UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

PROCEEDING BEFORE SPECIAL MASTER

LABOR/COMMUNITY STRATEGY CENTER, et al., Plaintiffs, vs. LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY and JULIAN BURKE, Defendants.	CASE NO. CV 94-5936 TJH (MCx) **IN RE: LOAD FACTOR COMPLIANCE**

MEMORANDUM DECISION & ORDER
RE: MOTION FOR CLARIFICATION AND MODIFICATION

INTRODUCTION AND SUMMARY OF DECISION

In its Motion For Clarification and Modification of the Special Master's March 6, 1999 Order (the "Motion" or "MTA Motion"), the Metropolitan Transportation Authority ("the MTA") challenges only the two paragraphs of the Special Master's remedial plan (Paragraphs 6 and 7) that quantify the number of additional expansion buses needed to comply with the Consent Decree.[1] The remainder of the MTA's petition, however, raises for the first time a

[1] The March 6, 1999 Memorandum Decision and Order is hereinafter referred to alternatively as the March 6 Order or the March 6 Memorandum Decision.

number of issues going to the heart of the Consent Decree and the Special Master's powers specified therein. For this reason it is useful to revisit briefly the history of the Consent Decree.

The Consent Decree was, first and foremost, a compromise. Of the three major components of the Consent Decree – reduced fares, enhanced county-wide mobility for the transit-dependent and reduced overcrowding – it was the latter issue that proved to be the most intractable and that threatened to unravel any agreement. The Plaintiffs initially insisted on quantifying in the Decree the number of buses that the MTA would be required to obtain in order to reduce overcrowding and restore the deteriorating quality of bus service. Despite several negotiation sessions, however, the parties could not agree on a specific number of buses.

This settlement impasse was finally overcome through the introduction of the load factor concept. Rather than specifically identifying at the outset the number of buses required to remedy the problems and conditions giving rise to the litigation, the parties agreed on an objective performance standard and a set of specific procedural mechanisms to address the severe problems of bus overcrowding in Los Angeles.

In order to encourage cooperation on technical issues while ensuring accountability and fairness, the parties introduced into the Decree several components of dispute resolution. Under the procedures set forth in Sections II.A.4. and V.B. of the Decree, the MTA is to have substantial flexibility – initially – in meeting the load factor targets. However, if the targets are not met, or if there is a disagreement about whether they in fact have been met, the Consent Decree provides specific mechanisms to address and resolve these issues. These mechanisms

include an initial referral to the Joint Working Group ("JWG") to "determine whether the targets have been met" and, if not, "whether sufficient funds have been reprogrammed to meet the next target."[2] Consent Decree § II.A.4. If the JWG is unable to resolve the matter, the dispute is to be referred to the Special Master. *Id.* Section V.B. establishes a resolution process that expressly applies to disputes arising under Section II and authorizes the Special Master to establish "procedures" to "mediate" the dispute informally with the attorneys to the parties (a Stage I proceeding) and, if that is not successful, to "resolve" the dispute through a more formal (Stage II) proceeding.[3] *Id.* § V.B.

To dispel any doubts about the Special Master's authority, this dispute resolution mechanism was reaffirmed in Section 4 of the stipulated and Court-approved Order of Reference which provides that: "[i]f the attorneys for the parties cannot resolve matters informally pursuant to the Consent Decree, the attorneys shall refer the matter to the Special Master for *resolution*, pursuant to procedures set forth by the Special Master." Stipulation and Order re Appointment of Donald T. Bliss as Special Master and Order of Reference (dated Nov. 21, 1996) ("Order of

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[2] With interpretive guidance from the Special Master the JWG was able to agree on which bus lines were noncompliant; however, it reached an impasse on the remedy. After exhaustive but unsuccessful efforts to mediate an agreement between the parties, the Special Master issued his March 6 Memorandum Decision "resolving" the dispute as to the remedial plan necessary to comply with Section II.A. of the Consent Decree.

That section, of course, also refers to the reprogramming of sufficient funds to meet the load factor targets. Neither party as yet has pressed the Special Master to identify specifically what funds, if any, should be reprogrammed to comply with the Decree, although in its petition, the MTA apparently acknowledges that the Special Master has the power to find that sufficient funds must be reprogrammed. *See* MTA Motion at 12-13. Instead, the Special Master has identified the specific steps that need to be taken to comply with Section II.A so that the MTA can determine the most cost-effective way to reprogram the funds to meet its obligations under the Decree. By this approach, the Special Master has sought to limit his Order to the actions deemed necessary to comply with Section II of the Decree and to defer to the MTA, at least for the present, on funding sources. To the extent that the March 6 Memorandum Decision is not crystal clear on this point, however, I do find that the MTA has not allocated, through reprogramming or otherwise, sufficient funds to procure and operate an adequate number of expansion buses to remedy the load factor violations attributable to insufficient capacity.

[3] Section V.B. further provides that "[a]ny matter *resolved* by or referred to the Special Master may be reviewed by the District Court, along with the recommendations of the Special Master, if any, upon motion by either of the parties." (emphasis added). Plainly, either party has the option of accepting and adhering to the Special Master's "resolution" or filing a motion with the Court seeking review of his decision.

Reference") ¶ 4 (emphasis added).[4] Therefore, the parties have agreed to a set of procedures that initially allow the MTA considerable flexibility in meeting the load factor targets, but that also create a dispute resolution process in the event the MTA fails to meet the targets. This process ultimately results in a referral to the Special Master of matters in dispute, and allows both parties the right to appeal the Special Master's decisions to the District Court.

Seen in this light, the MTA's petition fails to acknowledge the *consensual* nature of the Decree and the specific powers and duties conferred by the language of the Decree and the Special Master's Order of Reference.[5] The MTA's newfound view that only the MTA, in its sole discretion, can fashion a remedial plan designed to meet the load factor standards does not square with the language of the Decree or the purpose for which the dispute resolution procedures of the Decree were created. Indeed, the MTA's argument comes too late -- more than two and one-half years into the implementation of the Consent Decree. After invoking the Special Master's authority on previous occasions, the MTA cannot now be heard to disavow the Special Master's agreed-upon authority to resolve remedial disputes.

The other substantive points raised by the MTA, and vigorously opposed by the Plaintiffs, concern the methodologies used by the Special Master in calculating the number of buses required to remedy the load factor violations caused by an inadequate fleet size. The MTA takes issue with the Special Master's remedial approach, which adds an additional bus *trip* for every 20-minute period on a bus line exhibiting a load factor violation attributable to insufficient

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[4] The Order of Reference also invokes Fed. R. Civ. P. 53, but states that "[i]n the event of any conflict between the terms of the Consent Decree and Rule 53 . . . the Consent Decree shall govern." *Id.* ¶ 5.

[5] Significantly, both the Consent Decree and the Order of Reference incorporate the parties' agreement on the selection of a Special Master and the enumeration of his powers.

capacity. The MTA also introduces new evidence, supplementing the Administrative Record, to support its contention that scheduling techniques can reduce the number of buses needed to cover the additional trips which the March 6 Order found are necessary to meet the load factor targets.

For the reasons discussed more fully below, *see* pp. 22-24, *infra*, I find that the MTA has not demonstrated that this theoretical exercise undertaken after the March 6 Order would work in practice as described in the present Motion, or that the adoption of these techniques could reduce significantly the number of expansion buses required without adversely affecting existing service or imposing additional burdens on the MTA's ridership. I have given the MTA's argument careful consideration and have studied the supplementary headway sheets provided. Unfortunately, the backup data presented are not supported by specific declarations explaining the workings of the techniques on a line by line basis. During oral argument on May 11, there was some clarification of how these techniques might work for certain lines by using expansion buses on more than one line through practices such as interlining or short runs. *See* Transcript of May 11, 1999 Oral Argument ("Tr.") at 51-57. However, given the limited evidence presented in the Administrative Record, it is nearly impossible to evaluate the effectiveness and practicality of these sophisticated scheduling techniques or to come to a more definitive conclusion concerning whether these techniques will potentially result in a significant reduction in service to the transit-dependent on other lines.[6]

[6] I continue to wonder why, if the MTA can remedy the overcrowding caused by *insufficient capacity* through sophisticated scheduling techniques rather than by adding more buses, it has not already done so to achieve the load factor targets that were established in October 1996.

Despite these difficulties with the data, I do find that some use of the MTA's scheduling techniques can legitimately decrease further the number of expansion buses needed to cover the trips added by the March 6 Order. Having reviewed the MTA's scheduling data, I conclude that 23 of the buses found to be necessary in the March 6 Order can be eliminated by linking together two or more trips for service by a single bus. *See* p. 24, *infra*.

Moreover, I have also considered the MTA's arguments concerning the allocation of additional buses on lines exhibiting numerous and recent – but heretofore causally undetermined – load factor violations. Since approximately half of the total load factor violations are attributable to insufficient capacity, the March 6 Memorandum Decision applied this same ratio to some, but not all, of the lines that exhibited numerous and recent violations which remain unanalyzed for cause. Having reconsidered the evidence, I remain convinced that this approach is consistent with the provisions of the Decree. Nonetheless, I have revisited each of these lines and made additional modifications, eliminating an additional six buses where there were only a few unanalyzed violations that occurred early on in the monitoring period. *See* p. 25, *infra*.

With these modifications, as described more fully below, the MTA should move as expeditiously as possible to meet its obligations under the Consent Decree by funding, obtaining, and integrating into its fleet the additional expansion buses required to meet the load factor targets.[7] This includes moving forward with good faith efforts to procure temporary buses,

[7] During oral argument, the MTA questioned the wisdom of purchasing new buses to serve as spares. Tr. at 61. The record shows that a minimum spare ratio of 20 percent is needed for bus operations. Administrative Record ("AR") Tab 77 at V-8. To the extent, however, that the MTA faces legitimate obstacles in procuring the required number of buses in the time frame provided in the remedial plan, and concludes that proper staggering of new deliveries would enhance overall efficiency, it may propose in its quarterly reports to defer, up to 12 months, the delivery date of the new vehicles intended to serve as spares. If it does so, the MTA should ensure that there is in

whether new or old, to comply with the Decree while it awaits the arrival of the additional new buses. The Consent Decree requires that the MTA apply its best efforts to this task and report on its progress via the quarterly reports.[8]

With regard to both the *temporary* buses and the *new* expansion buses, I note that the MTA objected in its brief and during oral argument to the fact that the March 6 Order specifies the "type" of vehicle that is needed to ensure compliance with the Consent Decree. *E.g.*, MTA Motion at 12. I therefore want to make clear that the MTA continues to hold discretion over the *types* of vehicles needed to satisfy the additional fleet capacity found to be necessary by the March 6 Order, as modified by this Order. For the new expansion buses, the Special Master designated CNG buses because these buses are currently being purchased and employed on the overcrowded lines and because there are important environmental benefits from the use of these vehicles. However, if the MTA determines that alternative vehicles, *providing equivalent expansion capacity*, would meet the requirements of the Consent Decree and other applicable requirements more effectively and efficiently, it may pursue appropriate alternatives and explain its reasons in the quarterly reports.[9]

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place an acceptable method of utilizing the existing fleet (such as by deferring the retirement of a few of the existing buses) solely to provide the necessary spares for the incoming additional capacity buses.

[8] In its proposed remedial plan, the MTA has already committed to add 160 buses to remedy insufficient capacity violations, 30 buses before June 1999 and 130 buses by December 1999. With the modifications described above, the Special Master's remedial plan would require the MTA to use its best efforts to obtain 248 buses on a temporary basis, which is 88 more buses than the MTA has already committed to provide.

[9] The MTA also has argued that the Special Master should specify only the number of additional trips that are required to comply with the Consent Decree and *not* the number of buses needed to cover the additional trips. However, the MTA's proposed use of schedule adherence management and advanced scheduling techniques to remedy *insufficient capacity* violations has been hotly disputed in the JWG and by the parties. Given the history and language of the Consent Decree, as described in this Decision and the March 6 Decision, I have concluded that a finding on the specific number of expansion buses (or equivalent vehicular capacity) is critical to the resolution of this dispute.

In response to the MTA's Motion, several additional clarifying points should be made.

As the Special Master has indicated on several occasions, the Consent Decree does not require perfection. If the MTA can demonstrate that it has taken all reasonable steps within its power to comply, it would be appropriate at that point (and only at that point) to excuse as *de minimis* or immaterial isolated violations occurring over significant intervals. Until the MTA has demonstrated a good faith, comprehensive effort to remedy both the "missing bus" and the "insufficient capacity" causes of the load factor violations, however, it is premature to establish a precise *de minimis* standard. Implementation of the remedial plan set forth in the March 6 Order, as clarified and modified by this Order, together with timely quarterly reports explaining the MTA's efforts to cope with issues and problems along the way, would likely constitute such a good faith effort meriting a finding of *de minimis* or immaterial non-compliance for isolated, non-repeating and explainable violations.[10]

For present purposes, however, there is no basis in the Decree for drawing a principled distinction between "one violation per time period" versus "two or three violations per time period." As stated in the March 6 Order, and repeated by the Plaintiffs during oral argument, there are many overcrowded buses that do not violate the Consent Decree because to constitute a single load factor violation of the 1.35 target there must be an average of more than 15 people

[10] Under these circumstances, isolated instances of overcrowding attributable to a school letting out early or a major traffic accident could be considered *de minimis* or immaterial. *Cf.* Declaration of Dana Woodbury (dated Apr. 15, 1999) ("Woodbury Decl.") ¶ 13.

standing on all the buses passing the point check during a non-overlapping 20-minute peak period. March 6 Order at 20; Tr. at 87-88. Moreover, the "violations" are based on samples that, for most of the 77 lines, are conducted at infrequent intervals.[11] *Id.* For many of the lines on which additional trips are required, single violations in specific time periods are followed by multiple violations in adjacent 20-minute periods, indicating a compelling need to spread out the additional trips during the morning peak period. Given the magnitude of the violations and the lack of success to date in remedying them, there is no justification for ignoring, at the design phase of the remedial plan, specific violations of the load factor requirements.

In connection with this remedial stage, it also bears repeating that the March 6 Order made a critical distinction between violations caused by equipment malfunctions and violations resulting from insufficient capacity. Both the MTA and the Plaintiffs agree that about half of the load factor violations are caused by missing buses – in large measure attributable to the deterioration of an over-age bus fleet and the deferral of bus replacements for many years. March 6 Order at 22-23. In addressing these violations, the Special Master rejected the Plaintiffs' proposed remedy and essentially adopted the MTA's accelerated replacement schedule and other related remedies. The MTA's Accelerated Bus Replacement Program represents a substantial investment made by the MTA to remedy conditions of overcrowding caused by an unreliable and aging fleet. The MTA should be commended for making this multi-million dollar investment and for securing an accelerated stream of *replacement* buses.[12] In

[11] For example, for 57 of the 77 lines, the checks may have been performed as infrequently as once per quarter. AR Tab 81 at 115-116.

[12] The MTA states that, as a result of the Accelerated Bus Procurement Plan, its *replacement* schedule will provide a total of 2,095 new buses from FY98 through FY04. The MTA notes that this represents approximately 782 buses over and above what it contemplated for *replacement* at the time the Consent Decree was signed, at an additional cost of $300 million. *See* MTA Motion at 8.

order for the remedies to prove effective, however, the new buses scheduled to replace the over-age buses should be used for their intended purpose; they should not be redirected to fulfilling (or counted against) the additional capacity remedies enumerated in the March 6 Memorandum Decision, as modified by this Order. Adherence to the letter and the spirit of the Consent Decree requires *expansion* buses to add capacity and increase the size of the active fleet. That is what the present dispute is about.

The Special Master recognizes that severe time constraints face the MTA. While the MTA has in place a sound program that will address the "missing bus" cause of the load factor violations, it has not moved expeditiously to remedy, through fleet expansion, the "insufficient capacity" violations. In trying to catch up at this late stage, the MTA undoubtedly will need to satisfy various legal prerequisites and may confront unanticipated obstacles. These problems will have to be addressed if and when they present themselves. In the meantime, progress should be detailed in the quarterly reports.[13]

Finally, I hasten to point out that the March 6 Order reflects my best judgment, based on the Administrative Record, concerning the *expanded fleet capacity* that is required to meet the MTA's load factor obligations under the Consent Decree. While this calculation has been made on a line-by-line basis, the remedial plan does not require the MTA to assign the exact number of buses to the exact routes described in the computation of this needed expansion capacity. The

[13] Again, perfection is not required and the MTA is not being asked to perform the impossible. If the MTA has a sufficient and court-approved remedial plan in place, and can establish that it is taking every reasonable step in its power to execute faithfully this plan, then, for example, the late arrival of additional new buses for reasons beyond the MTA's control would not be considered a violation of the remedial plan. To date, however, the MTA appears to resist any requirement of additional new expansion buses as part of a remedial plan that it has not, in its sole discretion, devised.

MTA retains the discretion to schedule the additional capacity in an optimum manner to meet the 1.35 and 1.25 load factor targets. If the MTA can establish at some future date that its remedial steps have successfully eliminated the load factor violations (except for *de minimis* or immaterial exceptions) by using fewer than the required number of expansion buses and without significantly reducing service on the transit-dependent lines, the MTA will be free at that point to reassign these additional buses to other purposes consistent with the Consent Decree, such as expanding the Five Year New Service Plan and the Rapid Bus Network.

Therefore, in response to the MTA's Motion for Clarification and Modification, paragraph 6 of the Remedial Plan set forth in the March 6 Order has been revised in accordance with the modifications and clarifications described above. *See* p. 29, *infra*. All other paragraphs in the Remedial Plan remain in effect as described in the March 6 Order. The MTA's petition to withdraw paragraph 7 is denied for the reasons set forth *infra* at pp. 26-27.

ANALYSIS AND FINDINGS

I. Authority to Issue Remedial Orders

The MTA's most surprising new argument is its contention that the Consent Decree does not authorize the Special Master to issue remedial orders for established violations of the Decree, except to resolve "(1) whether the targets have been met, or (2) whether sufficient funds have been reprogrammed to meet the next target." MTA Motion at 12, *citing* Consent Decree at Section II.A.4. (emphasis omitted). During oral argument, the MTA's counsel argued emphatically that the Special Master's Section V authority to resolve disputes is, in effect, preempted by the more specific remedial powers outlined in Section II. Tr. at 40-41.

The specific language of the Consent Decree and the Order of Reference suggest otherwise. Section V.B. provides the Special Master with express authority to resolve *any* disputes arising under *any* provision of Sections I through IV of the Decree:

> "Any dispute arising under any provision of Sections I through IV of this Consent Decree in which the JWG has a role shall initially be addressed by the JWG. If the JWG cannot resolve the matter, or if the JWG does not have a role in the disputed function, this dispute shall be referred to the attorneys to the parties. If the attorneys cannot resolve the matter informally, the attorneys shall refer the matter to the Special Master for resolution, pursuant to procedures set forth by the Special Master. Any matter resolved by or referred to the Special Master may be reviewed by the District Court, along with the recommendations of the Special Master, if any, upon motion by either of the parties."

The MTA's load factor obligations which are the subject of the Special Master's March 6 Memorandum Decision are specified in Section II of the Consent Decree. Consequently, if the JWG and the attorneys cannot resolve disputes concerning how to remedy violations of those provisions relating to load factor compliance, the matter "shall" be referred to the Special Master for resolution pursuant to Section V.

The remedial powers described in Section II.A.4. are fully consistent with the Special Master's dispute resolution authority found in Section V. Well-established canons of contract interpretation, embodied in California law, provide that the "whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." Cal. Civ. Code § 1641. Reading these two sections together, and giving effect to each, it is clear that the Section II remedial powers authorizing the Special Master to determine whether MTA funds must be reprogrammed *supplements*, rather than excludes, the Special Master's Section V power to issue remedial orders resolving disputes under the Decree.

The Order of Reference further reinforces the Special Master's authority to issue remedial orders. It expressly states that "[i]f the attorneys for the parties cannot resolve matters informally pursuant to the Consent Decree, the attorneys shall refer the matter to the Special Master for resolution, pursuant to procedures set forth by the Special Master." Order of Reference, ¶ 4. This delegation of power is consistent with Federal Rule of Civil Procedure 53(c), which allows an order of reference to specify the master's powers and provides that "[s]ubject to the specifications and limitations stated in the order [of reference], the master has and shall exercise the power to . . . take all measure necessary or proper for the efficient performance of the master's duties under the order." Fed. R. Civ. P. 53(c). In fact, where there is a conflict between the Consent Decree and Rule 53, the parties have specifically agreed that the Consent Decree "shall govern." Order of Reference at ¶ 5.

But even assuming *arguendo* that the language of the Decree or the Order of Reference were somehow ambiguous on this point, the extrinsic evidence of the parties' intent compels the same conclusion concerning the question of the Special Master's authority. In interpreting ambiguous contracts, courts often look to the post-contract conduct to infer the parties' intent. *See Golden West Baseball Co. v. City of Anaheim*, 25 Cal. App. 4th 11 (1994) (post-agreement conduct may be used to resolve ambiguities in contracts).[14] As the Plaintiffs have pointed out, the MTA's prior conduct in these proceedings reflects an explicit recognition of the Special Master's authority to resolve disputes and compel the parties to act when necessary. Most notably, in July 1998, the MTA filed a motion asking the Special Master to exercise his dispute

[14] Indeed, the MTA recognized this principle in its March 23, 1999 Opening Brief re Five Year Plan ("When the parties to a contract perform under it and demonstrate by their conduct that they knew what they were talking about[,] the courts should enforce that intent." *Id.* at 2 n. 2, citations omitted).

resolution authority and prohibit the Plaintiffs from organizing a "no seat, no fare" strike. The MTA cited to the Special Master's powers under Section V.B. of the Consent Decree and concluded the following:

> "Here, the Special Master was appointed to monitor the parties' compliance with, and resolve any disputes arising under, the Consent Decree. (Consent Decree, §V.) The Consent Decree does not impose any limitations on the Special Master's powers or authorities to effectuate these objectives. Accordingly, *the Special Master has the inherent authority to issue orders and resolve disputes* arising under the Consent Decree."

MTA Letter-brief to Special Master (dated July 30, 1998) at 5 (emphasis added).[15] This consensus regarding the Special Master's authority has similarly governed the resolution of various other implementation issues, including the Night Owl Service. AR Tab 2. Thus, the post-Consent Decree conduct of both parties reaffirms that they envisioned and expected the Special Master to resolve disputes and issue orders governing the parties' future conduct.[16]

Taking another tack, the MTA attempts to nullify the Special Master's agreed-upon authority by misreading Section II.A.3. of the Decree, which provides that the MTA initially has the discretion to determine how to meet the load factor requirements. The MTA contends that under this provision it is the sole arbiter of how to remedy its own violations.

The MTA was fully afforded the initial discretion contemplated by Section II.A.3. From 1996 to the present, the MTA, in its sole discretion, decided what steps to take to comply with

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[15] This position was reaffirmed by the MTA in its Reply Brief (dated Aug. 9, 1998) on this same issue.

[16] In a similar vein, the plaintiffs argue that the doctrine of judicial estoppel precludes the MTA from raising any objection to the Special Master's authority. This doctrine is often invoked, both in judicial and administrative contexts, to prohibit a party from unfairly gaining an advantage by taking one position and then subsequently taking an incompatible position. *See, e.g., Yanez v. United States*, 989 F.2d 323 (9th Cir. 1993); *Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597 (9th Cir. 1996).

the Decree. Those steps, however, have been shown to be insufficient.[17] Both the JWG and the parties' attorneys, with the support of the Special Master, have attempted repeatedly to come up with a joint solution to the load factor violations. Having failed in this effort, the parties have submitted this dispute to the Special Master pursuant to Section V of the Decree.

Finally, the MTA continues its challenge to the Special Master's authority by advancing two separate, but interrelated, arguments: (1) that the Special Master has "not been granted the authority to control the operation of the MTA or to order how the target load factors are to be achieved"; and (2) that "even absent the specific restrictions contained in the language of the Consent Decree, . . . the Special Master must carefully consider the fiscal impact of his recommendations and exercise great deference to the MTA's own analysis and conclusions." MTA Motion at 6, 11.

Both contentions are founded on a misunderstanding of the role and the decisions of the Special Master. The parties expressly agreed to abide by a set of procedures to resolve disputes. Consistent with his obligation to "resolve" disputes arising under the Consent Decree, the Special Master has sought to limit interference with the MTA's control of its operations and to defer, as much as possible, to the MTA's decisionmaking and funding responsibilities. *See* Tr. at 78-82. Any party dissatisfied with the factual or legal accuracy of the Special Master's decisions

[17] Pursuant to the Special Master's legal guidance, both the MTA and the BRU found that the MTA failed to meet the load factor targets on 75 out of the 79 lines monitored. AR Tabs 36, 37. In its motion and oral argument, the MTA attempts to backtrack on these issues, stating that in admitting noncompliance, it had reserved its right to appeal the legal standard beyond the deadline set by the Special Master, that the load factor targets are merely goals and not an enforceable "ceiling" and that "substantial" compliance on a system-wide basis, as opposed to line-by-line compliance, is all that is needed. It should be noted for the record that, in admitting to the load factor violations, the MTA did submit to the Special Master a document seeking to reserve its rights to appeal certain issues. AR Tab 36. However, this document only purported to reserve the MTA's rights to appeal (1) the deadlines for appealing

can appeal these decisions directly and immediately to the District Court. Although not a perfect analogy, these procedures are akin to voluntary, binding dispute resolution subject to appeal. There can be no issue of improper "control" in this context.[18]

Indeed, for more than two and a half years, the parties and the Special Master have operated under this understanding of the Decree and have resolved several issues pursuant to these procedures. In the first instance, the Special Master has consistently deferred to the MTA on how to comply with the Decree. Where this has failed, he has encouraged the JWG and outside counsel to resolve disputes that have arisen. Only when these efforts have failed has the Special Master taken steps to resolve concrete remedial issues as required under Section V.B. The MTA has participated in these proceedings at each stage and, consequently, cannot now claim surprise concerning the purpose or effect of this Stage II proceeding.[19]

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the August 25 Order, (2) the propriety of granting reconsideration, (3) the "sliding" 20-minute issue, and (4) the deletion of the *de minimis* references on reconsideration. *Id.*

[18] The case law upon which the MTA relies in this context is likewise inapposite. Both *Hoptowit v. Ray*, 682 F.2d 1237, 1263 (9th Cir. 1982), and *National Organization for the Reform of Marijuana Laws v. Mullen*, 828 F.2d 536, 542 (9th Cir. 1987) involved court-mandated (as opposed to stipulated) special masters. These cases stand for the unremarkable – and wholly unrelated – proposition that Rule 53 does not authorize a court to place involuntarily a special master in control of a defendant in order to force compliance with court orders. Here, the consensual nature of the appointment and the agreed-upon dispute resolution procedures, coupled with the ability to seek review in the district court, eliminates any question of improper control.

More significantly, the March 6 Memorandum Decision does not seek to impose "control" over the daily operations or decisionmaking powers of the MTA. It simply sets forth the actions that are necessary to remedy the MTA's noncompliance with the Consent Decree. That the MTA must purchase *more* buses in order to meet the requirements of the Decree is not a question of control. The March 6 Decision leaves it up to the MTA to decide how to procure the buses, how to schedule the additional capacity, how to provide the operators, mechanics and other needed support and how to institute the other policies and practices necessary to integrate these expansion buses into the MTA's fleet.

[19] The MTA further argues that the recommendations made by the Special Master in the March 6 Memorandum Decision are the functional equivalent of a mandatory injunction issued without notice. MTA Motion at 23. This argument again ignores the critical fact that the dispute resolution procedures were agreed upon by the parties, and that the MTA has always been on notice that the present Stage II proceedings were directed towards remedial issues. *See, e.g.*, September 8, 1998 letter to Special Master from MTA, Attach. A ("the MTA will not be able to make an informed decision as to whether the Special Master's Order of August 25 should be appealed until it knows the *scope and nature of the remedy* that will be implemented as a result of that Order.")(AR Tab 36).

For the same reasons, the MTA's demand for total institutional "deference" is misplaced. As stated earlier, the initial deference afforded the MTA by Section II.A.3 does not grant the agency sole and unfettered authority to watch over and remedy its own violations. MTA's interpretation is wholly at odds with the dispute resolution procedures agreed to in Section V.B. and the Special Master's Order of Reference. Nor do the cases cited by the MTA offer any support for any heightened deference under these circumstances. Both *New York State Ass'n for Retarded Children v. Carey*, 706 F.2d 956 (2d Cir. 1983) and *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) deal primarily with the issue of what standards should be used in determining whether *modification* of a consent decree is appropriate. That issue is not before us here.[20]

II. Standards For Compliance With Load Factor Requirements

The MTA contends in its Motion that the March 6 Order violated the standard canons of contract construction by reading the terms of the Decree too literally and by failing to apply a "substantial compliance" standard in interpreting the Decree's requirements. MTA's Motion at 13-16. In essence, the MTA argues for a wholesale revision of the Special Master's previous Orders concerning the legal interpretation of the load factor requirements.[21]

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[20] The MTA also relies without success on *Youngsberg v. Romero*, 457 U.S. 307 (1982). In *Youngsberg*, the Court held that state facilities are constitutionally required only to exercise "professional judgment" in instituting policies and programs and explained that "[it] is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." *Id.* at 321. The MTA cannot rely on *Youngsberg* because, as the March 6 Memorandum Decision made clear, the MTA's remedial plan does not represent a professionally acceptable choice for remedying the load factor violations caused by insufficient capacity.

[21] As a preliminary matter, it is worth noting that the MTA's attempt to revisit the standards of compliance comes over six months after the Special Master's July 15, 1998 and August 25, 1998 Orders relating to the compliance standards. Although I have nonetheless considered again the MTA's legal arguments in the present Motion, the MTA's delay in asserting its specific objections to the standards enunciated in these Orders violates the procedures that have been established to ensure efficient and fair resolution of disputes under the Decree.

Having reviewed the language of the Consent Decree, the MTA's arguments and my prior Orders, I continue to find that the standards enunciated in previous Orders are fully in keeping with the MTA's repeated admonitions that the meaning of a contract is to be gleaned from the language of the writing alone. *See also* Cal. Civ. Code § 1639. As explained in the Special Master's July 15, 1998 and August 25, 1998 Orders, the provisions of Sections II.A.1. and II.A.2. of the Consent Decree unambiguously provide for "the reduction of the maximum load factor *ceiling for all bus routes* from 1.45 to 1.2 in [specified] increments." Consent Decree at 3 (emphasis added). The load factor is to be measured "during *any* 20 minute weekday peak period in the peak direction of travel *on each bus line*." *Id.* (emphasis added). Under Section II.A.4. "Failure to Meet Targets" specific remedial procedures are triggered "if MTA fails to meet the target load factors for *all* bus lines by the dates specified." Contrary to the MTA's contention, the Special Master's "literal" interpretation of this express language is not inconsistent with any other provisions of the Decree, or with the broader purpose of improving transportation conditions for the transit-dependent.

Additionally, the standard of "substantial compliance" referenced in Section VIII of the Consent Decree does not qualify the specific performance requirements described in Section II. Rather, this standard is limited to the context in which it is found; it is applicable only to a petition by the MTA to be released from the obligations of the Decree, subject to certain conditions, after seven years. Otherwise, the precise load factor targets established by the Decree would be rendered virtually meaningless.

III. Effect On Other Statutory Obligations

The MTA further argues that implementation of the Special Master's March 6 Order would force the MTA into a Hobbesian choice between complying either with the Decision or MTA's other statutory obligations. MTA Motion at 16-23. In connection with this argument, the MTA identifies various state and federal funding limitations, as well as several environmental statutes, which it contends might be violated if it were to implement the March 6 Order. *Id.*

In the intervening two and a half years since the Consent Decree was signed, the MTA has had ample signs (through preliminary point check data) that additional bus capacity was needed to meet the upcoming load factor targets. Although the MTA is to be commended for approving on its own initiative an ambitious and accelerated bus *replacement* plan to retire the agency's hundreds of over-age buses, the fact remains that *expansion* buses beyond these replacement buses are also required to remedy the load factor violations caused by the MTA's insufficient capacity. The fact that the MTA has not adequately prepared for this contingency is not an excuse to delay further (much less excuse altogether) the implementation of the Decree.

Regardless of the cause of the present difficulties, however, the MTA does not demonstrate specifically how the March 6 Order would compel the MTA to violate any statutory obligations. In the MTA's May 4, 1998 draft Restructuring Plan, the MTA identifies the many funding sources for which bus capital and/or operating costs are eligible. AR Tab 81 at 42-43. For many of these bus-eligible funding categories, no funds at all have been allocated to buses. *See generally* Declaration of Thomas A. Rubin (dated April 29, 1998) ("Rubin Decl.") ¶¶ 27-63

(noting that the MTA has not applied for, allocated or obtained maximum bus funding under various federal, state and local funding sources including Sections 5307, 5309 and Proposition C Funds). Thus, the fact that the MTA apparently has not applied for, allocated or received these bus-eligible funds somewhat undercuts the MTA's argument that it will be forced to tap already-committed funds, and therefore violate its other statutory obligations, to comply with the Decree.[22]

Focusing on its other obligations, however, does not relieve the MTA from its obligation under the Decree to make bus operations its *first* priority:

> "consistent with other statutory responsibilities and obligations, MTA's first priority for the use of bus-eligible funds realized in excess of funds already budgeted [in October, 1996] for other purposes shall be to improve bus service for the transit-dependent by implementing MTA's obligations pursuant to this Consent Decree."

Consent Decree § I.F.[23] As a practical and contractual matter, the allocation of sufficient resources to halt the deterioration of bus service to the MTA's most frequent daily customers – the transit-dependent of Los Angeles – should take precedence over the funding of new transit alternatives, even those designed to attract new transit patrons. This is what the Consent Decree requires.

Moreover, despite Mr. Yale's general inventory of the many, varied and substantial sources of MTA funding, some of which are restricted to specific purposes, the MTA does not

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[22] During the oral argument and in his declaration, the MTA CEO Julian Burke vigorously set forth the substantial financial challenges that the remedial plan creates for the MTA in the context of an agency that has accomplished much in recent months to put its financial house in order. However, Mr. Burke did not contend that it was impossible to identify funding to comply with the remedial plan; his primary concern was with the *operational* costs of an expanded bus fleet. Tr. at 65-72.

[23] If sufficient funding is not provided, Section I.F. further provides that "the matter shall be addressed in accordance with the procedures set forth in this Consent Decree."

specifically show how its long-range budget, with careful and advance planning, cannot accommodate the expenditures required to comply with the March 6 Decision as modified by this Order. On the contrary, the November 11, 1998 Regional Transportation Alternatives Analysis ("RTAA") concluded that as a result of suspended rail projects and expanded funding sources, the MTA is expected to have approximately $1.4 billion in funds available between FY99 and FY04. While there are, of course, other important projects that call for the use of these funds, the fact remains that, on this record, the MTA has not shown why some of these funds could not be used to fund or to secure the funding of the expansion buses required by the Remedial Plan.[24]

The MTA expresses the further concern that environmental statutes may pose obstacles to the implementation of the March 6 Memorandum Decision. Statutory obligations such as the National Environmental Policy Act (NEPA), the National Ambient Air Quality Standards (NAAQS) and the California Environmental Quality Act (CEQA) have always been an important consideration in planning any transportation project in California. Generally, adding additional bus capacity to improve service quantity should contribute positively to environmental quality. If despite the MTA's good faith efforts to implement an approved remedial plan there are unavoidable delays in complying with statutory requirements, these issues should be addressed in the quarterly reports.

[24] Taking into account various demands on these funds, the RTAA concludes that during the FY99-04 timeframe there will be $593.9 million in available funding which, after taking out $267.1 million which the RTAA recommends should be expended on the Rapid Bus Program, still leaves $326.8 million available. The RTAA finds even more funding available between FY99-FY10 ($2.4 billion available). *See* AR Tab 104 at 28.

IV. Line By Line Modifications

As the Plaintiffs acknowledge, because the Special Master is authorized by the provisions of the Consent Decree to establish separate procedures for adjudicating disputes between the parties, the present motion is not necessarily governed by the Central District Local Rules on motions for reconsideration.[25] Nonetheless, the standards for such motions are instructive. Central District Local Rule 7.16 provides:

> "A motion for reconsideration of the decision on any motion may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court . . ., or (b) the emergence of new material facts or a change of law . . ., or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. . . ."

With this standard in mind, I have reviewed the declarations and supplementary evidence provided by the MTA as well as the declarations submitted by the Plaintiffs. The MTA contends that there are two ways in which it can reduce the number of buses required to cover the additional bus trips found to be necessary by the March 6 Memorandum Decision. MTA Motion at 32-33; *see also* Declaration of Dana Woodbury (dated April 15, 1999) ("Woodbury Decl.") at ¶¶ 7, 10-11. First, the MTA asserts that 28 buses can be eliminated from the Special Master's calculations by matching trips to location and direction because, in some instances, one bus can provide more than one needed trip. Woodbury Decl. ¶ 10. Second, the MTA contends that additional use of advanced scheduling techniques can further decrease the number of buses required by 64 buses. *Id.* ¶11.

Addressing first the MTA's argument concerning the advanced scheduling techniques, I find that the MTA has not established that the additional use of these techniques is an appropriate

[25] Although not titled as such, the MTA's Motion clearly seeks reconsideration of the March 6 Memorandum Decision.

basis upon which to reduce the number of expansion buses that are necessary to remedy load factor violations attributable to insufficient capacity. The March 6 Decision already took into account the use of advanced scheduling techniques such as interlining, shortlining and deadheading, when such techniques do not adversely affect the transit-dependent by reducing the level of service on other bus lines, in crafting a remedial plan that found fewer buses to be necessary than proposed by the BRU.

The supplementary evidence provided by the MTA in its present motion does not support a further reduction. The raw and largely unexplained headway sheets provided by the MTA to supplement the Administrative Record do not show completely the interrelationship of the affected bus lines, nor do they establish that the altered headways and schedules will not adversely affect other service.[26] While counsel for the MTA very effectively explained at oral argument how these techniques would apply to several specific lines (Tr. at 51-57), the fact remains that these schedules were prepared as an exercise to show theoretically how the MTA could cover additional trips without buying expansion buses. As such, the techniques appear to involve somewhat contorted schedules that target specific violations rather than optimizing the use of the bus fleet for the benefit of riders. Indeed, one schedule maker attached a note to the scheduling sheets stating that "[i]n reality, we probably would have the trips work westbound instead of off-routing [deadheading]," suggesting that the theoretical reductions might not be practical. Second Supplemental AR at 165. *See* Declaration of Ted Robertson (dated May 1, 1998) ("Robertson Decl.") ¶ 16; *see also id.* ¶¶ 14-19. As explained by counsel, some of the

[26] Other than the general explanation offered in the Declaration of Dana Woodbury, the two volumes of supplementary evidence come unaccompanied by any declaration providing a line by line account of how these techniques would work. Moreover, they were submitted for the record without having been first provided to the Plaintiffs and their experts for review. Tr. at 102.

interline and short run schedules involve the use of expansion buses on more than one line; however, the MTA does not indicate how many expansion buses would be required for this purpose and where and when the MTA plans to obtain these buses. Given the rigorous standard normally applicable to motions for reconsideration, there is no basis to find that these additional data justify reopening the Special Master's March 6 Decision limiting the application of advanced scheduling techniques in the design of a remedial plan.[27]

On the other hand, the MTA's trip-linking proposal described in the Woodbury Declaration does satisfy this requirement. Table 2 attached to the Woodbury Declaration illustrates graphically how various bus trips found to be necessary by the March 6 Decision can be linked with a single bus, thereby reducing the number of buses required. I am satisfied that this technique improves upon and refines the factual findings of the March 6 Decision in a manner fully consistent with the purpose of the Consent Decree. Attached as Exhibit A to this Order are my line by line modifications to the March 6 Order based on the use of this technique.

Several important caveats to these modifications should be noted.

First, the Woodbury Declaration excludes from the analysis and computation any time period for which the Special Master added trips based on violations for which the cause had not

[27] It bears repeating that the relevant issue in this Stage II proceeding is this: Based on the Administrative Record, how many expansion buses (or vehicular equivalents) are needed to remedy the load factor violations attributable to insufficient capacity? The Remedial Plan does not dictate to the MTA how these buses should be scheduled. It is assumed that, in scheduling this additional capacity, the MTA will utilize its experienced schedule makers to optimize both the efficient use of these buses and the benefits to the transit-dependent. If the MTA is able to meet the load factor targets without utilizing all the expansion buses required, it would be free at that point to use the buses to improve service to the transit-dependent through an expansion of the Five Year New Service Plan, the Rapid Bus Expansion Network or other projects.

at that time been analyzed.[28] Thus, for these lines, the MTA's calculation of the number of buses required is understated.[29] At the request of the MTA, however, I have revisited my calculations concerning these violations. Since I have found, based on the Administrative Record, that approximately half of the load factor violations are attributable to insufficient capacity, the March 6 Order added bus trips for some (but not all) unanalyzed violations, predominantly on lines where a substantial number of violations occurred repeatedly and recently. I continue to find that this methodology is rooted firmly in an accurate and realistic assessment of the extent of the MTA's load factor violations. Having reviewed my previous findings, however, I now find that, of the buses added by the March 6 Order as a result of unanalyzed violations, six buses were added for violations that did not occur with sufficient frequency or that occurred primarily in the early months of the compliance period. Exhibit B to this Order presents my modified findings in this regard.

Second, the calculations in Table 2 attached to the Woodbury Declaration understate the total number of buses required by failing to add trips for violations occurring in the 8:40 – 9:00 a.m. time period. Contrary to the MTA's contentions, Lines 2, 70 and 78 do in fact exhibit violations in this period. For example, Line 2 had four "insufficient capacity" violations during the 8:00 a.m.– 8:19 a.m. time period (8:03 a.m., 8:09 a.m., 8:14 a.m., 8:14 a.m.), two recent unanalyzed violations occurring at 8:27 a.m. and 8:31 a.m., and two other "insufficient capacity" violations occurring at 8:35 a.m. and 8:36 a.m. Since the time of the violation in the Plaintiffs' mapping data indicates the first minute of the twenty-minute violation, the 8:35 a.m. and

[28] *See, e.g.*, Woodbury Decl., Exh. D, Bus Lines 16, 20, 110, 111.

[29] For example, Line 420 exhibited repeated and recent violations between 6:40 a.m. and 7:40 a.m. and between 8:00 a.m. and 8:40 a.m., for which the Special Master required three additional buses. The Woodbury declaration recommends 0 buses for this line on the ground that the violations were not analyzed.

8:36a.m. violations reflect conditions of overcrowding from 8:35 a.m. through 8:56 a.m.[30] Thus, it is proper to add bus trips for this last time period.

Finally, it is important to point out that, for numerous lines, the Woodbury methodology (by acknowledging that violations can occur in different directions and route segments) actually identifies more necessary bus trips, and in some cases concludes that *more* buses are required, than found to be necessary in the March 6 Memorandum Decision.[31] This shows that in certain instances the Special Master understated the number of additional bus trips required on certain lines and may have correspondingly understated the number of buses required to remedy violations on these lines. Nonetheless, I have not increased the number of buses required or otherwise modified my findings for those lines even where the MTA's numbers may be greater.

V. Requirement of 102 Buses

The MTA's Motion also requests reconsideration of that portion of the March 6 Decision which directed the MTA to purchase an additional 102 buses pursuant to Section II.B. of the Decree. MTA Motion at 24-26. The MTA argues that the Consent Decree does not require that the 102 buses be *new* buses. *Id.*

The MTA's arguments on reconsideration are identical to its arguments offered earlier, and fail for the same reasons. In previous rulings and in the March 6 Memorandum Decision, I have explained how the MTA has only temporarily met the requirement of Section II.B. by

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[30] Similarly, Line 70 had seven violations starting in the 8:20-8:39 a.m. time period, including violations starting at 8:33 a.m. and 8:36 a.m. which span almost to the end of the 9:00 a.m. hour.

[31] For example, for Line 1, Woodbury's methodology of linking trips concludes that eight buses are required for this line, although the Special Master only ordered five.

extending the life of buses scheduled for replacement. I have also indicated previously that eventually the MTA would have to retire these replacement buses and obtain 102 new buses to satisfy this requirement. The MTA does not provide any new basis or argument to amend this conclusion. These expansion buses may be used by the MTA for any purpose that improves bus service for the transit-dependent.

VI. Procurement of Temporary Buses.

The MTA argues that it cannot lease or otherwise procure the 277 temporary buses specified in the March 6 Memorandum Decision because there are virtually no new CNG buses available for lease. MTA Motion at 33-34. While this may be true, the March 6 Memorandum Decision did *not* require that the temporary buses be new or CNG. The Decision stated that in order to achieve compliance with the Decree, the MTA should "obtain, through lease or other means, 277 buses on a temporary basis to meet the 1.35 LFT as soon as possible until the new purchased buses arrive." *Id.* at 55. The MTA has the discretion to determine what types of vehicles it can obtain for this purpose. Moreover, since the present Order reduces the number of buses necessary to comply with the 1.35 LFT from 277 to 248 (not counting spares), the number of temporary buses needed is also reduced to 248.

VII. Summary of Modifications to the March 6 Order

As stated above, the modifications to the specific line by line findings made in the March 6 Order are attached hereto as Exhibits A and B. To summarize these findings, the 277 buses found to be necessary by the March 6 Decision to meet the 1.35 load factor requirements are hereby reduced by 29 buses (23-bus reduction in Exhibit A, 6 bus reduction in Exhibit B), for

a total of 248 buses. Applying this ratio of reduction to the 1.25 load factor target, I find that the number of additional buses required for this next standard is reduced from 126 to 113. Adding the standard spare ratio of 20%, and subtracting the 53 additional buses already planned, the total number of buses required to meet the 1.35 and 1.25 load factor targets equals 379 additional buses.

In sum, 379 new buses are necessary to expand the fleet size to remedy the load factor violations attributable to insufficient capacity and 102 new buses are necessary to meet the MTA's obligation under Section II.B. of the Consent Decree to expand bus services for the transit-dependent. With respect to that half of the load factor violations attributable to "missing buses," the MTA has in place a comprehensive and sufficient plan, including an accelerated bus replacement schedule and related remedies. While this program to accelerate the replacement of buses that are over 12 years old/500,000 miles will contribute greatly to the improvement in the quality of bus service, it is not enough. Additional capacity is needed to meet the requirements of the Consent Decree.

The MTA's Motion for Clarification and Modification is granted in part and denied in part. Paragraph 6 of the March 6 Order is hereby modified as follows, together and consistent with all of the findings and conclusions expressed in the present Memorandum Decision and Order. Except insofar as it has been modified or clarified by this Decision, the March 6 Memorandum Decision and Order remains in effect. The motions, briefs, declarations, and exhibits submitted by the parties, including *amicus curiae*, shall be admitted into the Administrative Record. The parties shall have twenty (20) days from the date of this Order to

file a motion before Chief Judge Terry J. Hatter, Jr. seeking review of this Memorandum Decision and Order and the March 6 Memorandum Decision and Order.

MODIFIED PARAGRAPH 6

6. Remedy violations attributable to insufficient capacity.

In order to achieve compliance with the Consent Decree, the MTA should:

(a) purchase 379 new buses to provide the additional capacity required to reduce the load factor target to 1.35 as soon as possible and to meet the 1.25 load factor target by June 2000, which includes:

(1) 248 buses to add trips to the lines with "insufficient capacity" violations to meet the 1.35 LFT;

(2) 49 spares (20% of 248[rounded down]);*

(3) 113 buses to meet the 1.25 LFT; and

(4) 22 spares (20% of 113[rounded down]);* minus

(5) 53 expansion buses already planned by MTA for purchase.

(b) hire additional full-time operators to operate the new service, as required;

(c) hire additional mechanics as needed to meet the new service requirements; and

(d) obtain, through lease or other means, 248 buses on a temporary basis to meet the 1.35 load factor target as soon as possible until the new purchased buses arrive.

Although the determination of the number of additional buses that are required to reduce load factor violations attributable to insufficient capacity is based in substantial part on a line-by-line analysis of the causes of the violations during 1998, the MTA has the flexibility to schedule

* *See* footnote 7, *supra*.

its service in a way that will maximize the efficiency of the fleet and will enable the MTA to meet the load factor targets as quickly and cost-effectively as possible. While meeting this objective may require some adjustment of schedules and some utilization of scheduling techniques, the MTA should not significantly reduce service to the transit-dependent in order to meet the load factor targets on the specified routes.

IT IS SO ORDERED.

Donald V. Bliss
SPECIAL MASTER

Dated: May 14, 1999

394137.1

EXHIBIT A

Applying the methodologies described in the March 6 Memorandum Decision as modified by the May 14, 1999 Order, the line by line findings made in the March 6 Memorandum Decision are modified as follows:

(13) Line 38.

Line 38 has exhibited insufficient capacity violations between 6:00-8:40 A.M. The Special Master previously found in the March 6 Memorandum Decision that eight buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that two trips can be linked on the Jefferson Eastbound segment by one bus, thereby reducing the number of additional buses required for this line to seven.

(17) Line 55.

Line 55 has exhibited insufficient capacity violations between 6:20-9:00 A.M. The Special Master previously found in the March 6 Memorandum Decision that eight buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that four of the eight additional trips can be linked on the Adams Westbound segment by two buses, thereby reducing the number of additional buses required for this line to six.

(19) Line 66.

Line 66 has exhibited insufficient capacity violations between 6:00-9:00 A.M. The Special Master previously found in the March 6 Memorandum Decision that nine buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that six of the nine additional trips can be linked on the Ninth St. Eastbound segment by three buses, thereby reducing the number of additional buses required for this line to six.

(20) Line 68.

Line 68 has exhibited insufficient capacity violations between 6:00-9:00 A.M. The Special Master previously found in the March 6 Memorandum Decision that nine buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that six of the nine additional trips can be linked on the Washington Eastbound segment by three buses, thereby reducing the number of additional buses required for this line to six.

(24) Line 81.

Line 81 has exhibited insufficient capacity violations between 6:00-6:20 A.M. and 6:40-8:40 A.M. The Special Master previously found in the March 6 Memorandum Decision that seven buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that several trips can be linked on the Figueroa Northbound and N. Figueroa Southbound segments, thereby reducing the number of additional buses required for this line to six.

(27) Line 105.

Line 105 has exhibited insufficient capacity violations (and/or repeated and recent unanalyzed violations) between 6:20-7:00 A.M., 7:20-7:40 A.M. and 8:00-8:40 A.M. The Special Master previously found in the March 6 Memorandum Decision that four buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that two out of four additional trips can be linked on Vernon Westbound segment by one bus, thereby reducing the number of additional buses required for this line to three.

(28) Line 108.

Line 108 has exhibited insufficient capacity violations (and/or repeated and recent unanalyzed violations) between 6:00-7:40 A.M. and 8:00-8:20 A.M. The Special Master previously found in the March 6 Memorandum Decision that six buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that four of the six additional trips can be linked on the Slauson Eastbound segment by two buses, thereby reducing the number of additional buses required for this line to four.

(33) Line 163.

Line 163 has exhibited insufficient capacity violations between 6:20-7:20 A.M. and 7:40-8:00 A.M. The Special Master previously found in the March 6 Memorandum Decision that four buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that two of the four additional trips can be

linked on the Sherman Way Westbound segment by one bus, thereby reducing the number of additional buses required for this line to three.

(37) Line 180.

Line 180 has exhibited insufficient capacity violations between 6:00-6:20 A.M. and 6:40-8:20 A.M. The Special Master previously found in the March 6 Memorandum Decision that six buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that two of the six additional trips can be linked on the Vermont Northbound segment by one bus, thereby reducing the number of additional buses required for this line to five.

(41) Line 206.

Line 206 has exhibited insufficient capacity violations between 6:00-9:00 A.M. The Special Master previously found in the March 6 Memorandum Decision that nine buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that two of the nine additional trips can be linked on the Normandie Northbound segment by one bus, thereby reducing the number of additional buses required for this line to eight.

(42) Line 207.

Line 207 has exhibited insufficient capacity violations between 6:20-9:00 A.M. The Special Master previously found in the March 6 Memorandum Decision that eight buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the

Woodbury Declaration, I find that two of the eight additional trips can be linked on the Western Northbound segment by one bus, thereby reducing the number of additional buses required for this line to seven.

(44) Line 212.

Line 212 has exhibited insufficient capacity violations between 6:00-7:40 A.M. and 8:00-8:40 A.M. The Special Master previously found in the March 6 Memorandum Decision that seven buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that four of the seven additional trips can be linked on the La Brea Northbound segment by two buses, thereby reducing the number of additional buses required for this line to five.

(48) Line 243.

Line 243 has exhibited insufficient capacity violations between 6:00-8:00 A.M. The Special Master previously found in the March 6 Memorandum Decision that five buses (servicing six trips) are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that four of the six additional trips can be linked on the De Soto Northbound segment by two buses, thereby reducing the number of additional buses required for this line to four.

(49) Line 251.

Line 251 has exhibited insufficient capacity violations between 6:40-8:40 A.M. and 3:00-5:40 P.M. The Special Master previously found in the March 6 Memorandum Decision

that seven buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that four of the seven additional trips can be linked on the Soto Southbound segment by two buses, thereby reducing the number of additional buses required for this line to five.

(53) Line 424.

Line 424 has exhibited insufficient capacity violations between 6:00-6:40 and 8:00-8:40 A.M. The Special Master previously found in the March 6 Memorandum Decision that four buses are needed to bring this line into compliance with the 1.35 load factor target. Based on the Woodbury Declaration, I find that two of the four additional trips can be linked on the Ventura Westbound segment by one bus, thereby reducing the number of additional buses required for this line to three.

EXHIBIT B

As explained in the March 6 Memorandum Decision and in the present Order, the load factor data compiled by the parties reflect numerous violations on various lines for which, for one reason or another, the cause of the violation could not be properly ascertained. To deal with this gap in the data, the Special Master found that, since approximately one-half of all the load factor violations are attributable to "insufficient capacity," time periods reflecting multiple and recent "unanalyzed violations" will require additional buses to remedy these violations.

Having factually reevaluated my analysis of those lines exhibiting load factor violations unanalyzed for cause, I hereby amend the findings of the March 6 Memorandum Decision:

(6) Line 16.

The Special Master previously found in the March 6 Memorandum Decision that Line 16 has exhibited insufficient capacity or multiple and recent unanalyzed violations between 6:20-7:40 A.M., and that four buses are needed to bring this line into compliance with the 1.35 load factor target. Upon reconsideration, I find that there were no insufficient capacity violations and only one recent unanalyzed violation which occurred in the 7:20 a.m. – 7:40 a.m. time frame. Accordingly, I am reducing my previous findings by one bus trip and hereby finding that three additional buses are needed for this line.

(7) Line 18.

The Special Master previously found in the March 6 Memorandum Decision that Line 18 has exhibited insufficient capacity or multiple and recent unanalyzed violations between 6:00-7:40 and 8:00-8:40 A.M., and that seven buses are needed to bring this line into compliance with the 1.35 load factor target. Upon reconsideration, I find that there were no insufficient capacity violations and only one recent unanalyzed violation occurring in the 8:00 a.m. – 8:20 a.m. time frame. Accordingly, I am reducing my previous findings by one bus trip and hereby finding that six additional buses are needed for this line.

(9) Line 26.

The Special Master previously found in the March 6 Memorandum Decision that Line 26 has exhibited insufficient capacity or multiple and recent unanalyzed violations between 6:00-8:00 A.M., and that four buses are needed to bring this line into compliance with the 1.35 load factor target. Upon reconsideration, I find that there were no insufficient capacity violations and only one recent unanalyzed violation occurring in the 7:40 - 8:00 a.m. time frame. Accordingly, I am reducing my previous findings by one bus trip and hereby finding that three additional buses are needed for this line.

(27) Line 105.

The Special Master previously found in the March 6 Memorandum Decision that Line 105 has exhibited insufficient capacity or multiple and recent unanalyzed violations between 6:20-7:00 A.M., 7:20-7:40 A.M. and 8:00-8:40 A.M., and that four buses are needed to bring this line into compliance with the 1.35 load factor target. Upon reconsideration, I find that

that there were no insufficient capacity violations and only two recent unanalyzed violations occurring in the 8:00 a.m. – 8:20 a.m. time frame. Accordingly, I am reducing my previous findings by one bus trip and hereby finding that three additional buses are needed for this line.

(49) Line 251.

The Special Master previously found in the March 6 Memorandum Decision that Line 251 has exhibited insufficient capacity or multiple and recent unanalyzed violations between 6:40-9:00 A.M. and 3:00-5:40 P.M., and that seven buses are needed to bring this line into compliance with the 1.35 load factor target. Upon reconsideration, I find that only one insufficient capacity violation and one recent unanalyzed violation occurred in the 8:20 a.m. – 9:00 a.m. time periods. Accordingly, I am reducing my previous findings by one bus trip and hereby finding that six additional buses are needed for this line.

(56) Line 522.

The Special Master previously found in the March 6 Memorandum Decision that Line 522 has exhibited insufficient capacity or multiple and recent unanalyzed violations between 6:20-9:00 A.M., and that eight buses are needed to bring this line into compliance with the 1.35 load factor target. Upon reconsideration, I find that there were no insufficient capacity violations and only two non-recent unanalyzed violations occurring in the 7:40 a.m. – 8:00 a.m. time periods. Accordingly, I am reducing my previous findings by one bus trip and hereby finding that seven additional buses are needed for this line.