

## Announcement of Board Decision, Sept. 10, 2001

Today, the Board voted to seek a rehearing of the Ninth Circuit decision and to implement the 88 more buses on top of the 160 in order to meet Judge Hatter's order of 248.



MTA Board Chairman John Fasana responds to questions following special Board meeting.

## Board to Add 88 Buses to Fleet; Votes to Seek Rehearing of Appeals Court Ruling

By BILL HEARD, Editor

(Sept. 11, 2001) Meeting in special session, Monday, the MTA Board voted to voluntarily implement a federal court ruling requiring the agency to add 88 buses to its fleet, despite the fact that the order is stayed until final resolution.

The Board also decided to seek a rehearing of a Ninth Circuit Court of Appeals decision it believes unnecessarily ties the MTA's hands in meeting its other transportation-related obligations.

"The Board is committed to improving bus service for all our riders. We have the buses here," Chairman John Fasana told MTA Report after the Board meeting. But, he said the agency needs clarification of the rulings made by the Consent Decree's Special Master and by Judge Terry Hatter of the Circuit Court.

"(W)e have a countywide responsibility to meet, as well, in terms of dealing with surface arterials, with highways and with rail," Fasana said. "We need flexibility and the ability to deliberate and set policy."

CEO Julian Burke echoed Fasana's statement about the need to get certainty about its Consent Decree obligations. "The reality is that it is a very difficult opinion because it (gives) such wide, wide discretion to the Special Master and to the District Court as to what is permissible for them to order under the Consent Decree."

"It seemed to a great majority of the Board that it was wise to get some further clarification," Burke added, "and in the meantime to comply with (that portion) of Judge Hatter's order that we put 88 more buses into service."

### 88 more buses on crowded routes

Chief Operating Officer Allan Lipsky said the 88 buses will be deployed and bus trips will be added on routes and in time segments that exceed the 1.35-times load factor two or more times during the past 12 months. The requirement for 88 more buses is based on a calculation made by the Special Master, he said.

"This means we will have significant additional service downtown and throughout our service area," Lipsky said, noting that nine buses will be added to the Metro Rapid 720 line on Wilshire Boulevard. "For our

customers, it will mean more frequent service at certain of the more crowded time periods.”

With the 88 buses, the MTA will add service even in areas where the agency has scheduled sufficient capacity, because the Special Master based his service requirements on the load factor measure. That is one of the issues the agency is seeking to clarify in the legal process.

The following are excerpts from Fasana’s interview with local media following the Board meeting:

**What do you expect out of the rehearing?**

Right now, it is impossible to meet the standard the way it’s been applied and interpreted in the recent cases that have gone to the Special Master and to Judge Hatter. We’re seeking a rehearing while, at the same time, focusing on our other responsibilities.

**Mayor James Hahn recommended that the MTA not appeal the Court’s order.**

Mayor Hahn and the rest of the Board share the concern about the need to improve service. The Board entered into the Consent Decree with the idea of the need for and of the importance of improving bus service. We believe we’ve done that and we think that we have substantially complied with the Consent Decree....

**What do you mean by a clarification and a reinterpretation?**

The court set the (number of buses we needed to purchase at) 248. We have ordered far more than that and 160 of those already are in service. The clarification comes down to the way the decisions were made. There could be other decisions down the road that could make it difficult for this agency.

There doesn’t seem to be a limit to the Decree in the context of the other responsibilities of the Board and the MTA. From that standpoint, as we seek federal funding for other projects...as we try to meet our varying needs throughout the county – whether they be paratransit needs, carpool lanes, rail service and others – it’s become difficult to operate as an agency.

**Isn’t it kind of late to ask that question, since the MTA entered into this Consent Decree five years ago?**

That’s a fair question. Those of us who were here when we entered into the Consent Decree had a different interpretation of what our responsibilities were. We all felt it was very important to improve bus service in this county. And we think we’ve taken substantial steps to accommodate that.

The record shows that, with the declining age of the fleet and the new buses coming in, this has been the case. But, there’s been a vast difference in the interpretation of passenger load factors. At this point, you could have any type of traffic incident (that would delay buses) and we would be out of compliance (with load factors). That’s really unacceptable from the standpoint of trying to meet our obligations under the Decree.

**Was there consensus on the Board about appealing this?**

Those who supported the request for the rehearing reflected the same opinion that I have. What is the role of the courts versus the role of the Board and balancing the obvious need to improve bus service with the other responsibilities we have on a countywide basis?

**Is it possible this may end up in the Supreme Court?**

That's something the Board may want to consider. It's also possible that after the rehearing the Board would take no action. We would meet again to determine that.

**There's some issue over the number of buses. You've said 88 buses, but the Bus Riders Union has said 248 above what you have now. Can you explain the difference in numbers?**

I can't explain where the Bus Riders Union is coming up with their numbers, but I can say that the MTA is fully confident that we're 88 buses short of deployment. We've given direction, today, to make sure that those 88 buses – which are here on-site – are deployed. We'll still be getting more buses in that already are on order. We'll have more than enough buses.

**What impact will 88 buses have for these bus riders who say their buses are always crowded?**

We have questions about that. Even if we put the 88 buses out there, we really might not be carrying additional riders and maybe it won't have an impact on those occasional (load factor) violations in the way the Consent Decree is being interpreted. It might happen anyway. It might have very minimal effect. Now, again, you could deploy those 88 buses in a different fashion and maybe have far more impact if you add additional routes.

**Can you characterize the Board's discussions today?**

Everyone wants to improve service. There was unanimity in getting the 88 buses deployed and in getting drivers for those buses and mechanics. There was not unanimity, at this point, in terms of pursuing the rehearing.

**When would you expect the rehearing to be held?**

Our understanding is a month to two months. They may agree to rehear it. They may agree to rehear it with the full panel of 17 Ninth Circuit judges, rather than with the three judges who decided this case. We're asking for all the judges to rehear the case. So, we'll wait and see and, depending on what happens there, we'll meet again as a Board.

**And will you abide by what the courts tell you to do?**

We think that we are improving the service throughout the county. We've already sent that message. We need the flexibility to operate that service.

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[Back to MTA Report](#)