was to be implemented by FY2003 and required an additional 49 buses. *Id.*

C. Preliminary Views of the Special Master

In the Preliminary Views guidelines, the Special Master evaluated each party's initial New Service Plan proposal. In considering the proposals, the Special Master found the Initial MTA Plan "fail[ed] to meet the minimum requirements of the Consent Decree." *Id.* at 8. In particular, the Special Master rejected the MTA's proposal that the New Service Plan consist of nothing more than the continuation of the Board-approved Pilot Project. *Id.* Importantly, the Special Master noted:

...the MTA Five-Year Plan does not appear sufficient to satisfy the goal of providing meaningful improvements in countywide access for the transit-dependent of Los Angeles... The MTA does not demonstrate how its plan will do more than just link up a few, isolated destinations.

Id. at 8-9.

While the Special Master commended the Initial BRU Plan providing “a comprehensive and fully integrated approach to the goal of enhancing County-wide access to jobs, education, health care and personal mobility throughout the region,” the Preliminary Views advised that the Initial BRU Plan was “beyond the scope of what the parties agreed to in signing the Consent Decree.” *Id.* at 8. Specifically, the Special Master found that Phase I of the BRU proposal would have required a 25% increase in the MTA fleet:

While the BRU’s vision of a comprehensive, fully integrated bus system establishes a worthy goal, the language of the Consent Decree simply does not require this level of expenditures to meet the Five Year Plan’s stated goals of providing countywide access to the transit-dependent.

Id.

Several observations and conclusions were central to the Special Master’s Preliminary Views, which remain important in the current environment:

- *The Consent Decree emphasizes county-wide access to educational, employment, and health care centers throughout the region.* Noting the language of Section II.C., the Special Master emphasized that “express lines” serving this purpose should be given “special consideration” by the JWG. *Id.* at 6.
- *The data gathered from the Pilot Project and other analyses (such as the RTAA) should serve as a guide for developing the Five-Year Plan.* Again examining the language of Section II.C of the Consent Decree, the Special Master noted, “[t]he clear import of this

facet of the Decree is to provide the parties with some objective source of data to assist in designing the more comprehensive Five Year Plan.” *Id.* at 7.

- *The Rapid Bus Network was to be closely examined as a potential “backbone” of a Five Year Plan.* *Id.* at 10. The Special Master noted that Rapid Bus was exactly the type of “objectively-tested proposal[] designed on a system-wide basis to address the problems inherent in long-range travel” since its benefits included the provision of regional mobility, proximity to transit-dependent populations, ability to be quickly implemented, relative low cost, service to high-demand corridors, and improvement of modal connectivity. *Id.* at 9 - 10. However, the Special Master cautioned that, “care should be taken in selecting corridors that primarily serve the transit-dependent population, provide long-range service, and provide improved access to employment, educational and medical centers around the County.” *Id.* at 10.
- *In addition to Rapid Bus, the Consent Decree requires some combination of freeway express service or community circulator service in order to facilitate access to transportation centers.* *Id.*

Next, the Special Master outlined a draft of a possible New Service Plan that would be consistent with the Consent Decree mandate to be implemented over two phases. Again, the following guidelines were intended to facilitate agreement by the MTA and the BRU on a New Service Plan, but, alas, no agreement was forthcoming.

- Permanent operation of Phase I of the Pilot Program (12 routes, 63 buses)
- Implementation of Phase II of the Pilot Program (6 routes, 49 buses)
- Implementation of a three-line Rapid Bus Demonstration (97 buses)

- Expansion of Rapid Bus Implementation adding 13 additional lines (203 buses)
- Expansion of freeway network and/or Community Circulator services (100 buses)

CURRENT NEW SERVICE PLAN PROPOSALS

On November 2, 2004, the parties informed the Special Master that the JWG had reached a “state of impasse” on the development of the New Service Plan. November 2, 2004 Letter at 1. In the correspondence, the parties outline their agreement on only two issues: (1) the “concept” of the Metro Rapid network³; and (2) the continued operation of the existing 11 lines in the Pilot Project (Lines 58, 167, 214, 218, 305, 422, 550, 601, 602, 603, and 605.) *Id.*

Given the state of discussions, on November 17, 2004, I directed the parties to submit separate New Service Plan proposals. New Service Plan Procedural Order No. 2 dated November 17, 2004. The BRU and MTA submitted separate proposals on January 14 and January 18, 2005 respectively. The current proposals, like those underlying the Preliminary Views guidelines, were very different in scope and nature.

³ The parties explained, “[t]he parties agree that the *concept* of Rapid Bus has a role to play in the Five-Year New Bus Service Plan. However, the parties do not agree on the method or scope of Rapid Bus implementation.” (emphasis in original).

A. The BRU Plan

The BRU Five-Year Plan for Countywide New Bus Service dated January 14, 2005 (the "BRU Plan") proposed an extensive plan with the goal of "creat[ing] an integrated 3-tier bus network for fast, reliable, countywide access." The BRU Plan has three components: a Freeway Bus Network, Metro Rapid Bus, and Neighborhood and General Services. BRU Plan at 2. In total, the BRU proposes the purchase of 576 new buses, 50 shuttles, and the addition of 2,351,000 annual bus in-service hours. *Id.*

1. Freeway Bus Network

With regard to the Freeway Bus Network, the BRU proposes the establishment of a network in two phases. Phase I, from June 2005 – December 2006, creates new freeway bus routes on portions of five freeways: Interstates 5, 10, 110, and 405 as well as US 101. BRU Plan at 18. Phase II, between December 2006 and June 2010, would add 75 additional freeway miles on freeways or freeway segments as determined by the JWG. *Id.* The BRU proposal contains several additional characteristics, such as short headways (5 minutes peak and 7.5 minutes off-peak), operation of the route exclusively on the freeway, utilization of High-Occupancy Vehicle (HOV) and bus-only lanes, evening and weekend service, and the elimination of higher freeway fares. *Id.* at 19 – 21. To fill gaps in long-distance service not served by the Freeway Network or current routes, the BRU Plan proposes implementation of two of the three pilot project lines that were never implemented: Lines 530 (increasing service between East Los Angeles College and Panorama City) and 577 (increasing service between the Cerritos Town Center and El Monte.) All in all, the Freeway Network proposal requires the purchase of 243 new buses and an addition of 730,000 annual bus in-service hours in Phase I alone. The implementation of Pilot Project

Lines 530 and 577 requires 24 new buses and 51,000 annual in-service hours.

The BRU criticizes the MTA's current operation of freeway bus service and counters the MTA's contention that freeway bus service has been a basic failure, resulting in high operating costs and low ridership:⁴

In fact, MTA has carried out a series of policies that discourage freeway ridership, cutting over 50 percent of freeway routes since 1999, failing to provide integrated freeway and surface street service, and charging high freeway bus fares.

BRU Plan at 15.

2. Metro Rapid

In the BRU Plan, the BRU supports the inclusion of the 28 lines of the Metro Rapid system in the New Service Plan.⁵ *Id.* at 25. However, the BRU is strongly critical of the MTA's current operation of the program in its plan. Specifically, the BRU argues the MTA's current "cost-neutral deployment" policy has resulted in few new expansion vehicles or additional service hours causing infrequent Metro Rapid service, the degradation of local service supporting the Metro Rapid lines, service cuts, and little night and weekend service. *Id.* at 26 – 30. This has

⁴ See MTA Plan at 8 ("Freeway express services developed in the program attracted a marginal amount of ridership in the I-110 and US-101 corridors....In both cases, the cost effectiveness of these freeway services was found to be poor relative to the number of passengers being served."); Goldman Decl. at 3 ("...the number of bus riders using MTA freeway services has been declining, primarily due to slow freeway speeds and the ability to use faster rail services in parallel corridors.")

⁵ The parties briefing is inconsistent on whether the JWG agreement on the number of Metro Rapid bus lines is 27 or 28. See, e.g. BRU Plan at 25 ("The BRU and MTA also agree as to the 28 corridors that have been identified by MTA for inclusion in the Metro Rapid program."); MTA Plan at 4 ("...27 corridors have been identified for inclusion in the Metro Rapid Expansion Program []."); MTA Plan, Table A at 3 – 7 (listing 28 Metro Rapid corridors.) As the BRU correctly notes, Sepulveda Boulevard is sometimes treated as one corridor, and sometimes treated as two lines: Line 706 (Sepulveda Boulevard South) and Line 734 (Sepulveda Boulevard North.) See Plaintiffs' Response to MTA's "Updated" New Service Plan at 12, n.10.

For the sake of clarity, I will refer to the agreed-upon Metro Rapid program as including 28 bus lines (instead of "corridors") regardless of party proposal, given that (per the MTA Plan) Line 734 is set to be implemented by June 2005 and Line 706 is not set for implementation until June 2008.

resulted in increased wait and transfer time, increased walking distances, and persistent overcrowding on the current Metro Rapid lines and parallel local lines. *Id.* Among other suggestions to remedy these practices, the BRU proposes the purchase of 309 new buses and the addition of 1,570,000 annual bus in-service hours.

3. Shuttle and Other Services

Lastly, the BRU proposes the addition of at least 50 shuttles serving five canyon neighborhoods, the locations of which would be determined by the JWG. Along with the shuttle services, the BRU proposes the implementation of two categories of general services: a revision to the MTA's student bus pass policy,⁶ and a program for the analysis of bus stop improvement as provided by the Consent Decree.⁷

⁶ Although the BRU has raised the student bus pass issue, I will not incorporate this requirement in the New Service Plan Criteria for three reasons. First, the BRU has not cited any provision of the Consent Decree that specifically requires such a program. Second, I agree with the MTA that the student pass program is one "more appropriately handled between the MTA and the numerous local school districts throughout Los Angeles County." Goldman Decl. at 5. Moreover, it appears that the BRU has made some progress on this issue in its discussions with the MTA (see article cited below). Third, the MTA has made significant strides to improve the student pass program. See Press Release, *Metro To Launch New Photo-Less Student Fare Card Program* dated March 18, 2005 ("In an effort to cut red tape and increase convenience, Metro will launch a new photo-less Student Fare Card program March 21, 2005 for K-12 students. The new streamlined process eliminates the need for an application and the taking of a special photo to obtain the fare card.") *MTA Streamlines Application Process for Student Transit Pass*, Los Angeles Times, April 7, 2005 at B6. (BRU quoted as supporting "MTA's elimination of the student bus application process [and three week wait] is an affordable and accessible way to education for inner-city youth...") See also Program Description entitled *Introducing the New Photo-less Metro Student Fare Card* available at http://www.metro.net/images/fare_card_student_eng.pdf. Nonetheless, the new MTA fare card program is certainly consistent with the spirit of Section I.C. of the Consent Decree, and if the MTA wishes to include an improved Student Fare Card program in its New Service Plan, it is free to do so. It is unclear how the MTA plans to improve the fare card program for college students, but this also would be consistent with Section II.C's emphasis on facilitating access to "Education Centers."

⁷ Attachment B, II.A. of the Consent Decree provides,

MTA shall make available as part of its Call for Projects a total of \$500,000 over the next five years to be dedicated to bus-stop improvement. While the local jurisdictions will apply for such funds, MTA agrees that any funds provided through such grants shall go first to communities that are heavily transit-dependent. The JWG will evaluate this pilot project and recommend to the MTA Board an expanded program for bus stop improvement.

B. The MTA Plan

The MTA Plan consists of two components: (1) continued operation of the 11 current Pilot Project lines; and (2) expansion of the Metro Rapid Program to 28 lines by June 2008. It should be noted, as is discussed below, that although the MTA has titled its plan an "Update," given the apparent lack of JWG discussion and agreement, the Special Master considers the MTA Plan a proposal along with the BRU Plan.

1. Metro Rapid Expansion Program

As suggested in the Preliminary Views, the Metro Rapid network forms the "backbone" of the MTA Plan. The benefits of Metro Rapid have been recognized in various studies and reports, including the Westside Transit Restructuring Study, the RTAA, and the Metro Rapid Demonstration Report. According to the MTA, there are 11 Metro Rapid lines currently in operation,⁸ with an additional 16 corridors to be placed into service by June 2008.⁹

The MTA summarizes the benefits of Metro Rapid in the MTA Plan:

[Metro Rapid] has shown great success in increasing travel speeds on major traffic corridors, and has been designed to serve major generators, such as schools, hospitals and employment areas. Metro Rapid service has also proven to be a cost effective means of improving travel speed within the region.

⁸The current Metro Rapid lines in operation are Lines 705 (Vernon Avenue – La Cienega Boulevard), 710 (Crenshaw Boulevard), 711 (Florence Avenue), 720 (Wilshire Boulevard – Whittier Boulevard), 740 (Hawthorne Boulevard), 745 (Broadway), 750 (Ventura Boulevard), 751 (Soto Street), 754 (Vermont Avenue), 761 (Van Nuys Boulevard – Westwood), and 780 (Pasadena – Glendale – Hollywood).

⁹ The MTA proposes adding Lines 703 (Lincoln Boulevard), 704 (Santa Monica Boulevard), 714 (Beverly Boulevard), 734 (Sepulveda Boulevard – North), and 757 (Western Avenue) by June 2005; Lines 741 (Reseda Boulevard), 753 (Central Avenue), 760 (Long Beach Boulevard), and 766 (San Fernando – Lankershim) by June 2006; Lines 715 (Manchester Boulevard), 728 (Olympic Boulevard), 730 (Pico Boulevard), 762 (Atlantic Boulevard), and 770 (Garvey – Chavez) by June 2007; and Lines 706 (Sepulveda Boulevard – South), 709 (Torrance – Long Beach), and 794 (San Fernando Road) by June 2008

MTA Plan at 4.¹⁰

2. Pilot Project Lines

According to the MTA, the parties have agreed to the continued operation of the 11 Pilot Project lines currently in operation. November 2, 2004 Letter at 1. However, of the 11 Pilot Project lines, the MTA Plan only describes four lines (Community Shuttle Lines 601, 602, 603, and 605) as services that “perform[ed] well in densely populated areas where residents have traditionally had difficulty accessing transit.” MTA Plan at 7. The other lines, which include two local routes (Lines 5 and 167), one limited-stop route (Line 305), two other community shuttle routes (Lines 214 and 218), and two freeway express routes (Lines 422 and 550) were described throughout the MTA Plan as generating “little demand,” being “poor performers” and not being “cost effective.” *Id.* at 7 – 9. For this reason, the MTA maintains it has not included an expansion of services of these types in the MTA Plan. *Id.* at 3.

CONSENT DECREE OBLIGATIONS

A. Requirements of the Consent Decree

Because the JWG has been unable over the course of six years to agree on a New Service Plan and because the parties have submitted very different proposals, it is incumbent on the Special Master to spell out the specific parameters of the New Service Plan required by the Consent Decree. The starting point for this analysis is the language of the Consent Decree. *See* Preliminary Views at 5 (“The parties (and the Special Master) further agree that the governing

¹⁰ The MTA website explains additional Metro Rapid benefits, “[t]hrough system integration of bus signal priority, low floor buses, headway rather than timetable-based schedules, and fewer stops, passenger travel times have been reduced by as much as 29%. As a result, ridership has increased by 40% in the two demonstration corridors, with one-third of the ridership increase from new riders who have never before ridden transit.” Overview of Metro Rapid program available at http://www.metro.net/projects_programs/rapid/overview.htm#TopOfPage.

principles of contract interpretation require that the intention of the parties with respect to the Five-Year Plan be ascertained in the first instance by reference to the “clear and explicit” meaning of the terms of the Decree.”) (citations omitted.)

Section II.C.1 provides the goal and framework for the New Service Plan:¹¹ “to improve access by the transit-dependent community to Los Angeles County-wide educational, employment, and health care centers, as well as enhancing personal mobility throughout the region.” The Decree requires “additional bus service” to improve access and mobility (emphasis added). In developing the plan, the MTA could: (1) add service to existing routes, or (2) develop new routes that meet the Consent Decree’s focus. *Id.* Moreover, the addition of service was to take into account both passenger demand and the efficient use of the MTA’s resources. Section II.C.1 states “[t]he parties understand that the addition of these routes must be responsive to sufficient rider demand and economically feasible and that such new routes will be closely monitored and terminated if there is not sufficient customer demand.”

Next, the Section II.C.2 establishes a procedure to evaluate new service. It mandates a 50-bus pilot project which was to be structured to provide essential information on what types of services would meet the requirements of Section II.C.1 as well as the criteria of sufficient rider demand and economic feasibility. Second, the JWG was given two tasks: (1) consulting with the MTA in the design of the Pilot Project, and (2) evaluating the results of the Pilot Project and “develop[ing] a plan for additional bus and other transit services over the following five years....” (emphasis added). Indeed, the JWG was required to project the number of buses and other vehicles needed to provide the additional service. The JWG was unable to agree on a plan,

¹¹ Relevant excerpts of the Consent Decree concerning the New Service Plan are attached at Appendix 1.

and thus the issue is now before the Special Master.

B. Responsibility for Developing New Service Plan

As an initial matter, it should be noted that there is a subtle distinction in the role of the parties in developing the New Service Plan.¹² To clarify the roles of the parties, the Consent Decree charges the MTA with the responsibility for developing and implementing the pilot project (after consultation with the JWG). In the first instance, the JWG is responsible for

¹² This may have been the source of some of the disagreement between the parties. For example, § II.C.1 of the Consent Decree suggests that MTA bears responsibility for both developing and implementing the New Service Plan, with the benefit of consultation from the JWG,

MTA shall work with the JWG to develop and implement a plan to provide additional bus service that is designed to improve access by the transit-dependent community to Los Angeles County-wide educational, employment, and health care centers, as well as enhancing personal mobility throughout the region.

Consent Decree at 6 (emphasis added.)

Section II.C.2 places the responsibility for the Pilot Project on the MTA, after consultation with the JWG,

After consultation with the JWG, MTA will initiate as expeditiously as possible a pilot project to provide a minimum of fifty additional buses (*i.e.* buses in addition to those buses already planned for replacement purposes) during the next two years to demonstrate how this program can meet the needs of the transit-dependent areas for access to jobs, education and health services.

Id. at 7 (emphasis added.)

However, Section II.C.2 also elaborates and provides a more specific procedure for the actual development of the New Service Plan; it charges the JWG with evaluating the pilot project, developing the Plan, and referring any JWG disagreement to the Special Master,

The JWG will evaluate the pilot project and develop a plan for additional bus service and other transit services over the following five years, which shall include a projection of the number of buses and other vehicles needed to provide such services. **If the JWG cannot agree on a five-year plan** by December 31, 1998, the issue may be referred to the Special Master.

Id.(emphasis added.)

Reading the three provisions together, the Consent Decree envisions a cooperative working relationship in the JWG in developing a New Service Plan based on analysis of the Pilot Projects initiated by MTA (after consultation with the JWG). Then, MTA is responsible for implementing the JWG-developed New Service Plan.

evaluating the information from the Pilot Projects and then developing the New Service Plan. The MTA, however, bears the sole responsibility for implementing the New Service Plan.

Although the MTA maintains that it has been implementing the plan suggested in the Special Master's Preliminary Views, it is unclear what role the JWG has had in evaluating and designing the details of the plan. The Preliminary Views were intended to guide the JWG and not substitute the Special Master's views for the JWG's initial responsibility. See Preliminary Views at 2 ("It is my hope that these preliminary views will provide a catalyst for further discussion and agreement on these important issues.") For this reason, the MTA did not have unilateral authority to develop a New Service Plan, and I will consider its "Update" to the New Service Plan as a proposal along with the proposal of the BRU.

While the Consent Decree provides a mechanism for referral to the Special Master, it is self-evident, I hope, that the Special Master is not in a position to develop a detailed New Service Plan and certainly not to implement such a plan. Similarly, the BRU cannot implement the plan. Only the MTA can implement the New Service Plan. The failure of the JWG to reach agreement on a New Service Plan is very disappointing. Under these circumstances, it is incumbent on the Special Master to determine, with little specific guidance from the Consent Decree,¹³ what criteria the MTA should follow in implementing a New Service Plan. In this Order, I will set forth the parameters of a New Service Plan as guided by the Consent Decree and the precedents interpreting the Decree over the past eight years. These parameters essentially consist of criteria that the MTA must meet in filling out the details and establishing a timeline for

¹³ Attachment A of the Consent Decree provides little additional guidance about the New Service Plan. It does state in relevant part, "MTA shall consider the feasibility of (1) adding buses for lines 120-121, 117, and 264 to bring more reliable service to the Los Amigos Medical Center, and (2) adding buses on line 205 and extending a branch of line 204 to the Harbor/UCLA Hospital."

the implementation of the New Service Plan after consultation with the JWG (the “New Service Plan Criteria”). These parameters leave the MTA with substantial discretion to make decisions and adjustments that are consistent with the overarching purpose of the plan – to enhance county-wide mobility for the transit-dependent and facilitate access to educational, employment and health care centers – and that meet the criteria of responsiveness to rider demand and economic feasibility. While the MTA is directed to consult with the JWG, the responsibility to fill in the details and execute the New Service Plan Criteria falls squarely on the MTA.

C. New Service Plan Criteria

In the Preliminary Views, I set forth what, in my best judgment, the Consent Decree requires with respect to a New Service Plan. Although neither party has presented a plan that is fully consistent with these guidelines, my views as to what the Consent Decree requires have not changed. Since the JWG has failed to develop a New Service Plan, I will refashion these guidelines as updated and specific New Service Plan Criteria that the MTA will be directed to apply in implementing a New Service Plan. These criteria are designed to maximize the MTA’s flexibility in scheduling to changing patterns of customer demand and allocating resources efficiently. The MTA is directed to consult with the JWG and then prepare a detailed plan for implementing the following New Service Plan Criteria (the “Implementation Plan.”) The MTA shall submit the Implementation Plan to the Special Master for approval on or before **July 31, 2005**.

The New Service Plan Criteria that follow represent the minimum requirements for compliance with Section II.C.2 of the Consent Decree. Recognizing that the MTA faces fiscal constraints and ultimately must be responsible for providing consumer responsive and

economically feasible bus service, the criteria address the two components of the MTA's proposed New Service Plan – the Metro Rapid network and extension of the Pilot Projects. However, the criteria are intended to ensure that these programs are implemented in a way that provides additional bus service – not alternative bus service – that will improve access and enhance county-wide mobility for the transit dependent. Moreover, these criteria are intended to ensure that the MTA procures the additional buses or other vehicles to implement fully the promise of these programs, that funds are reprogrammed from other sources of bus-eligible funding to provide these additional services, and that the resources to implement these programs do not come from bus service cuts that adversely affect the transit dependent.

The MTA has chosen the Metro Rapid network and the continuation of the 11 pilot projects as the means by which the New Service Plan goals of mobility and access will be achieved. The JWG has supported these programs so long as sufficient resources are committed to them. Indeed, the MTA has expanded the Metro Rapid network from the 16 lines envisioned in the Preliminary Views guidelines to the current proposal of 28 lines. This is a substantial commitment to the goal of county-wide mobility and access. Moreover, despite its concerns about performance on some routes, the MTA has agreed to continue the 11 pilot project lines developed by the JWG to meet the specific needs of the transit-dependent.

In my judgment, implementing these programs in accordance with the following criteria will establish the common ground that the Consent Decree sought to achieve through the JWG. There are other components to the BRU's thoughtful and comprehensive New Service Plan proposal – *e.g.*, the Freeway Bus network, canyon shuttles, and bus stop improvements. The MTA is encouraged to consider these programs as well and to incorporate elements of them in its Implementation Plan where feasible.

The Implementation Plan submitted to the Special Master shall be accompanied by a certification by a senior executive of the MTA attesting that the Implementation Plan meets the New Service Plan Criteria, that the MTA Board has reviewed and approved the plan, and that sources of funding, as discussed below, have been identified to implement the plan.

The Implementation Plan shall include a specific and detailed schedule, establishing dates by which additional services will be initiated and buses or other vehicles obtained. The MTA shall proceed immediately to implement the plan as expeditiously as possible, as many components of such plan are already in place, and shall not await final approval of the plan. Despite the inability of the JWG to reach final resolution, substantial progress has been made in developing the Metro Rapid network and implementing some of the pilot projects. Nothing in this Memorandum and Order should be interpreted to delay the expeditious implementation of plans already underway that are consistent with the Consent Decree and these criteria.

The MTA is encouraged to consult with the JWG on every aspect of the Implementation Plan and to explore other components not required by this Order. However, JWG consent is required only for any component of the Implementation Plan that does not conform to the New Service Plan Criteria outlined below. Comments on the New Service Plan will be due August 31, 2005. Comments that address issues beyond the scope of the New Service Plan Criteria will not be considered at this time. After reviewing any comments, the Special Master will, if necessary, set an expedited hearing on the Implementation Plan, approve the Implementation Plan, or modify the Implementation Plan.

As more fully detailed in the New Service Plan Criteria below, the MTA is directed to prepare an Implementation Plan effectuating the two components of the New Service Plan:

(1) the 28-line Metro Rapid network, and (2) continued and enhanced operation of the 11 Pilot Project lines. In the Implementation Plan, the MTA will set forth a schedule for the expansion of the Metro Rapid program that will enable all 28 Metro Rapid lines to be in operation by December 31, 2008.

The Implementation Plan should incorporate the following New Service Plan Criteria:

Metro Rapid Network

CRITERION #1: The MTA Board must allocate sufficient capital and operational funding to implement the Metro Rapid network in a way that achieves the original requirement of the Consent Decree to provide additional bus service that will enhance personal mobility throughout the region and improve the access of the transit dependent to Los Angeles county-wide educational, employment, and health centers.

Despite the substantial promise of the Metro Rapid program, many of the benefits of the program have not been fully realized due to the lack of sufficient funding allocated to the program. The Long Range Transportation Plan describes the MTA's funding limitations:

...Since no additional operating funds are anticipated to become available until after 2015, service modifications are based on the ability to improve efficiencies in the existing system. For example, new Metro Rapid lines can be recrafted from existing local service resources, but there is a limit to what these resources can accommodate with respect to increased ridership demands.

MTA Draft 2001 Long Range Transportation Plan for Los Angeles County at 2-2.

The MTA's Metro Rapid Five Year Implementation Plan describes the MTA's "cost-neutral" approach to the implementation of the Metro Rapid program:

Previous board action provided funds for capital improvements, but did not include additional operating funds. Consequently, the Metro Rapid Implementation Plan assumes a deployment of Phase II corridors that is funded with available operating revenues. In order to meet this financial requirement,

and taking into account the efficiency improvements resulting from faster operating speeds and restructured operator schedules, the following modifications in Metro Rapid attributes were made.

Metro Rapid Five Year Implementation Plan dated August 2002 at 6, attached to the Orosz Decl. at Ex. 6 (“Metro Rapid Five Year Implementation Plan”).

The Metro Rapid Five Year Implementation Plan goes on to describe three basic components of the Metro Rapid system that have been adjusted to accommodate the lack of additional operating funds allocated to the then 24-corridor network¹⁴ and concludes that “[i]mplementation of Metro Rapid service attributes as originally adopted in the Long Range Transportation Plan will require additional resources.” *Id.* at 7.

Seven Day Service

As originally proposed, Metro Rapid was to offer service on all seven days of the week. *Id.* The MTA reported, however, that only six of the 24 expansion corridors were to operate on all seven days, five were to operate on weekdays and Saturdays, six were to operate only on weekdays all day, and seven were to operate only during weekday peak periods. *Id.* at 6. The MTA explained that “[i]n some cases, operation of six or seven day schedules is appropriate regardless of operating cost constraints; in other cases, expansion to a seven day service is sound only if funds become available.” *Id.* The BRU points out that only three of the 11 currently-operating Metro Rapid lines offer service after 9 p.m., and only one during late evening hours (Line 720 operates until 1:30 a.m.). BRU Plan at 28. Of the currently operating lines, five lines have limited or no weekend service, and, under current plans, 12 of the future Metro Rapid lines

¹⁴ The Metro Rapid Five Year Implementation Plan, formulated in August 2002, originally envisioned 24 Metro Rapid corridors. After further evaluation, the MTA decided to expand the network to 28 Metro Rapid lines, which is reflected in the current MTA Plan.

will not offer weekend service, or that service will be limited to Saturday-only. *Id.* at 29.

Minimum Service Frequencies

As originally conceptualized, the Metro Rapid program required frequent service as “one of the basic attributes,” with 10-minute peak and 12-minute off-peak service. Metro Rapid Five Year Implementation Plan at 6. However, the Metro Rapid Five Year Implementation Plan recognized that 19 of the 24 corridors would not meet this “minimum standard” which would “result in less ridership growth” due to the lack of operating funds. *Id.* See also BRU Plan at 28.

Service Capacity

The MTA explained:

Expansion of Metro Rapid service within available operating revenue requires that each line be scheduled as close to existing hours as possible while allowing the miles to increase due to increasing operating speeds and schedule restructuring. It is anticipated that additional operating resources may be needed to meet ridership demand.

Metro Rapid Five Year Implementation Plan at 7.

If the Metro Rapid network is to serve as the backbone of the New Service Plan (as envisioned by the MTA, the BRU, and the Preliminary Views), it must offer a significant enhancement of service quality (not simply the substitution of one service for another). This means that a “cost-neutral” policy or a policy that artificially limits total capacity on a line because of operational funding or scheduling caps is not satisfactory and fails to meet the requirements of Section II.C.1 which requires new service, additional service – not alternative or substitute service – to enhance county-wide mobility.

In its Implementation Plan, the MTA must set forth in detail the enhanced service

operation of the Metro Rapid program as originally envisioned in the Long Range Transportation Plan (including the attributes of service frequency, off-peak, evening and weekend service where there is sufficient passenger demand and service capacity measurements). The following specific information should be provided in the Implementation Plan to establish the optimal operation of the Metro Rapid network.

- The MTA should analyze and detail which current and future Metro Rapid lines would support Metro Rapid service all day on all seven days, and which would support only some form of limited service (*i.e.*, no weekend service) without regard to “cost-neutral” policies or other artificial constraints that would preclude the realization of the additional service benefits underlying the original Metro Rapid proposal and mandated by the Consent Decree.
- Considering the seven-day service analysis above, the MTA should establish the optimal service frequency during each applicable period (weekday peak, weekday off-peak, evening, weekend, etc.) for each currently operating Metro Rapid line and each future line.
- The MTA should analyze the extent of local or limited service to be provided on lines served by Metro Rapid to minimize waiting, walking and transfer times for persons dependent upon local service.
- The MTA should evaluate the optimal amount of service capacity, including Metro Rapid, limited and local service, for each current and future line on which Metro Rapid service is, or will be, provided.

The MTA is then directed to re-evaluate the sources of bus-eligible funding (including those currently in use for rail projects) and, unless economically infeasible, allocate additional

capital and operating funds to the expansion and operation of the Metro Rapid Program as needed to meet the criteria and operate the Metro Rapid program as close to the optimum level as possible. The Implementation Plan should contain a detailed discussion of this funding analysis and evaluation. Then, the MTA shall include in the Implementation Plan an explanation of the expanded attributes it intends to apply to the Metro Rapid program line by line to operate the network as close to the originally adopted purpose as possible. If additional capital and operating funds are still needed, the MTA is directed to set forth a specific schedule of funding sources. Consistent with the overall purpose of Metro Rapid as the backbone of the Consent Decree's New Service Plan, it is recognized that the MTA will make schedule adjustments and modifications as they are needed to respond to changes in customer demand and that funding sources are subject to intervening events beyond its control, e.g., sales tax revenues, governmental appropriations, etc. Updates on the Metro Rapid enhancement and funding should be included in each quarterly report.

CRITERION #2. Only 33% of the service provided by the Metro Rapid network may be diverted or converted from existing local or limited service in Metro Rapid corridors or other service system wide.

The Metro Rapid program has been the focus of several studies, analyses, and proceedings. Early proposals of the Metro Rapid network considered the increased efficiency offered by Metro Rapid's higher speeds and other attributes, but still recognized the need for the addition of bus service above and beyond that which operated previously in Metro Rapid corridors. Given this history and the continuing load factor exceedences in the Metro Rapid corridors, on average for the whole Metro Rapid network, no more than 33% of total Metro Rapid service may be comprised of local and other service diverted from within the Metro Rapid corridor or elsewhere in the bus system. If more than 33% of existing Metro Rapid service has

come from service diverted from local service in the corridors or elsewhere in the system, the MTA should include in the Implementation Plan a schedule to reinvest such service/capacity in non-Metro Rapid service. The remaining 67% of Metro Rapid service must be expansion service.

In November 1988, the RTAA presented by Booz-Allen & Hamilton Inc. proposed that 200 new buses of 300 buses for a 16-corridor Metro Rapid network be added as service expansion:

Approximately 300 buses could be used as part of the ultimate regional program. This includes a service expansion of approximately 200 buses with the remainder of the service coming from the conversion of local service along these corridors to Rapid Bus.

RTAA at 24. Therefore, the RTAA proposed that approximately one-third of Metro Rapid service could be converted from local or other service.

Similarly, in the Preliminary Views decision, I analyzed the various New Service Plan proposals and suggested that expansion of the Metro Rapid network to 16 lines would require 203 buses (over the 97 for the Phase I Demonstration). Preliminary Views at Appendix A. Of these 203 buses, 140 were to be new expansion, while 63 could be diverted from existing bus service, or about 31%. *Id.*

The MTA's Metro Rapid Five Year Implementation Plan projected that a 24-corridor Metro Rapid program would add 641 bus trips (a 10.3% increase) with the addition of only one bus during peak hours. Metro Rapid Five Year Implementation Plan at Table 4. The MTA continues to assert that the greater efficiencies provided by the attributes of Metro Rapid preclude the need for expansion of service. Goldman Decl. at 4.

However, the need for service expansion, as opposed to service diversion, is evident from the continually high number load factor exceedences prevalent in Metro Rapid corridors. For example, from my review of recent load factor mapping, the Southbound 754 and Southbound 204 (the Vermont Avenue corridor) exhibited 58 and 22 load factor exceedences respectively during the p.m. peak hours at the Vermont and Wilshire checkpoint from July – December 2004. Similarly, the Wilshire/Whittier corridor continues to show high levels of exceedences, with 64 exceedences on the Eastbound lines during the past six months at the Wilshire and La Brea checkpoint during p.m. peak hours (there were 60 exceedences on the Eastbound 720 and 4 exceedences on the Eastbound 20). Other lines show varying levels of overcrowding, but all corridors have exhibited recent exceedences. Although the attributes of the Metro Rapid network allow it to offer improved service with fewer vehicles, the continuing evidence of overcrowding in Metro Rapid corridors counsels for continued service expansion.

The use of a 33% cap on service diversion to the Metro Rapid network will allow the MTA the flexibility to make adjustments among the Metro Rapid corridors so long as on average no more than a third of the network comes from service cuts elsewhere. The two thirds expansion in the Metro Rapid network will come from the addition of new expansion buses to the routes as well as additional seat capacity created through increased scheduling efficiency, higher speeds and shorter turnaround times. I note, however, that although 33% of Metro Rapid service, on average, may be comprised of converted existing service, the MTA must comply with New Service Plan Criterion #4 (described below) which prohibits service cuts in other parts of the bus system simply to garner resources for Metro Rapid.

CRITERION #3. At least 134 new buses must be added to the Metro Rapid system.

At a minimum, the MTA must add 134 new buses to add to the Metro Rapid system.¹⁵

This probably will not be a sufficient number of buses to meet the criteria set forth in this section; however, it is a mandatory minimum requirement. Although I recognize that 134 new buses will not be sufficient to serve adequately 28 Metro Rapid lines in accordance with the criteria set forth in this Order, I have set this minimum for the following reasons.

In the Preliminary Views guidelines, I proposed that 203 buses be added to a 13-line expansion of the Metro Rapid program. Of those, I found that 140 (or 31%) must be new service expansion buses. Under Criterion #2 as explained above, I imposed a 33% cap on diversion from existing service. Applying the 33% cap to the 203 buses, I now set 134 buses as the minimum required number of new buses to be added to Metro Rapid. Of course, the Preliminary Views envisioned only a 13-line expansion (for a total of 16 Metro Rapid lines.) The New Service Plan now involves 28 Metro Rapid lines, and only 33% of Metro Rapid service, on average, may come from existing service (per Criterion #2). Moreover, the Metro Rapid program must be operated as close to its original purpose in the Long Range Plan as possible (per Criterion #1). The MTA therefore likely will need to allocate more new buses than the 134-bus minimum to expand the Metro Rapid program. However, I have incorporated a mandatory minimum of 134 new buses in the criteria because Section II.C of the Consent Decree requires “additional bus service” and directs the JWG to project “the number of buses and other vehicles needed to provide such services.” Thus, the MTA has received ample notice that at least a

¹⁵ Given that most, if not all, of the buses currently operating on the Metro Rapid network have been diverted from existing service, the 134 new buses are in addition to the net increase of 77 a.m. peak buses and 114 p.m. peak buses that the MTA has already allocated to Metro Rapid Network. See Exh. 1, Orosz Decl.

minimal amount of additional buses would be required to implement the New Service Plan. Moreover, in the Preliminary Views, the MTA received specific notice of the minimal number of new buses that would be needed. For this reason, the MTA has had many years to include in its plans and budget decisions the need for additional buses to implement the New Service Plan.

While, as noted above, I doubt that 134 new buses will be sufficient, I have set the minimum low because the MTA should have the flexibility to expand service and seating capacity on the Metro Rapid network through other means such as efficient scheduling, higher travel speeds, shorter turnaround time, short headways, low floor buses, sophisticated technologies, and improved bus stops. Thus, the MTA can take these improvements into account in determining how many expansion buses to add to the network to satisfy this criterion once the 134-bus minimum is met.

After taking service efficiencies and all of the New Service Plan Criteria into account, the MTA will need to establish the total number of buses needed to operate the Metro Rapid network. In the Implementation Plan, the MTA should detail the number of buses being diverted from existing service, the increased capacity resulting from scheduling efficiencies, and the number of new buses to be procured for use on the Metro Rapid network, specifying any new buses that are procured for other purposes (per Criterion #6 below). The Implementation Plan will show for each of the new bus procurements: (1) the Board approval of the procurement, (2) the anticipated dates of arrival and placement into service, (3) to the extent feasible, the Metro Rapid line to which the bus is planned to be assigned, and (4) the sources of funding to be used for purchase and operation.

CRITERION #4. Service may not be cut in other parts of the bus system for the sole purpose of garnering resources for the Metro Rapid network or other New Service Plan services.

An important issue throughout this litigation has been the extent to which the MTA may utilize service reductions in other parts of the bus system to secure additional resources for Consent Decree-mandated remedies. Plaintiffs have repeatedly contended, both in the New Service Plan proceedings and other contemporaneous proceedings such as the pending service cut analysis, that the MTA cuts service, in violation of the mandates and spirit of the Consent Decree, in order to reallocate resources to comply with its obligations under the Consent Decree. *See, e.g.*, BRU Plan at 11 (describing the MTA's Transit Service Policy) and 27 – 30 (describing service cuts allegedly related to the operation of Metro Rapid service).

While the MTA does not, and cannot, argue that it has not reduced service to secure resources to operate the Metro Rapid network,¹⁶ the MTA contends that (1) Metro Rapid's higher speeds allow buses in the network to increase the number of bus trips and seating capacity with fewer buses, and (2) service (including the split with local service, and service during off-peak and weekend periods) in the Metro Rapid corridors are scheduled based on passenger demand in order to prevent a waste of resources. Goldman Decl. at 4. Indeed, there has been a net increase on all currently-operating Metro Rapid corridors of 77 buses in a.m. peak periods, and 114 buses in p.m. peak periods. Chart entitled "Metro Rapid Before and After Comparison" attached as Ex. 1 to the Orosz Decl. However, the MTA offers no evidence to rebut Plaintiffs' contention that service cuts in other parts of the bus system (i.e. non-Metro Rapid corridors) have supplied resources for the Metro Rapid network.

¹⁶ See discussion regarding the MTA's "cost-neutral" implementation of Metro Rapid above. See also Draft Planning and Programming Committee Memorandum dated September 18, 2002 at 3 (attached as Ex. 6 to Orosz Decl.) (discussing the allocation of resources to Metro Rapid by finding "service structuring efficiencies" in the current system through the help of the Service Sectors and Area Teams.)

As will be explained in more detail in my forthcoming order analyzing the MTA Transit Service Policy and specific past service cuts, the MTA may only reduce service in the bus system in a manner consistent with the conditions articulated in the 1.25/1.20 Remedial Plan Memorandum. To do this, two conditions must be met: (1) the service reductions must be independently justified on the basis of objective efficiency and resource allocation criteria and (2) the transit-dependent must not be adversely impacted. See 1.25/1.20 Remedial Plan Memorandum at 17. Specifically, to be “independently justified,” service cannot be reduced in one part of the bus system simply to provide resources for the Metro Rapid network, or other New Service Plan programs. While under Criterion #2 up to 33% of Metro Rapid service may come from existing service in the corridor or elsewhere, the reduction in existing service must be independently justified. Presumably most of this 33% will come from the elimination of redundant or overlapping schedules within the corridor. Such reductions cannot be made, however, simply to reallocate resources to Metro Rapid service. Thus, taken together with other New Service Plan Criteria, the MTA may need to procure additional buses beyond its current procurement commitments to supply adequate resources for New Service Plan services.

Although this criterion addresses future service cuts, I realize that there may have been reductions in service in the past. I will not now address whether the MTA should restore past service cuts because: (1) Criterion #2 requires a reinvestment of any service diverted to Metro Rapid over the 33% cap, and (2) my forthcoming order evaluating the parties' service cut analysis will consider the propriety of specific service reductions.

CRITERION #5. The Implementation Plan must consider the improvements to local and intersecting service.

For the New Service Plan to work effectively, the transit-dependent must be able to transfer from Metro Rapid to parallel and intersecting local service in an efficient manner. The establishment of a premier Metro Rapid network, for example, will do little to improve county-wide access for the transit dependent if bus service in other parts of the system suffer from degraded service.

The BRU aptly expresses this concern:

For riders who previously relied on Limited service and whose stops are not covered by Rapid, the only alternatives are to walk further or add a transfer and a longer wait to get a Local bus to and from a Metro Rapid stop. For the thousands of passengers who make shorter local trips on Metro Rapid corridors and therefore do not benefit from the time savings of Metro Rapid, the reduction in Local service is a new burden that makes travel time longer.

BRU Plan at 30.

The implementation of Criteria 2 - 4 should enable the MTA to address some of BRU's concerns about degraded service on local lines within Metro Rapid corridors and in connections to other parts of the bus system. Practically speaking, Criterion #2 will likely require the reinvestment of resources in non-Metro Rapid services.

In its Implementation Plan, the MTA should detail the amount of bus equivalents being reinvested into the bus system from the Metro Rapid program and how those buses will be used to improve non-Metro Rapid service. The MTA is encouraged to consult the JWG in preparing this portion of the Implementation Plan. After such consultation, the MTA should determine whether any existing lines should be realigned to facilitate access to the Metro Rapid network by the transit dependent.

CRITERION #6. Buses procured for other Consent Decree purposes, such as load factor reduction and replacement of overage buses, may be utilized for the New Service Plan.

In the 1.25/1.20 Remedial Plan Memorandum and Final Order, I directed the MTA to procure and place into service 145 40-seat buses (or the vehicular equivalent) to remedy continuing load factor violations and 381 40-seat buses (or the vehicular equivalent) to replace overage buses. 1.25/1.20 Remedial Plan Final Order at 3-6. This means the MTA is obligated to procure and place in service at least 526 buses before FY07.

Plaintiffs have taken the position that the New Service Plan provisions of the Consent Decree require new bus procurements separate and apart from those procured during the load factor compliance proceedings. However, I have previously held that buses procured for load factor reduction may also be used in the New Service Plan. Preliminary Views at Appendix A (“Buses procured under paragraph 7 of the Load Factor Reduction Remedial Plan may be used for the Five Year Plan.”) Although, in practical terms, implementation of the New Service Criteria likely will require new bus procurements, utilization of buses procured for load factor reduction and overage replacements for the New Service Plan is not necessarily inconsistent with the Consent Decree. Importantly, however, the MTA must not sacrifice its other obligations under Consent Decree (*i.e.* remedying overcrowding on non-Metro Rapid lines and replacing overage buses) by utilizing new bus procurements planned for those purposes for the New Service Plan. However, if new buses serve more than one purpose of the Consent Decree, *i.e.*, enhance county-wide mobility and reduce overcrowding, that is all to the good.

CRITERION #7. Municipal Operators may operate Metro Rapid services, e.g., on the Pico Boulevard, Lincoln Avenue, Sepulveda Boulevard, and Torrance-Long Beach lines, as long as service to the transit-dependent is not degraded, and MTA may contract out Metro Rapid services as long as the criteria are met.

The MTA currently plans on utilizing municipal operators to operate four Metro Rapid Lines: Pico Boulevard and Lincoln Avenue (by Santa Monica Municipal Bus Lines), Sepulveda Boulevard (by Culver City Municipal Bus Lines), and Torrance-Long Beach (by Torrance Transit.) Metro Rapid Five Year Implementation Plan at 6. The MTA has stated that operation by these municipal operators will provide “the same attributes, operating protocols, and branding to ensure a consistent ‘product’ for the customer regardless of operator.” *Id.*

Plaintiffs express concern that operation of these four lines by municipal operators will result in “increasingly balkanized service.” BRU Plan at 34. Additionally, the BRU complains that transit-dependent riders traveling on these four lines will likely have to pay increased fares, comprised of the MTA fare on MTA-operated lines combined with an additional municipal operator fare when transferring to or from one of these four lines. *Id.* The MTA did not respond to these concerns in its response to the BRU Plan.

A similar issue involving the use of municipal operators has come up before in this litigation. In his September 23, 1999 Memorandum Opinion and Order, U.S. District Judge Terry Hatter recommended that the Special Master consider whether coordination with municipal operators was appropriate in assisting the MTA with meeting the 1.35 load factor target. U.S. District Court Memorandum and Order dated Sept. 23, 1999 at 5 (“...the Special Master should consider...the possibility of reducing or eliminating MTA service to those municipalities served by the sixteen municipal bus lines that offer overlapping service to the service provided by the MTA.”) Applying the rationale in Judge Hatter’s decision, I directed the

MTA to consider improved coordination with municipal operators in its remedial plan to meet the 1.25 and 1.20 load factor targets, "so long as the quality of service to the transit-dependent is not diminished." Memorandum Decision and Order of Remedial Methodology; Meeting the 1.25 and 1.20 Load Factor Targets dated December 9, 2002 at 53. Additionally, in the Preliminary Views guidelines, I recognized the propriety of allowing non-MTA operators to help effectuate the New Service Plan. Preliminary Views at Appendix A ("Some of the new service presumably will be operated by contractors who will provide their own buses.")

The same principle should be applied in analyzing whether municipal operators or contractors may operate Metro Rapid service, on the Pico, Lincoln, Sepulveda, the Torrance-Long Beach or other lines. The MTA appropriately may consider opportunities to improve coordination with municipal operators in providing service to the transit dependent, *as long as that service is not degraded by that coordination*. Subject to the considerations discussed below, this same principle may be applied to other opportunities for municipal operators or contractors to participate in the Metro Rapid network.

The operation of the Metro Rapid network is distinct from other opportunities to coordinate the provision of bus service with the municipalities since the success of the network depends in part on the consistency and quality of the Metro Rapid brand. Therefore, the MTA will need to ensure that Metro Rapid lines operated by municipal operators or contractors provide a service consistent with MTA-operated Metro Rapid lines. This includes, among other things, utilization of a consistent fare structure. If municipal operators are to operate Metro Rapid service on Pico, Lincoln, Sepulveda, and the Torrance-Long Beach lines, the total charged to riders should not be greater than on an MTA-operated route, and, both the MTA and the municipal operators should comply with applicable New Service Plan Criteria outlined herein

regarding the operation of the Metro Rapid network.

Enhancement and Expansion of the Pilot Project

There are currently 11 routes operating under the Consent Decree Pilot Program. These routes provide local, express and community circulator service throughout the region, working in conjunction with the existing regional bus and rail service network. The Pilot Program routes include the following:

| | |
|----------|--|
| Line 58 | Union Station-Alameda Street-Washington Blue Line Station |
| Line 167 | Plummer Street-Coldwater Canyon Avenue |
| Line 214 | Broadway/Main Street Loop |
| Line 218 | West Hollywood-Studio City via Laurel Canyon Boulevard |
| Line 305 | City Connector Limited |
| Line 422 | Newbury Park-Thousand Oaks-Calabasas-Encino Park-Ride Express (L.A. DOT) |
| Line 550 | West Hollywood-San Pedro Express |
| Line 601 | Union-Echo Park Shuttle (L.A. DOT) |
| Line 602 | El Sereno-City Terrace Shuttle (L.A. DOT) |
| Line 603 | Rampart-Hoover-Colorado Boulevard Shuttle |
| Line 605 | Grande Vista-USC Hospital Shuttle |

Continuation of the Pilot Project as part of the New Service Plan will provide, according to the MTA, “a service network with the following diverse categories of services”:

Local Routes – These routes link transit centers and employment areas with frequent stops. Included in this category are Lines 58 and 167.

Limited-Stop Routes – Line 305 provides expedited travel between South Los Angeles and the UCLA campus in Westwood. Stops are provided at major intersections to connect with major bus routes. The diagonal routing minimizes the need to transfer.

Community Circulator Routes – These routes connect residential areas with activity centers and other regional transit services. To penetrate residential neighborhoods, smaller vehicles are often used. Services in this category include Lines 214, 218, 601, 602, 603 and 605.

Express Routes – These routes provide passengers with high-speed travel over long distances using freeways and High Occupancy Vehicle (HOV) lanes, where available. Express routes include Lines 422 and 550.

MTA Plan at 5 – 6.

Together with Metro Rapid, the New Service Plan network, according to the MTA, “works together to meet the original goals of improving service for the transit-dependent to employment areas, medical and educational facilities; addresses unmet travel needs; and improves service quality by providing services that meet the stated needs of the community.” *Id.* at 6.

The MTA contends that only four of the 11 Pilot Project lines are currently performing well. MTA Plan at 7-9. Nonetheless, the pilot projects were mandated by the Consent Decree, developed in conjunction with the JWG, approved by the MTA Board and acknowledged in the Preliminary Views as an appropriate part of a New Service Plan. Perhaps for these reasons, the MTA appears willing to continue to maintain the 11 ongoing pilot projects as part of the New Service Plan despite its ongoing concerns about their performance. The BRU, on the other hand, contends that ridership could be increased if service on the Pilot Project lines were improved.

The following criteria set forth the MTA’s obligations to continue and improve the 11 Pilot Projects as part of the New Service Plan.

CRITERION #8. The MTA shall continue to operate and improve the 11 Pilot Project lines as part of the 5-year New Service Plan, except that if the MTA determines, after consultation with the JWG, that the continued operation of one or more of such lines is not economically feasible and not responsive to sufficient rider demand, it may substitute an alternative route that meets the criteria of Section II.C. of the Consent Decree provided that there is no diminution in resources – funding, vehicles and vehicle seats – allocated to the Pilot Project component of the New Service Plan.

The MTA shall include in its Implementation Plan a description of the 11 Pilot Project lines that are part of the New Service Plan. The MTA shall also include the following:

- The funding and funding sources allocated to the Pilot Project component of the New Service Plan (with appropriate and applicable conditions and caveats).
- The total number of vehicles by vehicle type and seats allocated to the Pilot Project, including a schedule of additional vehicles and seats to be added during the five-year period.
- A description of the improvements that the MTA plans to make to existing pilot project lines to attract additional ridership, including but not limited to advertising, marketing, and communicating more effectively information about the line, improvements in headways, schedule frequency and capacity to make the service more attractive, modifications to fare and transfer policies, reductions in waiting and transfer times, and improvements to bus stops.
- A description of the criteria to be employed by the MTA to determine whether a pilot project line generates sufficient ridership and is economically feasible.

If, after consulting the JWG, the MTA determines that an alternative pilot project route should be substituted for an existing route that, despite improvements, does not attract sufficient ridership and is not economically feasible, the MTA may substitute the new route and report this decision to the Special Master with a copy to the JWG and BRU. Such report shall state:

- The reasons why the nonperforming route is being discontinued.
- How the new route will meet the criteria set forth in Section II.C. of the Consent Decree, enhancing personal mobility and facilitating county-wide access by the transit-dependent to educational, health care and job centers.
- How the MTA will maintain the total commitment of resources – funds, vehicles and vehicle seats – to the Pilot Project component of the New Service Plan after the substitution of the new route.

CRITERION #9. The MTA shall consult with the JWG and consider whether to adopt the BRU's proposals to improve service on the freeway lines.

According to the MTA, freeway express service developed for the Pilot Project program "attracted a marginal amount of ridership." MTA Plan at 8. However, the BRU contends that

the MTA has not offered the kind of freeway service that would meet the need of the transit-dependent for county-wide mobility. The BRU Plan offered five suggestions for improving service on the freeway lines (Lines 422 and 550):

- short headways (5 minutes peak and 7.5 minutes off-peak);
- operation of the route exclusively on the freeway;
- utilization of High-Occupancy Vehicle (HOV) and bus-only lanes;
- evening and weekend service; and
- the elimination of higher freeway fares.

BRU Plan at 19-21.

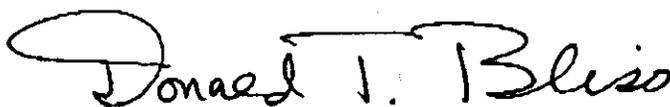
The MTA has suggested that in lieu of an *expansion* of freeway services suggested by the BRU, that the MTA utilize subscription services which “require that employers guarantee a certain amount of ridership and revenue in return for the establishment of bus service.” Goldman Decl. at 3. However, the MTA did not respond to the BRU’s suggestions for the *improvement* of service on the current freeway lines.

The MTA, after consultation with the JWG, shall include in the Implementation Plan an analysis of the BRU’s five suggestions for improving freeway service. Of course, the MTA may consider additional ideas for improving freeway service. If the MTA cannot accept the BRU’s suggestions, it should set forth alternative ways of improving freeway service. After the JWG consultation, the Implementation Plan should contain a plan for improving services on Lines 422 and 550. The MTA shall further consider whether additional freeway service is feasible as recommended by the BRU. The MTA should include in each quarterly report an update on its plans for improving freeway service.

CRITERION #10. The MTA shall consider the BRU's proposal for a 50-shuttle network for servicing transit-dependent riders in five canyon neighborhoods as determined by the JWG.

Line 218 tested shuttle service in the Hollywood Hills canyon corridors, connecting the San Fernando Valley to West Los Angeles via Laurel Canyon Boulevard. MTA Plan at 7. The MTA describes this Pilot Project line, however, as generating "little demand" and "carr[ying] the majority of its patronage in West Los Angeles." *Id.* The BRU, however, maintains that shuttle service is still needed, and suggests that the JWG evaluate the need for service in Topanga Canyon, Benedict Canyon, Mulholland Drive, Kanan Road, Malibu Canyon, and Agoura Hills. The MTA should consider whether any or all of these canyon routes should be added to the New Service Plan to fill in a service gap for the transit-dependent.

If the MTA determines that one or more of the 11 Pilot Project lines should be terminated for the reasons specified in Criterion #8, it shall consult with the JWG, and consider whether any of five canyon neighborhoods suggested by the BRU should be considered as substitute routes.¹⁷ A report on the status and performance of the canyon shuttle services should be included in the quarterly reporting.



Donald T. Bliss

SPECIAL MASTER

Dated: April 14, 2005

¹⁷ Additional candidates for substitute or expansion pilot project routes include two of the three pilot project lines approved by the Board but never implemented: Lines 530 (increasing service between East Los Angeles College and Panorama City) and 577 (increasing service between Cerritos Town Center and El Monte).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PROCEEDING BEFORE SPECIAL MASTER DONALD T. BLISS

| | | |
|---|---|-------------------------------|
| LABOR/COMMUNITY STRATEGY |) | |
| CENTER, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | Case No. CV 94-5936 TJH (MCx) |
| |) | |
| vs. |) | |
| |) | |
| LOS ANGELES COUNTY METROPOLITAN |) | MEMORANDUM AND ORDER |
| TRANSPORTATION AUTHORITY, <i>et al.</i> |) | IN RE NEW SERVICE PLAN |
| |) | |
| Defendants. |) | |
| |) | |

ORDER

I. After consulting with the JWG, the MTA shall prepare an Implementation Plan containing the information and prepared in accordance with the procedures set forth in this Memorandum and Order,¹ and which shall include:

A. A description of the Metro Rapid Expansion Program that includes a phase-in schedule implementing all 28 lines in the Metro Rapid network by December 31, 2008. The description of the Metro Rapid Expansion Program shall include the following information:

1. How each corridor will meet the express requirements of the Consent Decree to facilitate access by the transit dependent to jobs, educational facilities, and health care centers.²

¹ Much of the requested information has already been prepared by the MTA in the development of its New Service Plan proposal and may be incorporated in the Implementation Plan.

² Attachment A of the Consent Decree specifically requires the MTA to consider increased and/or extended service to the Harbor/UCLA Hospital and the Los Amigos Medical Center. Consent Decree at A-2. Upon review of the MTA Proposal at Table A, the only Line which meets this requirement is Metro Rapid line 709, to be complete in 2008. As part of the implementation plan, MTA shall prepare an update on the evaluation of service and any current or planned provision of service to these two medical centers.

2. After consultation with the JWG, any proposed realignments to or reconfiguration of the Metro Rapid corridors and connecting local routes to improve the access of the transit dependent to county-wide facilities, *inter alia*, by reducing waiting time, walking time to bus stops, and transfer time and costs.

3. Information required by criteria 1-7 of this Memorandum and Order.

B. A description of the 11 pilot project components of the New Service Plan, including a list and maps of the 11 routes and the following information:

1. How each route meets the express requirements of the Consent Decree.

2. Whether each route responds to sufficient ridership demand and is economically feasible, and, if not, what steps the MTA plans to take to improve the quality of service on the route, and to attract additional ridership.

3. To the extent not covered in 2 above, the improvements that the MTA plans to make to the 11 pilot project routes to improve the quality of service and to attract additional ridership and a schedule for implementing such improvements.

4. Any substitute routes that the MTA is considering to replace an existing pilot project route, describing how the replacement route will meet the criteria of Section II.C. of the Consent Decree and how the MTA will maintain at least the same amount of committed resources – funds, vehicles, seats – to this component of the New Service Plan if the substitution is made.

5. Information required by Criteria 8-10 in the Memorandum and Order.

C. A budget approved by the MTA Board that specifies the following:

1. Capital funds required to implement the New Service Plan, including both the Metro Rapid and Pilot Project extension;

2. Operating funds required to implement the New Service Plan;

3. Sources of capital funds;

4. Sources of operating funds;

5. Funds to be reprogrammed from other bus eligible funding sources to implement the New Service Plan;

6. Conditions or qualifications on the approved budget. It is recognized that funding sources may be beyond the MTA's control, e.g., state and federal appropriations and sales tax revenues. Therefore, the budget may be appropriately conditioned so long as the

funding assumptions are realistic and consistent with current planning and projections.

D. The MTA shall include in the Implementation Plan the following information concerning the bus and other vehicles to be used in implementing the New Service Plan:

1. The number of buses to be allocated to each Metro Rapid line and the total number of buses serving the corridor: local, limited and rapid.

2. The number of additional buses to be allocated to each Metro Rapid line and the number of buses to be diverted from local or limited service on that line or from other service, showing how Criteria #1-5 will be satisfied.

3. The number of new buses that will be obtained through new bus procurements to implement the Metro Rapid program, specifying:

- a. Board approval for the procurement;
- b. description of relevant contracts;
- c. the projected date of delivery;
- d. the source of capital funding for the additional buses;
- e. the source of operations funding for the additional buses;
- f. showing specifically how the minimum bus procurement criteria (Criterion #3) will be satisfied;

4. The number of bus and other vehicles and total number of seats that will be allocated to the Pilot Project component of the New Service Plan as of July 31, 2005.

5. Appropriate conditions and caveats.

II. The Implementation Plan shall be:

A. Approved by the MTA Board.

B. Accompanied by a certification of an authorized MTA executive that the Implementation Plan complies with the New Service Plan Criteria and this Order.

C. Submitted to the Special Master on or before July 31, 2005, with a copy served on counsel to the plaintiffs, the JWG and the BRU.

D. Effective on July 31, 2005 (subject to final approval by the Special Master).

III. Additional Procedures.

A. Any interested party may comment on the MTA's New Service Plan on or before August 31, 2005 and a copy of such comments shall be served on counsel to the MTA and the MTA representative on the JWG.

B. The MTA shall have until September 20, 2005 to reply to any comments submitted.

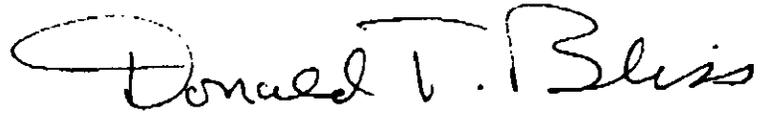
C. If necessary, the Special Master will schedule an expedited hearing on the Implementation Plan.

D. While the Implementation Plan will be subject to final approval by the Special Master after reviewing comments thereon, the MTA is directed to implement expeditiously those components of the New Service Plan that are already in place and to adopt and apply the New Service Plan Criteria as expeditiously as possible. Implementation of appropriate and feasible elements of the plan during the June 2005 shakeout is greatly encouraged. Nothing in this Order shall be interpreted to require or excuse any delay in the implementation of the Metro Rapid program or the extension of the pilot projects.

E. The MTA shall be responsible for complying with the consulting requirements, information requests and quarterly reporting requirements set forth in this Memorandum and Order as long as such requirements remain in effect for the duration of the Consent Decree.

F. Petitions for Reconsideration of this Memorandum and Order will not be considered at this time. Reasonable proposals for amendment or modification of this Order or the New Service Plan Criteria may be submitted on August 31, 2005.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Donald T. Bliss". The signature is written in black ink and is positioned above a horizontal line.

Donald T. Bliss

SPECIAL MASTER

Dated: April 14, 2005

APPENDIX 1

Section II.C. of the Consent Decree states:

C. New Bus Service To Facilitate Access To County-wide Job, Education and Health Centers

1. MTA shall work with the JWG to develop and implement a plan to provide additional bus service that is designed to improve access by the transit-dependent community to Los Angeles County-wide educational, employment, and health care centers, as well as enhancing personal mobility throughout the region. See Attachment A, Section IV.A for examples of specific service improvements that could facilitate access to health care centers. Routes to increase service to job and education centers or to add service to existing routes also shall be developed by MTA working with the JWG, as set out in Attachment A, Section IV.B. The parties understand that the addition of these routes must be responsive to sufficient rider demand and economically feasible and that such new routes will be closely monitored and terminated if there is not sufficient customer demand.

2. After consultation with the JWG, MTA will initiate as expeditiously as possible a pilot project to provide a minimum of fifty additional buses (i.e., buses in addition to those buses already planned for replacement purposes) during the next two years to demonstrate how this program can meet the needs of transit-dependent areas for access to jobs, education and health services. The

JWG will evaluate the pilot project and develop a plan for additional bus and other transit services over the following five years, which shall include a projection of the number of buses and other vehicles needed to provide such services. If the JWG cannot agree on a five-year plan by December 31, 1998, the issue may be referred to the Special Master.

Consent Decree at 6-7.

Sections IV.A and B of Attachment A provide:

IV. NEW BUS SERVICES

A. Essential Non-Emergency Medical Transportation Needs. With the restructuring of the County Health Care system, patients often have to travel long distances to clinics in other communities. It is essential that transit-dependent people be able to get to these clinics in a reasonable amount of time. In the design of the pilot project set forth in Section II.C.2 of the Consent Decree, MTA shall consider the feasibility of (1) adding buses for lines 120-121, 117, and 264 to bring more reliable service to the Los Amigos Medical Center, and (2) adding buses on line 205 and extending a branch of line 204 to the Harbor/UCLA Hospital. MTA shall undertake a more detailed analysis, along with the JWG, to assess the transit needs at other public hospitals in connection with the five-year plan described in Section II.C.2.

B. New Bus Service to Job and Education Centers. In designing the pilot project and developing the five-year plan in consultation with the JWG, as set forth in Section II.C.2 of the Consent Decree, MTA shall develop a plan to

provide additional service, or to add service to existing routes, via bus and other vehicles to meet the needs of the transit-dependent attempting to travel to and from job and education centers. This plan shall enable transit-dependent riders to move from their neighborhoods to areas of employment and health care. The plan shall expand bus and other vehicle service to service important centers outside downtown Los Angeles. If the JWG cannot agree on a five-year plan, the issue may be referred to the Special Master.

Consent Decree, Attachment A at A-2.