



U.S. Department  
of Transportation

**Federal Transit  
Administration**

Administrator

1200 New Jersey Avenue, SE  
Washington, DC 20590

**APR 23 2012**

Mr. Arthur Leahy  
Chief Executive Officer  
Los Angeles County  
Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012

Dear Mr. Leahy:

I write regarding a matter of utmost importance, namely our collective responsibility to protect the civil rights of all transit users throughout the greater Los Angeles region.

As you know, Title VI of the Civil Rights Act of 1964 provides that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” U.S. Department of Transportation (DOT) regulations require that public transportation services be provided in a nondiscriminatory manner. To implement this requirement, DOT regulations and the Federal Transit Administration’s (FTA) Title VI guidance require that transit agencies receiving Federal assistance evaluate whether any major service change may have a discriminatory (disparate) impact on minority passengers as compared to non-minority passengers before implementing the service change.

When a potentially discriminatory impact is found, the transit agency must revise its plans in order to avoid or mitigate the discriminatory impact. If, upon taking mitigating actions and reanalyzing the proposed change, the transit agency determines that minority passengers will continue to bear a disproportionate burden of the proposed service change, the transit agency may implement the service change *only* if the agency has a substantial legitimate justification for the proposed service change, and can show that there are no alternatives that would have a less disparate impact on minority riders.

On November 15, 2010, FTA received a complaint from the Bus Riders Union (BRU) alleging that the policies of the Los Angeles County Metropolitan Transportation Authority (LACMTA) were prioritizing rail service over bus service to the detriment of minority and low-income communities and in violation of Title VI of the Civil Rights Act of 1964. Rather than pursuing the BRU complaint in isolation, FTA conducted a comprehensive compliance review of LACMTA's Title VI program and processes. The findings of the compliance review, and subsequent analysis conducted by FTA staff, reveal numerous deficiencies in LACMTA's

implementation of its Title VI responsibilities. Some of our most disturbing findings indicate that:

- LACMTA failed to comply with the FTA requirement to conduct the required Title VI service equity analysis when evaluating the impact of many proposed major service changes over the past several years.
- LACMTA proceeded to implement multiple semi-annual service changes, including reductions in service, despite the absence of the required Title VI analysis.
- LACMTA failed to use its own Board-adopted definition of a "major service change" when identifying service cuts that must be subject to analysis for potential discriminatory impacts.

Only by conducting the Title VI analysis could LACMTA determine whether the proposed service changes would have disparate impacts. Since LACMTA did not conduct the Title VI portion of the service equity analysis, LACMTA cannot assure that its service changes were implemented in a nondiscriminatory manner. These findings are particularly troubling since LACMTA should be well familiar with the requirements of DOT's Title VI regulations in the wake of its many years of litigation and the multi-year Consent Decree that it entered into with the BRU and other plaintiffs.

These findings now require me to formally find LACMTA not compliant with FTA Title VI requirements. Since Federal law requires FTA to first seek voluntary compliance when addressing potential violations of Title VI, your agency must take a series of immediate actions to come into compliance. For purposes of coming into compliance with FTA requirements, LACMTA is directed to take the following steps:

- LACMTA must conduct a cumulative service equity analysis of the following service changes: December 2009, June 2010, December 2010, and June 2011, and make a determination as to whether those changes resulted in unjustified disparate impacts in violation of Title VI.
- Prior to conducting this analysis, LACMTA is directed to submit a detailed methodology for conducting the analysis to FTA for approval.
- **Importantly, LACMTA is to assess its service assuming that it had not made any service reductions during this period; the changes must be analyzed cumulatively, comparing today's conditions and service levels with the conditions and service levels in place prior to December 2009.**

If LACMTA's service equity analysis reveals unjustified disparate impacts, or justified disparate impacts that may be mitigated through an alternative with less of a disparate effect, LACMTA must restore and/or restructure service to remedy its Title VI violations. FTA will monitor LACMTA's progress during this analysis. Prior to implementing any corrective service changes, LACMTA must submit its documentation of the methodology and analysis to FTA for final review.

To be clear, an inability by LACMTA to demonstrate a substantial legitimate justification and selection of the least discriminatory alternative without appropriate service restorations could result in LACMTA being found in violation of Title VI and endanger its eligibility to receive Federal funds for both its ongoing needs and its plans for the expansion of its rail network. FTA's findings and the measures required for LACMTA to come into compliance are discussed in greater detail in the enclosed determination memorandum.

FTA first discussed the draft compliance review findings with LACMTA in September 2011. This past December, LACMTA submitted a corrective action plan to address many of the findings of the compliance review and submitted an update to the corrective action plan in February 2012. We are pleased with LACMTA's notable progress in many areas, and we appreciate the diligence with which LACMTA is now seeking to correct past errors. Considerable progress has been made with LACMTA's corrective action plan, notably its updated notice to beneficiaries, its translation of the notice into 10 languages, and the establishment of system-wide service standards and policies.

While a great deal of work has been done, a great deal more work must now be done to ensure that the cumulative effects of multiple service changes did not in any way violate the civil rights of Los Angeles transit riders. LACMTA's February 2012 corrective action plan must now be revised to incorporate the directives cited above and in the enclosed determination memorandum. FTA will send a separate letter identifying which elements of the February 2012 corrective action plan are approved and provide comments or necessary revisions to those portions of the corrective action plan that are not yet satisfactory.

Sincerely yours,



Peter Rogoff

cc: The Honorable Thomas E. Perez  
Assistant Attorney General

Enclosure: Determination Memorandum



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

# Memorandum

Subject: Los Angeles County Metropolitan Transportation  
Authority - Final Title VI Determination Memorandum

Date: April 23, 2012

From: Dorval R. Carter, Jr., Chief Counsel  
Linda C. Ford, Acting Director, Office of Civil  
Rights

To: Peter M. Rogoff, Administrator

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## SUMMARY

On November 15, 2010, the Bus Riders Union (BRU) filed a complaint with the Federal Transit Administration (FTA), alleging the Los Angeles County Metropolitan Transportation Authority (LACMTA) was prioritizing rail service over bus service to the detriment of minority and low-income communities and in violation of Title VI of the Civil Rights Act of 1964. Specifically, BRU alleged that bus service revenue hours were decreasing while rail service revenue hours were increasing. On March 9, 2011, FTA administratively closed the complaint and in its place initiated a comprehensive Title VI compliance review in order to address the allegations raised in the complaint in the context of a broader review. FTA conducted an initial Title VI Compliance Review of LACMTA in July 2011 and issued a final Compliance Review Report in December 2011.

FTA found LACMTA deficient in five of the twelve areas examined, including in the area of evaluation of service changes, or service equity analysis. LACMTA has addressed two areas of deficiency – notice to beneficiaries and system-wide service standards and policies – to FTA’s satisfaction. Three areas of deficiency – Limited-English Proficient (LEP) language assistance plan, evaluation of fare and service changes, and monitoring transit service – are open deficiencies that LACMTA has not yet satisfactorily addressed. This memorandum clarifies the findings related to the Title VI portion of LACMTA’s service equity analysis.<sup>1</sup> As part of FTA’s ongoing effort to seek voluntary resolution of the deficiencies identified during the Compliance Review, this memorandum also describes the actions FTA is requiring LACMTA to take to

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<sup>1</sup> FTA requires recipients to include low-income populations in service and fare equity analyses as a means of incorporating the principles of environmental justice. Low-income populations are not a protected class under Title VI. Non-Title VI aspects of the service equity analysis are being addressed separately through ongoing discussions and other communications with LACMTA.

correct its deficient service equity analyses and come into compliance with FTA Title VI requirements.

With respect to LACMTA's service equity analyses, the Compliance Review Report found that LACMTA identified potential disparate impacts on minority passengers when it proposed service changes, but did not conduct the subsequent analysis showing there was a substantial legitimate justification for the actions and the service changes were the least discriminatory alternative, as required by FTA Circular 4702.1A. Subsequent to completion of the Compliance Review Report, FTA re-examined the data and found that LACMTA conducted only environmental justice analyses, not Title VI analyses, and consequently LACMTA's methodology was insufficient to show whether there were actual disparate impacts. Indeed, LACMTA identified "disproportionate adverse impacts" based solely on routes traveling through minority and/or low-income Census tracts and did not conduct the comparative analysis required by Title VI. While the fact that routes subject to reduction or restructuring traveled through minority Census tracts is relevant to a Title VI analysis, that fact alone is insufficient to establish a *prima facie* case of disparate impact under Title VI. Accordingly, the Compliance Review Report's identification of disparate impacts was premature; LACMTA must conduct the requisite Title VI portion of the service equity analysis before such a determination can be made.

FTA finds that LACMTA did not comply with the FTA requirement to conduct the Title VI portion of the service equity analysis prior to implementing major service changes as required under FTA Circular 4702.1A. FTA's response to a recipient's failure to comply with the requirements for a service equity analysis will depend on the facts and circumstances of each situation. In this instance, FTA finds that since the service changes were not properly analyzed and may have resulted in unjustified disparate impacts in violation of Title VI, LACMTA must expeditiously conduct a cumulative service equity analysis of the following service changes: December 2009, June 2010, December 2010 and June 2011, and make a determination as to whether those changes resulted in unjustified disparate impacts in violation of Title VI. In order to ensure compliance with Title VI, U.S. Department of Transportation (DOT) Title VI regulations and FTA's Title VI Circular, if LACMTA's service equity analysis reveals unjustified disparate impacts, or justified disparate impacts which could be mitigated through an alternative with less of a disparate effect, LACMTA must restore and/or restructure service to remedy its violations. Consistent with federal transit law and the public participation requirements described in the FTA Title VI Circular, LACMTA must provide a meaningful opportunity for public comment on any proposed mitigation measures, including the appropriate restructuring or restoration of service.

Below we provide additional background information and describe, in more detail, the governing legal standards and the nature of the service equity analysis FTA now directs LACMTA to undertake.

## BACKGROUND

Los Angeles County Metropolitan Transportation Authority (LACMTA) serves as transportation planner and coordinator, designer, builder and operator for Los Angeles County. LACMTA operates bus, bus rapid transit (BRT), light rail, and heavy rail with an annual operating budget of \$901 million for the bus system, and \$279 million for rail.<sup>2</sup> In addition to operating its own service, LACMTA funds 16 municipal bus operators and numerous local shuttle programs as well as other transportation projects including bikeways and pedestrian facilities, local roads and highway improvements, goods movement, Metrolink, and the Freeway Service Patrol and call boxes.<sup>3</sup> LACMTA's total adopted budget for FY 2012 is \$4.2 billion.<sup>4</sup>

According to the 2010 Census, LACMTA's service area is approximately 72 percent minority and 28 percent white.<sup>5</sup> Minority populations use the transit service at a level that is higher than their representation in the service area, with approximately 90 percent of bus riders and 83 percent of rail riders from minority populations.<sup>6</sup>

According to LACMTA's most recent ridership surveys, bus ridership accounts for 78 percent of total weekday boardings.<sup>7</sup> System-wide, Metro Bus provides approximately 7.2 million revenue service hours annually with an average of 1.1 million boardings per weekday.<sup>8</sup> The Metro Rail system consists of light and heavy rail lines and accounts for 300,000 weekday boardings.<sup>9</sup>

LACMTA is continuing to expand its bus and rail network across the region under local funding mechanisms, including Measure R and the 30/10 Initiative. In November 2008, Los Angeles County voters approved Measure R, a half-cent sales tax.<sup>10</sup> The measure is expected to generate \$40 billion for countywide transportation projects over the next 30 years.<sup>11</sup> While Measure R has been touted for its ability to fund capital projects, Measure R requires that 20 percent of the funds will be allocated to bus operations.<sup>12</sup> Specifically, funds are available for countywide bus

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<sup>2</sup> LACMTA, ADOPTED BUDGET: FY2012 at 18, *available at* [http://www.metro.net/about\\_us/finance/images/Adopted\\_Fiscal\\_Year\\_2012\\_Budget.pdf](http://www.metro.net/about_us/finance/images/Adopted_Fiscal_Year_2012_Budget.pdf). LACMTA's fiscal year is July 1 to June 30.

<sup>3</sup> LACMTA, ADOPTED BUDGET: FY2010 at III-2, *available at* [http://metro.net/about\\_us/finance/images/budget\\_adopted\\_fy10.pdf](http://metro.net/about_us/finance/images/budget_adopted_fy10.pdf).

<sup>4</sup> LACMTA, ADOPTED BUDGET: FY2012.

<sup>5</sup> U.S. Census Bureau, 2010 Demographic Profile Data: Los Angeles County, California, *available at* [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC\\_10\\_DP\\_DPDP1&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1&prodType=table).

<sup>6</sup> LACMTA, 2010 Customer Satisfaction Survey.

<sup>7</sup> *Ridership Statistics*, METRO, <http://www.metro.net/news/ridership-statistics/> (accessed Apr. 6, 2012).

<sup>8</sup> LACMTA, ADOPTED BUDGET: FY2011 at 8, *available at* [http://www.metro.net/about\\_us/finance/images/FY11BudgetBook.pdf](http://www.metro.net/about_us/finance/images/FY11BudgetBook.pdf).

<sup>9</sup> LACMTA, TITLE VI PROGRAM UPDATE at 21 (Sep. 2010).

<sup>10</sup> Los Angeles County Ordinance 08-01, Traffic Relief and Rail Expansion Ordinance ("Measure R") § 5, *available at* <http://www.metro.net/measurer/images/ordinance.pdf>.

<sup>11</sup> Measure R, METRO, <http://www.metro.net/projects/measurer/> (accessed Apr. 3, 2012).

<sup>12</sup> Measure R Attachment A at 1, *available at* [http://www.metro.net/measurer/images/expenditure\\_plan.pdf](http://www.metro.net/measurer/images/expenditure_plan.pdf).

service operations, maintenance and expansion.<sup>13</sup> In addition, a scheduled July 1, 2009 fare increase was suspended for one year, and all discounted fares (e.g., student, disabled, senior) are frozen through June 30, 2013.<sup>14</sup> LACMTA's adopted FY 2012 budget includes \$134 million for bus operations from Measure R,<sup>15</sup> with \$41 million going to local operators and \$93 million available to LACMTA.<sup>16</sup>

#### ***A. Bus Riders Union Lawsuit and Consent Decree***

In 1994, the Bus Riders Union (BRU) sued LACMTA alleging intentional and disparate impact discrimination in violation of Title VI of the Civil Rights Act of 1964.<sup>17</sup> BRU alleged that 94 percent of LACMTA's patrons were bus riders and predominantly minority and poor, while LACMTA was spending 71 percent of its total resources on Metrolink commuter rail projects designed to transport riders from white and relatively wealthy communities to job sites downtown and elsewhere.<sup>18</sup> According to the complaint, LACMTA's Board of Directors voted to raise fares and eliminate a monthly pass for the bus system, and one week later voted to allocate funds to an as-yet-unbuilt rail line, the Pasadena Gold Line.<sup>19</sup> The complaint alleged that LACMTA created a pretextual fiscal need to raise bus fares and cut monthly passes by allocating funds to the rail system rather than the bus system.<sup>20</sup>

In 1996, BRU and LACMTA entered into a Consent Decree, the duration of which was 10 years.<sup>21</sup> As part of the Consent Decree, LACMTA agreed to limit its fare increases,<sup>22</sup> and agreed to reduce the maximum load factor over a 5-year period from 1.35 in December 1997 to 1.2 in June 2002, and to maintain that load factor for the duration of the Consent Decree.<sup>23</sup> If LACMTA failed to meet the target, it agreed to reallocate sufficient funds from other programs.<sup>24</sup> LACMTA also agreed to initiate a bus service improvement program that would put 102 additional buses in service by June 30, 1997.<sup>25</sup> In addition, LACMTA agreed to expeditiously initiate a two-year pilot project to provide a minimum of 50 additional buses

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> LACMTA, ADOPTED BUDGET: FY2012 at 38.

<sup>16</sup> *Id.* at 41.

<sup>17</sup> *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority*, No. 94-5936 (C.D. Cal. Filed Aug. 31, 1994).

<sup>18</sup> Complaint at 9, *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority*, No. 94-5936 (C.D. Cal. Filed Aug. 31, 1994).

<sup>19</sup> *Id.* at 2-3, 17.

<sup>20</sup> *Id.* at 10-11

<sup>21</sup> *Labor/Community Strategy Center v. LACMTA*, No. 94-5936 (C.D. Cal. Filed Aug. 31, 1994) (Consent Decree).

<sup>22</sup> Consent Decree at 8.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.* at 6.

specifically to meet the needs of transit-dependent populations, and to develop a New Service Implementation Plan for additional bus and other transit service over the following five years.<sup>26</sup>

### ***B. Bus Riders Union FTA Complaint***

On November 15, 2010, the Bus Riders Union (BRU) filed a complaint with FTA alleging LACMTA policies were prioritizing rail service over bus service, to the detriment of minority and low-income communities and in violation of Title VI of the Civil Rights Act of 1964.<sup>27</sup> The primary complaint was that LACMTA's FY 2011 budget planned a net reduction of 387,500, or five percent, of bus revenue service hours.<sup>28</sup> LACMTA's stated reason for doing so was the loss of State Transit Assistance (STA) funds.<sup>29</sup> That funding source was restored, but the cuts to bus service went forward.<sup>30</sup> The complaint asserted that since 2008, LACMTA bus service changes resulted in a net loss of 564,000 bus revenue service hours.<sup>31</sup> In the same 3-year period, LACMTA light rail service grew by eight percent, or a net gain of 55,000 revenue service hours.<sup>32</sup>

In the complaint, BRU requested that FTA investigate in order to halt the round of cuts scheduled for December 12, 2010; and that FTA order LACMTA to take corrective action to remediate past and future harms, including halting additional cuts until LACMTA has developed a fair and balanced plan that will not unfairly burden low-income bus riders of color, and prevent future discrimination by the adoption and implementation of appropriate Title VI and environmental justice policies governing future service cuts.<sup>33</sup> BRU also stated the "appropriate remedy" would be to restore all bus service that has been cut, given that STA funds were restored in an amount four times greater than the amount to be saved by the FY 2011 cuts.<sup>34</sup> FTA decided to administratively close the BRU complaint and in its place initiate a comprehensive Title VI compliance review of LACMTA in order to address the allegations raised in the complaint in the context of a broader compliance review.

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<sup>26</sup> *Id.* at 7.

<sup>27</sup> Bus Riders Union Administrative Complaint against LACMTA (Nov. 15, 2010).

<sup>28</sup> *Id.* at 4-6. LACMTA reports 394,872 bus revenue service hours were cut in FY 2011. Email from LACMTA to FTA on March 13, 2012. Discrepancy may be due to budgeted versus actual service cuts.

<sup>29</sup> *Id.* at 7-8.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 5. Including FY 2008 and June 2011 cuts, LACMTA reports a net reduction of 739,727 bus revenue service hours. Email from LACMTA to FTA on March 13, 2012.

<sup>32</sup> Bus Riders Union Administrative Complaint against LACMTA at 6 (Nov. 15, 2010). LACMTA's 2008 budget set target revenue service hours for rail at 651,000, and in its 2010 budget at 706,000, a targeted increase of 55,000 revenue service hours. LACMTA, ADOPTED BUDGET: FY2008 at II-4, *available at* [http://www.metro.net/about\\_us/finance/images/budget\\_adopted\\_fy08.pdf](http://www.metro.net/about_us/finance/images/budget_adopted_fy08.pdf); LACMTA, ADOPTED BUDGET: FY2010 at II-3, *available at* [http://www.metro.net/about\\_us/finance/images/budget\\_adopted\\_fy10.pdf](http://www.metro.net/about_us/finance/images/budget_adopted_fy10.pdf).

<sup>33</sup> Bus Riders Union Administrative Complaint against LACMTA at 16-17 (Nov. 15, 2010).

<sup>34</sup> *Id.* at 17.



### *C. FTA Compliance Review*

In July 2011, in response to the allegations raised in the BRU complaint, FTA conducted a Title VI Compliance Review of LACMTA, and issued a final report in December 2011.<sup>35</sup> The Compliance Review examined the Title VI Program submitted by LACMTA in September 2010, which covered the 3-year period from 2007 to 2010; complaints and significant service or fare changes occurring between September 2010 and July 2011; and service monitoring activities undertaken since 2009.<sup>36</sup> The report noted deficiencies in five of twelve areas examined, including the area of evaluation of service changes, or service equity analysis.<sup>37</sup>

Specifically, FTA's Compliance Review found that LACMTA's service equity analyses did not contain any quantitative or comparative analyses; did not analyze the cumulative effects of each semi-annual service change, given that these changes included both increases and reductions in service; and did not use the LACMTA definition of "major service change" when conducting the analysis.<sup>38</sup> In addition, when LACMTA identified a potential disproportionate adverse effect, there was no attempt to justify how the service change met a substantial need/business necessity. Moreover, LACMTA failed to demonstrate that the selected service change was compared with alternatives to ensure the selected service change would result in the least discriminatory alternative.<sup>39</sup>

Subsequent to completion of the Compliance Review, FTA re-examined the data and found that LACMTA did not conduct the appropriate Title VI analyses for any of its service changes. LACMTA identified "disproportionate adverse impacts" based solely on routes traveling through minority and/or low-income Census tracts and did not complete an analysis that compared how the changes impacted minority passengers to how the changes impacted non-minority passengers, so it is not possible to conclude, based on the available administrative record, that the changes resulted in actual disparate impacts on minority passengers.

### **LEGAL AUTHORITY**

As a recipient of federal financial assistance, LACMTA is obligated, both by federal law and contract, to ensure its policies and practices do not have the effect of discriminating on the basis of race, color, or national origin. FTA's legal authority to conduct this compliance review and determine steps LACMTA must take in order to ensure nondiscrimination is derived from: (1) Title VI of the Civil Rights Act of 1964; (2) 49 U.S.C. § 5332; (3) 49 CFR part 21; and (4) the FTA Master Agreement. In addition, FTA Circular 4702.1A, *Title VI and Title VI-Dependent*

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<sup>35</sup> U.S. DEP'T OF TRANSP., FED. TRANSIT ADMIN., TITLE VI COMPLIANCE REVIEW OF THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (2011), available at [http://fta/documents/Final\\_LAMetroTitleVI\\_Report\\_12\\_12\\_11.docx](http://fta/documents/Final_LAMetroTitleVI_Report_12_12_11.docx).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 39-43.

<sup>38</sup> *Id.* At 28-34.

<sup>39</sup> *Id.*

*Guidelines for Federal Transit Administration Recipients* provides guidance to FTA recipients regarding compliance with Title VI requirements; FTA's recipients are contractually obligated under the FTA Master Agreement to follow the Circular.

Section 601 of Title VI of the Civil Rights Act of 1964<sup>40</sup> provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 602 of the Act<sup>41</sup> requires Federal agencies to effectuate the provisions of section 601 by issuing regulations of general applicability. In the event a Federal agency finds that a recipient is out of compliance with the regulations and voluntary compliance cannot be secured, the agency may take steps to withhold Federal funds from that recipient or refer the matter to the U.S. Department of Justice for a civil enforcement action.<sup>42</sup> In addition to Title VI of the Civil Rights Act, Federal Transit Law at 49 U.S.C. § 5332(b), provides that a person may not be excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance under chapter 53 of title 49 because of race, color, creed, national origin, sex, or age. The statute further provides that the Secretary of Transportation shall take affirmative action to ensure compliance with section 5332(b),<sup>43</sup> and in the event a recipient does not comply with "subsection (b) of this section, a civil rights law of the United States, or a regulation or order under that law, the Secretary shall notify the [recipient] of the decision and require action be taken to ensure compliance."<sup>44</sup>

The U.S. Department of Transportation's (U.S. DOT) Title VI implementing regulation is title 49 CFR part 21. The regulation applies to all recipients who receive Federal financial assistance from U.S. DOT, and prohibits both intentional (disparate treatment) and unintentional (disparate impact) discrimination. The provision prohibiting disparate impact discrimination is in 49 CFR § 21.5(b)(2):

A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination

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<sup>40</sup> 42 U.S.C. § 2000d.

<sup>41</sup> 42 U.S.C. § 2000d-1.

<sup>42</sup> *Id.*

<sup>43</sup> 49 U.S.C. § 5332(c)(1).

<sup>44</sup> 49 U.S.C. § 5332(c)(2).

because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. (Emphasis added).

The U.S. DOT Title VI regulation provides the authority for FTA to conduct periodic compliance reviews, investigate complaints, and resolve issues of deficiency and noncompliance via informal means whenever possible.<sup>45</sup>

Notably, 49 CFR § 21.5(b)(7) provides, “[e]ven in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.”

Appendix C to 49 CFR part 21 provides examples<sup>46</sup> that illustrate the application of the regulation to projects receiving Federal financial assistance under the programs of U.S. DOT operating administrations such as FTA. Subsection (a)(3) provides two examples related to the provision of public transportation service:

- (i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.
- (ii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.

Moreover, pursuant to the Master Agreement that LACMTA voluntarily enters into with FTA each year in order to receive Federal funds for public transportation, LACMTA is subject to the terms and conditions of section 12.b of the FY 2012 Master Agreement, which provides:

Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each third party participant will, prohibit discrimination on the basis of race, color, or national origin and:

- (1) Comply with:

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<sup>45</sup> 49 CFR § 21.11.

<sup>46</sup> The list of examples is illustrative, not exhaustive.

- (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq.,
  - (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 CFR part 21, and
  - (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and
- (2) Follow FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable Federal directives that may be issued, except as FTA determines otherwise in writing.

Finally, FTA’s Title VI Circular 4702.1A, which LACMTA agrees to follow when it signs the Master Agreement, provides guidance to assist recipients in their obligation to comply with Title VI. The Circular includes guidance on all areas evaluated during a compliance review. More specifically, the Circular requires LACMTA to conduct a service equity analysis, discussed in more detail below.

## **DISCUSSION**

### ***A. LACMTA did not conduct the appropriate Title VI portion of its service equity analysis before implementing major service changes.***

FTA Circular 4702.1A describes the requirement to conduct a service equity analysis prior to making a major service change in order to comply with 49 CFR § 21.5(b)(2), 49 CFR § 21.5(b)(7) and Appendix C to 49 CFR part 21. The circular provides two options: Option A, a prescriptive option, and Option B, a locally developed evaluation procedure. LACMTA opted to develop its own evaluation procedure. Option B provides:

Recipients have the option of modifying [Option A] or developing their own procedures to evaluate significant system-wide service and fare changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact. This locally developed alternative shall include a description of the methodology used to determine the impact of the service and fare change, a determination as to whether the proposed change would have discriminatory impacts, and a description of what, if any, action was taken by the agency in response to the analysis conducted.

One purpose of conducting a service equity analysis prior to implementing major service changes is to determine whether those changes will have a disparate impact on the basis of race,

color, or national origin and therefore may violate Title VI and DOT's Title VI regulations.<sup>47</sup> Where a potential violation is identified, a recipient must revisit the proposed service changes and make necessary adjustments. Courts have adopted a three-part test to determine whether a recipient's policy or practice violates the Title VI disparate impact regulations. First, a *prima facie* violation is established where the adverse effects of the policy or practice are borne disproportionately by members of a group identified by race, color, or national origin. If such an effect occurs, the recipient must demonstrate the existence of a substantial legitimate justification for the policy or practice. Finally, even if the recipient establishes such a justification, the policy or practice still violates the disparate impact regulation if an alternative exists that would serve the same legitimate objectives but with less of a disparate effect on the basis of race, color, or national origin. The existence of such an alternative method of accomplishing the recipient's substantial and legitimate interests demonstrates that the disparate effects can be avoided by adoption of the alternative methods without harming such interests. In addition, if evidence undermines the legitimacy of the recipient's asserted justification – that is, that the justification is not supported by demonstrable evidence – the disparate effects will violate Title VI, as the lack of factual support will indicate that there is not a substantial legitimate justification for the disparate effects. At that point, the recipient must revisit the service changes and make adjustments that will eliminate unnecessary disparate effects on populations defined by race, color, or national origin.<sup>48</sup>

The typical measure of disparate impact involves a comparison between the proportion of persons in the protected class who are adversely affected by the policy or practice and the proportion of persons not in the protected class who are adversely affected.<sup>49</sup> The legally relevant population base for a statistical measure of disparate impact is all persons that are either affected by the policy or practice at issue or that could possibly be affected by some change in the policy or practice at issue. In the transit context, the legally relevant population base will typically be all passengers or potential passengers.<sup>50</sup> These legal principles inform the nature of the service equity analysis required by FTA prior to major service changes. Completion of the service equity analysis ensures, with greater certainty, that the change will not violate Title VI. FTA considers completion of the analysis and appropriate response to the findings strong evidence of compliance with a recipient's Title VI obligations.

In order to complete the Title VI portion of a service equity analysis, an FTA recipient must first compare the impacts of the proposed major service change on minority<sup>51</sup> passengers and

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<sup>47</sup> As stated in n. 1, *infra*, FTA requires recipients to include low-income populations in service and fare equity analyses as a means of incorporating and addressing environmental justice principles. Low-income populations are not a protected class under Title VI.

<sup>48</sup> See generally, *U.S. Department of Justice Title VI Legal Manual* at 47-53. available at <http://www.justice.gov/crt/about/cor/coord/vimanual.php> (accessed Apr. 4, 2011).

<sup>49</sup> *Tsombanidis v. West Haven Fire Dep't*, 325 F.3d 565, 575-577 (2nd Cir. 2003).

<sup>50</sup> *Darensburg v. Metropolitan Transp. Commn*, 636 F.3d 511 (9th Cir. 2011).

<sup>51</sup> Minority Persons include: (1) American Indian and Alaska Native, which refers to people having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or

potential passengers to the impacts on non-minority passengers and potential passengers. For example, a recipient may propose restructuring<sup>52</sup> a number of routes, some of which are minority routes and some of which are non-minority routes.<sup>53</sup> The recipient should analyze all of the proposed changes to determine if the changes will reduce service to areas of heavily minority populations, and presumably heavily minority ridership, to a relatively greater extent than service is reduced in areas of heavily non-minority populations and, presumably, non-minority ridership. If the recipient finds that minority passengers will bear a disproportionate burden of the proposed major service change, the recipient should consider modifying the proposed changes in order to avoid, minimize or mitigate the disparate impacts of the changes. If, on the other hand, the recipient chooses not to alter the changes despite their disparate impact on minority ridership, or if the recipient finds, notwithstanding the revisions, that minority passengers will continue to bear a disproportionate burden of the proposed service change, the recipient may implement the service change *only* if, as described above, it has a substantial legitimate justification for the proposed service change, and can show that there are no alternatives that would have a less disparate impact on minority riders but would still accomplish the recipient's legitimate program goals. It is important to understand that in order to make this showing, the recipient must consider and analyze alternatives to determine whether those alternatives would have less of a disparate impact on the basis of race, color, or national origin, and then implement the least discriminatory alternative.

As part of its 2010 Title VI Program, LACMTA provided a list of major service changes that occurred between June 24, 2007, and December 13, 2009.<sup>54</sup> Each route change is depicted by the route and impacted segments of the route overlaid on a tract map showing Limited-English Proficient (LEP) tracts, poverty tracts and minority tracts, which is consistent with the first step of the prescriptive Option A analysis in FTA Title VI Circular 4702.1A.<sup>55</sup> To the side of each map is a column stating the description of the change, whether there is a potential disproportionate adverse impact,<sup>56</sup> and a list of alternative services and mitigation measures

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community attachment; (2) Asian, which refers to people having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent; (3) Black or African American Populations, which refers to people having origins in any of the Black racial groups of Africa; (4) Hispanic or Latino Populations, which includes persons of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race; (5) Native Hawaiian and Other Pacific Islander, which refers to people having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands. FTA Circular 4702.1A, May 13, 2007, Page II-5.

<sup>52</sup> For purposes of this example, "restructuring" means adding or reducing service on a route, including but not limited to: changing the route to start or end at different points, lengthening or shortening headways, changing the hours of operation, or completely eliminating the route or adding a new route.

<sup>53</sup> Recipients may choose to define "minority routes" based on demographics (e.g., Census tracts, traffic analysis zones) or based on ridership, and should select the approach most likely to yield a meaningful analysis in light of the fact-specific circumstances.

<sup>54</sup> LACMTA, TITLE VI PROGRAM UPDATE at 125-199 (2010).

<sup>55</sup> *Id.*

<sup>56</sup> "Disproportionate adverse impact" is a term used in environmental justice analysis. FTA Circular 4702.1A uses this term in the service and fare equity section and does not use the term "disparate impact". FTA acknowledges this causes confusion, and is in the process of developing more detailed guidance in this area, but given LACMTA's

incorporated, as applicable.<sup>57</sup> There is no analysis showing how LACMTA concluded that a change or cancellation of a route would result in a disproportionate adverse impact, nor is there any analysis regarding substantial legitimate justification or alternatives with a less severe discriminatory impact. The maps seem to assume a disproportionate adverse impact based solely on whether a particular route serves minority Census tracts, and not based on a comparison between such routes and routes that serve non-minority Census tracts.<sup>58</sup>

In advance of the Compliance Review, LACMTA submitted a summary of Title VI considerations for its June 2011 service changes.<sup>59</sup> This is presented as a table with the routes proposed for change/elimination, the proposal presented at the public hearings, whether there are potential disproportionate impacts, the recommended action, and the alternative services available.<sup>60</sup> At the bottom of the third page, LACMTA notes, “Potential Disproportionate Impact indicates that a majority of census tracts served by the impacted segment(s) of service exceed the countywide average level of minority, low income households and/or Limited English Proficient households.”<sup>61</sup> As with the maps for the earlier route changes, the accompanying maps confirm a “potential disproportionate impact” if the route runs through primarily minority neighborhoods<sup>62</sup> – there is no comparative analysis between the routes impacting minority neighborhoods and non-minority neighborhoods. The document shows that a number of the proposed changes were withdrawn or amended based on public comment.<sup>63</sup>

LACMTA included in its 2010 Title VI Program its 2009 Transit Service Policy. This document describes LACMTA’s service change process.<sup>64</sup> LACMTA generally implements service changes twice a year.<sup>65</sup> The policy, for purposes of Title VI compliance, provides that if a route that is proposed for a major service change serves a large share of the target populations (minority, low-income, LEP), then “the impacts of the change will be determined, and if they are significant, mitigation may be recommended, alternative services identified, and the change could be withdrawn. If the route does not serve a large share of the target populations, no further review will be required.”<sup>66</sup> This description of a “Title VI analysis” does not include a comparison of impacts between minority and non-minority passengers, nor does it include the Title VI legal test for disparate impacts; the analysis described is insufficient to determine compliance.

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unique history, it should have known to conduct disparate impact analyses, including application of the legal test, for major service changes.

<sup>57</sup> LACMTA, TITLE VI PROGRAM UPDATE at 125-199.

<sup>58</sup> The maps also depict low-income Census tracts. As stated in n.1, *infra*, FTA requires recipients to analyze the effects of service changes on low-income passengers, but low-income is not a protected class under Title VI.

<sup>59</sup> LACMTA, Summary of Title VI Considerations June 2011 Service Change Program.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> See n. 58, *infra*.

<sup>63</sup> *Id.*

<sup>64</sup> LACMTA, TITLE VI PROGRAM UPDATE at 97.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 100. Note, also, that LACMTA’s 2011 Transit Service Policy repeats this language at page 37.

Taken together, the documents show that LACMTA conducted EJ analyses, noting alternatives and mitigation measures to service changes, and not Title VI analyses, for all of its most recent service changes. The documents also show that LACMTA's methodology was similar to the prescriptive Option A in FTA Title VI Circular 4702.1A, but failed to include steps that required comparative or quantitative analyses. In addition, the comparison of impacts between minority and non-minority passengers, the analysis for substantial legitimate justification, and the pursuit of the least discriminatory alternatives are all critical pieces of the service equity analysis that LACMTA did not complete.

Importantly, since a finding of disparate impact, for purposes of the Title VI portion of a service equity analysis, necessarily involves a comparison of impacts between minority populations and non-minority populations, and a subsequent determination that the minority populations bore a disproportionate burden of the service change, and LACMTA did not conduct this analysis, it is impossible to know based on the available administrative record if the implemented service changes resulted in a disparate impact on minority populations.<sup>67</sup>

***B. LACMTA must expeditiously conduct a complete service equity analysis on the cumulative effects of recent service changes as if the service reductions from December 2009 to June 2011 had not been implemented. If the service equity analysis reveals unjustified disparate impacts, or justified disparate impacts which could be mitigated through an alternative with less disparate effects, LACMTA must restore and/or restructure service to remedy its Title VI violations.***

LACMTA's 2010 Title VI Program covered all service changes made between September 2007 and September 2010.<sup>68</sup> The Compliance Review looked at all service changes since September 2007, inclusive of changes occurring between September 2010 and June 2011.

LACMTA has confirmed the following changes in bus revenue service hours:<sup>69,70</sup>

- A net increase of 8,660 hours in FY 2008.

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<sup>67</sup> This is a different conclusion than that reached by the reviewers during the compliance review. The reviewers found that where a disparate impact was identified, there was no narrative analysis to explain how the service change met a substantial need or that the selected service change was the least discriminatory alternative. In fact, as discussed above, LACMTA identified "disproportionate adverse impacts" based solely on routes traveling through minority and/or low-income Census tracts and did not complete the comparative analysis, so it is not possible to conclude that the changes resulted in disparate impacts on minority and/or low-income populations.

<sup>68</sup> LACMTA, TITLE VI PROGRAM UPDATE at 125-199.

<sup>69</sup> Email from LACMTA to FTA on March 13, 2012.

<sup>70</sup> BRU asserts in its complaint that LACMTA cut 90,000 revenue service hours in December 2007. The LACMTA spreadsheet indicates only a small net revenue service hour change. This discrepancy, and others between the BRU complaint and the LACMTA spreadsheet, is likely due to LACMTA's adopted budgets versus actual changes in service.



- A net reduction of 63,559 revenue service hours in FY 2009. Specifically, Rapid Bus revenue service hours increased and local bus revenue service hours decreased.
- A net reduction of 224,568 revenue service hours in FY 2010.
- A net reduction of 394,872 revenue service hours in FY 2011.
- A net reduction of 64,988 revenue service hours in FY 2012 (the June 2011 service reduction).
- LACMTA canceled the planned December 2011 service changes.

This represents a total net reduction of 739,727 revenue service hours, or a 9.5 percent reduction since FY 2008.

In FY 2008, LACMTA budgeted for 7.78 million bus revenue service hours.<sup>71</sup> LACMTA budgeted 7.2 million bus revenue service hours in FY 2011 and 6.84 million bus revenue service hours for FY 2012, resulting in a planned net reduction of an additional 376,982 bus revenue service hours in FY 2012.<sup>72</sup>

FTA considered the following factors in making a determination as to how many service changes LACMTA would be required to review for potential cumulative impacts and to conduct appropriate service equity analyses:

- The BRU complaint discusses the cumulative effects of cuts since FY 2008.
- A graph provided as an exhibit to the BRU complaint shows the revenue service hours did not decrease until FY 2009.<sup>73</sup> BRU also provided a graph showing a decrease in revenue service miles beginning in FY 2007.<sup>74</sup>
- In 2009, after passage of Measure R, LACMTA further reduced bus service while increasing rail service.<sup>75</sup>
- The reductions in bus revenue service hours raise the question of whether those reductions have reversed the gains made under the Consent Decree.

<sup>71</sup> LACMTA, ADOPTED BUDGET: FY2008 at II-4, *available at* [http://www.metro.net/about\\_us/finance/images/budget\\_adopted\\_fy08.pdf](http://www.metro.net/about_us/finance/images/budget_adopted_fy08.pdf).

<sup>72</sup> LACMTA, ADOPTED BUDGET: FY2012 at 65. Subsequent to the Compliance Review findings, the December 2011 (FY 2012) service changes were canceled. According to the LACMTA adopted FY 2012 budget, rail service is budgeted to increase more than 115,000 revenue service hours in FY 2012.

<sup>73</sup> Bus Riders Union Administrative Complaint against LACMTA Ex. "Revenue Service Hours (Absolute Change FY 06-11)" (Nov. 15, 2010).

<sup>74</sup> Bus Riders Union Administrative Complaint against LACMTA Ex. "Revenue Service Miles (Absolute Change FY 06-11)" (Nov. 15, 2010).

<sup>75</sup> LACMTA, ADOPTED BUDGET: FY2009 at II-3, *available at* [http://www.metro.net/about\\_us/finance/images/budget\\_adopted\\_fy09.pdf](http://www.metro.net/about_us/finance/images/budget_adopted_fy09.pdf).

- LACMTA eliminated transfers in 2004. Changes in routes may mean that passengers who used to have a one-seat ride from origin to destination now have a two- or three-seat ride, greatly increasing their cost to use the system.
- LACMTA asserts in various budget documents over the past few years that reductions in bus revenue service hours result in a reduction of service duplication and improved productivity and efficiency.<sup>76</sup>
- LACMTA asserts in its FY 2012 adopted budget that bus and rail service have increased more than 50 percent over the past two decades while the demand has risen by less than a third of that increased level over the same time frame.<sup>77</sup>

In light of all of the factors, FTA determines that LACMTA must conduct a service equity analysis, consistent with the Title VI legal principles described above, on the cumulative effect of the following service changes: December 2009, June 2010, December 2010 and June 2011. The selection of December 2009 as the starting point is consistent with LACMTA's data, which shows that the most severe service cuts began in FY 2009, and the graph provided by BRU seems to support this. Indeed, 663,113 of the 739,727 net revenue service hour cuts occurred between December 2009 and June 2011.<sup>78</sup>

FTA directs LACMTA to analyze its enacted service changes – system-wide, including both bus and rail – from December 2009, June 2010, December 2010 and June 2011. LACMTA is to assess its service assuming that it had not made any service reductions during this period; the changes should be analyzed cumulatively, under today's conditions, consistent with the legal principles described above. In other words, LACMTA's analysis should involve a comparison of the effects under the benchmark (service levels as they existed prior to the December 2009 change) with the effects under today's service levels (reflecting the cumulative changes between December 2009 and June 2011).

If LACMTA's service equity analysis reveals unjustified disparate impacts, or justified disparate impacts which could be mitigated through an alternative with less of a disparate effect, LACMTA must restore and/or restructure service to remedy its Title VI violations. Consistent with federal transit law and the public participation requirements described in the Circular, LACMTA must provide a meaningful opportunity for public comment on any proposed mitigation measures, including the appropriate restoration of service.

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<sup>76</sup> See, e.g., LACMTA, ADOPTED BUDGET: FY2012 at 10. ("As the Metro Rail expands, adjustments to the bus system will improve access to rail stations, take advantage of new transfer facilities, and reduce bus and rail service duplication."); LACMTA, ADOPTED BUDGET: FY2011 at 10 ("The FY11 budget assumes an initial 5% bus service reduction (387,575 Revenue Service Hours) through more efficient scheduling to reduce service duplication and improve productivity.").

<sup>77</sup> LACMTA, ADOPTED BUDGET: FY2012 at 12.

<sup>78</sup> Email from LACMTA to FTA on March 13, 2012.

Ultimately, it is FTA's expectation that any LACMTA decisions resulting from this analysis arise from an open, transparent, and participatory process. Should LACMTA identify disparate impacts and move forward to mitigate, minimize, or avoid those impacts by route restructuring that will require major service changes, federal law requires an appropriate public participation process as part of that action. At the conclusion of that process, LACMTA staff shall make recommendations to the Board of Directors that properly puts forward both the analysis that was conducted, as well as the range of alternatives for restructuring that were considered.

Should LACMTA complete its analysis and determine either that there is no disparate impact, or that there is a disparate impact but that the restructuring of routes does not constitute a major service change triggering a formal public participation requirement, LACMTA shall, at a minimum, provide to the Board prior to its final decision sufficient documentation and justification for the staff's analysis and recommendations.

***C. LACMTA's corrective action plan must be revised. While LACMTA has made good progress toward taking actions to identify the deficiencies addressed in the Compliance Review, several items remain.***

LACMTA submitted a corrective action plan to FTA on December 5, 2011. FTA staff has been working with LACMTA staff regarding items included in the corrective action plan. As part of that collaboration, LACMTA submitted an updated corrective action plan to FTA on February 29, 2012.

FTA is reviewing LACMTA's "Civil Rights Corrective Action Plan Update #1, February 2012." LACMTA has addressed two areas of deficiency – notice to beneficiaries and system-wide service standards and policies – to FTA's satisfaction. With regard to the other three areas of deficiency – Limited-English Proficient (LEP) language assistance plan, evaluation of fare and service changes, and monitoring transit service – FTA will provide, under separate cover, approval, comments or necessary revisions to those portions of the corrective action plan.

## **CONCLUSION**

FTA formally finds LACMTA not compliant with FTA Title VI requirements. Given the nature of the 1994 lawsuit and subsequent Consent Decree, LACMTA knew or should have known it needed to conduct service equity analyses that identified whether there were disparate impacts for all major service changes. LACMTA also knew or should have known the steps necessary in conducting a service equity analysis that would be compliant with Title VI requirements, including the critical steps of identifying a substantial legitimate justification for an action that results in disparate impacts on the basis of race, color, or national origin, and analyzing alternatives that would have a less discriminatory impact.

FTA directs LACMTA to submit an updated methodology for conducting service equity analyses for the December 2009, June 2010, December 2010, and June 2011 within 15 days of receipt of

FTA's comments to the remaining areas of deficiency. Such methodology shall be consistent with the principles described above. FTA is available to provide technical assistance to LACMTA concerning the adequacy of the methodology. Once FTA has approved the methodology, LACMTA will conduct the analysis expeditiously and submit the complete analysis to FTA for review within 60 days. The analysis and process must be well-documented and must support the actions LACMTA will take as a result of the analysis. Finally, depending on LACMTA's methodology and the results of its analysis, FTA may request additional analyses in order to adequately understand the cause of any disparate impacts identified and ensure the adequacy of potential remedies.