

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**PROCEEDING BEFORE SPECIAL MASTER DONALD T. BLISS**

LABOR/COMMUNITY STRATEGY CENTER, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case No. CV 94-5936 TJH (MCx)
	)	
vs.	)	<b>MEMORANDUM DECISION II</b>
	)	<b>AND FINAL ORDER ON</b>
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, <i>et al.</i>	)	<b>REMEDIAL SERVICE PLAN</b>
	)	<b>TO MEET 1.25 AND 1.20</b>
Defendants.	)	<b>LOAD FACTOR TARGET</b>
	)	<b>REQUIREMENTS</b>

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**MEMORANDUM DECISION II AND FINAL ORDER**

**I. BACKGROUND**

When the Labor/Community Strategy Center, *et al.* (“BRU”) and Los Angeles County Metropolitan Transportation Authority, *et al.* (“MTA”) (collectively, the “Parties”) entered into the Consent Decree in 1996 with a “strong common commitment to the improvement of bus service,”<sup>1</sup> a key objective was to “reduc[e] overcrowding by adding new service.” *See* Consent Decree Section II.A (hereinafter “Consent Decree” or “Decree”) (capitalizations omitted). As the MTA has noted, “by the time the Consent Decree was signed MTA bus riders were unquestionably experiencing poor service and excessive crowding.”<sup>2</sup> Unable to agree on a specific number of buses to be purchased by the MTA for this purpose, the Parties devised as a surrogate the concept of a load factor target (“LFT”), a specific ratio of bus passengers to bus

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<sup>1</sup> *See* Consent Decree at 3.

<sup>2</sup> MTA Plan for Continuing Consent Decree Compliance at 5 (dated March 2002) (hereinafter “MTA March 2002 Report”).

seats during 20-minute peak periods and one-hour off-peak periods, by which to measure the levels of crowding on bus lines.<sup>3</sup> See Consent Decree Section II.A.2.

Although the MTA has made significant service improvements to the bus system since the inception of the Consent Decree, it is undisputed that, during the weekday peak hours, the MTA did not meet the 1.25 LFT that became effective on June 30, 2000 on 75 non-exempt bus lines, and did not meet the 1.20 LFT that became effective on June 30, 2002 on 72 non-exempt bus lines. See Memorandum Decision and Order Re 1.25 Load Factor Target Findings at 4 and Exh. I (Aug. 6, 2002) (“August 6, 2002 Order”); Memorandum Decision and Order Re Deferral of 1.25 Load Factor Target for Seven Bus Lines at 8 (Sept. 9, 2002) (“September 9, 2002 Order”); Letter from Eric Mann to Special Master and attached Exhibit B (dated Nov. 12, 2002) (“JWG 1.20 LFT Submission”).

The Joint Working Group (“JWG”), composed of representatives of both the MTA and the BRU, concluded that 331 A.M. expansion service units<sup>4</sup> (“ESUs”) and 453 P.M. ESUs are required to meet the 1.25 and 1.20 LFTs during weekday peak hours on the overcrowded bus

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<sup>3</sup> As negotiated and agreed to by the MTA and the BRU, Section II.A of the Consent Decree sets forth a specific schedule of LFTs, according the MTA initial “discretion” as to how to meet the following targets “for all bus routes”: (1) 1.35 LFT – December 31, 1997; (2) 1.25 LFT – June 30, 2000; and (3) 1.20 LFT – June 30, 2002. Section II.A.1 of the Decree requires that “[t]hereafter MTA shall maintain the 1.2 load factor for the duration of this Consent Decree.” Section II.A.3 of the Decree states that the “MTA will plan to make available sufficient additional buses and other vehicles to meet these load factor targets,” and Section II.A.4 also mandates that if the MTA “fails to meet the target load factors for all bus lines by the dates specified,” the “MTA shall meet the target as soon as possible and reallocate sufficient funds from other programs to meet the next lower target load factor as scheduled.” See also *Labor/Community Strategy Ctr. v. LACMTA*, 263 F.3d 1041, 1048-49 (9<sup>th</sup> Cir. 2001) (“[D]ecree set out mathematically precise method of measuring bus overcrowding and a detailed schedule of load factor targets that were to be met by specific dates,” requiring that if the MTA “missed one of the scheduled LFTs, MTA ‘shall meet the target as soon as possible and reallocate sufficient funds from other programs . . . .’”), *cert. denied*, 535 U.S. 951 (2002). Furthermore, Section II.A.4 of the Consent Decree states that “[a]ny dispute concerning whether the targets have been met; or if the targets have not been met, whether sufficient funds have been reprogrammed to meet the next target” is to be resolved pursuant to the procedures set forth in the Consent Decree. See also Consent Decree Section V.B; *Labor/Community Strategy Ctr. v. LACMTA*, 263 F.3d at 1049-50 (“Special Master has inherent authority to issue orders and resolve disputes arising under the Consent Decree,” including “[a]ny dispute about the fund reallocation”).

<sup>4</sup> An expansion service unit (“ESU”) represents an additional trip operated by a 40-seat bus, or an appropriate equivalent, on the line during the affected sliding 20-minute period where there is a non-exempt exceedence. See Memorandum Decision and Order on Remedial Methodology; Meeting the 1.25 and 1.20 Load Factor Targets at 62 (December 9, 2002) (“Remedial Methodology Order”).

lines. *See* Letter from Rod Goldman and Ted Robertson to Special Master (dated March 14, 2003) (“JWG Submission on MTA Initial Service Plan”). According to the JWG, this will require the addition of 185 buses and 425,500 revenue service hours. *See id.* In its Initial Service Plan, the MTA proposed the adoption of alternative narrowly tailored remedies such as Rapid Buses, Limited Stop service, and improved schedule adherence in lieu of a portion of the additional expansion bus trips and buses identified by the JWG. *See* Los Angeles County Transportation Authority Service Plan for Consent Decree Load Factor Compliance: January 2003, Section II “Narrowly-Tailored Remedies” (submitted January 31, 2003) (“MTA Initial Service Plan”). After applying these “narrowly tailored remedies,” the MTA contended that only 245 weekday A.M. peak ESUs (86 fewer than designated by the JWG) and 336 weekday P.M. peak ESUs (117 fewer than designated by JWG) – equivalent to 125 buses and 287,500 revenue hours – were still required. *See* JWG Submission on MTA Initial Service Plan. For 70 of the remaining 125 buses or their equivalents, instead of adding expansion trips to crowded lines through procurement of additional buses, the MTA proposed system-wide service modifications and the use of HASTUS software to increase in-service productivity. *See* MTA Initial Service Plan, Section III “Service & Scheduling Modifications”; JWG Submission on MTA Initial Service Plan. The BRU opposed the MTA’s proposed alternative remedial measures and advocated the addition to service of the full number of 185 expansion buses and 425,500 revenue hours identified by the JWG. *See* JWG Submission on MTA Initial Service Plan.

Because the Parties could not agree on a remedial service plan, I established procedures to review alternative plans submitted by the MTA and the BRU. *See* Memorandum and Order on Development and Implementation of Service Plan to Meet 1.25 and 1.20 Load Factor Targets at 2-5 (March 18, 2003) (“March 18, 2003 Order”).

To ensure that progress would continue while the alternative plans were being reviewed, on March 18, 2003, I ordered the MTA to implement the components upon which there was baseline agreement within the JWG, directing the MTA immediately to “take steps to implement at least 245 A.M. and 336 P.M. weekday peak expansion service units (at least 125 buses and 287,500 revenue hours) by the June 2003 service change.” March 18, 2003 Order at 4.

Thereafter, pursuant to Sections II.A.4 and V.B of the Consent Decree, I undertook a review of the Parties’ alternative remedial service plans, which were far apart on a number of critical issues, to determine what remedial steps the Consent Decree requires to achieve the 1.20 LFT of June 30, 2002 “as soon as possible.” *See* Consent Decree Section II.A.4.

On September 5, 2003, I issued a Memorandum Decision and Proposed Order on Remedial Service Plan to Meet the 1.25 and 1.20 Load Factor Target Requirements (Sept. 5, 2003) (hereinafter “September 5, 2003 Memorandum” or “Proposed Order”) that utilized as a starting point the JWG’s determination that 185 buses and 425,500 revenue service hours are needed to alleviate bus overcrowding. The September 5, 2003 Memorandum analyzed the respective remedial proposals submitted by the Parties, and set forth my findings on the minimal remedies required to meet the 1.25 and 1.20 load factor targets. I outlined a remedial service plan that was issued in the form of a Proposed Order in order to give the MTA and the BRU the opportunity to agree upon the remedial measures to be implemented and to suggest modifications and refinements for making the remedial plan as effective and cost-efficient as possible.

Unable to agree upon the Proposed Order and its implementation, however, the MTA and the BRU submitted to the Special Master written briefing, declarations and other evidence pertaining to the Proposed Order, raising issues that are addressed in this supplemental Memorandum Decision and Final Order (hereinafter “Memorandum” or “Final Order”).

For the most part, the Parties' submissions do not focus on refining the Proposed Order to ensure that the 1.25 and 1.20 load factor targets are met efficiently. Rather, the BRU reargues the case for its own remedial service plan proposal, contending that load factor remedies must be funded through the reallocation of resources from other programs -- not through reduction of service elsewhere on the bus system. The MTA, on the other hand, declares that it accepts the Proposed Order except for the requirements to procure a specific number of additional buses and to increase by a specific amount the overall revenue service hours on overcrowded bus lines. As long as it has complete flexibility as to how to implement the required expansion service units, the MTA states that it is prepared to accept the Proposed Order. Without actual expansion of the bus fleet to alleviate bus overcrowding, however, the MTA's plan is a little like rearranging the chairs on a shrinking deck. I recognize that the MTA currently faces significant financial and budgetary constraints, but, as discussed more fully below, it is during times like these that the preservation and improvement of bus service to the overwhelming majority of the MTA's ridership who depend upon buses to get to jobs, schools and health care facilities becomes especially critical.

While I do not intend to address each and every argument raised by the Parties, there are several issues, including some that have dogged this proceeding for several years, that warrant additional comment. These are:

1. May bus-budgeted funds be reallocated to pay for load factor remedies or must all funds used to remedy bus overcrowding be reprogrammed from other program sources?
2. Does the Consent Decree permit the MTA to meet the load factor requirements through service reductions and modifications in other parts of the bus system?
3. Should the load factor remedies be measured solely by ESUs or bus trips without reference to additional buses or revenue service hours?

4. Does the HASTUS scheduling software program optimize the use of resources so as to preclude the need for additional expansion buses?
5. Should the Pasadena Light Rail Gold Line be deemed a load factor remedy for overcrowded buses?
6. Should the MTA be permitted to reduce its spare bus ratio from 20% to 17%?
7. Should the Special Master direct the MTA to terminate the MTA's Traffic Loader Demonstration Program on Line 66?
8. Should the MTA be ordered to implement specific missed trip remedies?
9. What level of expansion service should be added to alleviate bus overcrowding during off-peak hours?
10. Should the MTA modify its bus procurement plan to purchase additional expansion buses to meet the 1.25 and 1.20 load factor targets?
11. What are the appropriate parameters for monitoring and remedying bus overcrowding in excess of permissible load factor levels on an ongoing basis?

Each of these issues will be addressed in turn below.

The requirement that the MTA meet the 1.20 LFT "as soon as possible" by implementing appropriate and effective remedial measures is underscored by the persistent and ongoing levels of bus overcrowding reflected in the record. Based on a review of the line-by-line mapping of load factor exceedences contained in the MTA's most recent Quarterly Report, which covers the period from July 2003 through September 2003, it appears that 71 monitored bus lines exhibited load factor exceedences during weekday peak hours *above the 1.20 LFT* that became effective June 30, 2002.<sup>5</sup> See Consent Decree Quarterly Report for the Period Ending September 30, 2003 (dated October 2003) ("October 2003 Quarterly Report") (based on line-specific review of load factor exceedence mapping). The levels of bus overcrowding also appear to be

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<sup>5</sup> In practical terms, an exceedence above 1.20 LFT means that the *average* number of passengers at the checkpoint on each 40-seat bus moving in a specific direction during a 20-minute time period was more than 48 passengers, of whom more than 8 were standing. Since "point checks monitor 'only a sample of the number of bus trips' and consequently are 'only representative of the extent of overcrowding,'" it is fair to say that recorded exceedences represent only a portion of the extent of overcrowding throughout the bus system. See Memorandum Decision and Order Re Frequency of Point Checks at 6 (May 31, 2002) (citation omitted).

unacceptably high, as reflected in the magnitude of exceedences during the July 2003 through September 2003 time period. For example, 57 monitored bus lines exhibited one or more exceedences *above 1.35 LFT*<sup>6</sup> – the load factor requirement that became effective six years ago on December 31, 1997. *See id.* (based on line-specific review of load factor exceedence mapping). Moreover, 40 monitored bus lines exhibited one or more exceedences *above 1.5 LFT*;<sup>7</sup> 26 monitored lines exhibited one or more exceedences *above 1.6 LFT*;<sup>8</sup> and 15 monitored lines exhibited one or more exceedences *above 1.7 LFT*<sup>9</sup> during the same time period. *See id.* (conducted line-specific review of load factor exceedence mapping). As stated in previous orders, I fully recognize that given conditions on the street, load factor exceedences cannot be eliminated entirely; the Consent Decree does not require perfection. *See, e.g.,* Remedial Methodology Order at 2 n.2, 24. Moreover, there has been some progress in reducing the number and magnitude of exceedences for which the MTA is to be commended.<sup>10</sup> Nonetheless, the large number and high magnitude of exceedences on many of the monitored lines continuing through the most recent quarter for which data are available demonstrate that additional improvements are essential to meet the requirements of the Consent Decree. For this reason and

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<sup>6</sup> In practical terms, an exceedence above 1.35 LFT means that the *average* number of passengers at the checkpoint on each 40-seat bus moving in a specific direction during a specific 20-minute time period was more than 54 passengers, of whom more than 14 were standing.

<sup>7</sup> In practical terms, an exceedence above 1.5 LFT means that the *average* number of passengers at the checkpoint on each 40-seat bus moving in a specific direction during a specific 20-minute time period was more than 60 passengers, of whom more than 20 were standing.

<sup>8</sup> In practical terms, an exceedence above 1.6 LFT means that the *average* number of passengers at the checkpoint on each 40-seat bus moving in a specific direction during a specific 20-minute time period was more than 64 passengers, of whom more than 24 were standing.

<sup>9</sup> In practical terms, an exceedence above 1.7 LFT means that the *average* number of passengers at the checkpoint on each 40-seat bus moving in a specific direction during a specific 20-minute time period was more than 68 passengers, of whom more than 28 were standing.

<sup>10</sup> While the large number of bus lines exhibiting high magnitude load factor exceedences during the July 2003 through September 2003 quarter is a continuation of overcrowding patterns exhibited during previous quarters, there has been some progress. The number of lines exhibiting high magnitude exceedences improved in this most recent quarter for which data are available compared to the January 2003 through June 2003 period, when 74 lines exhibited one or more exceedences above 1.2 LFT; 70 lines exhibited one or more exceedences above 1.35 LFT; 61 lines exhibited one or more exceedences above 1.5 LFT; 49 lines exhibited one or more exceedences above 1.6 LFT; and 24 lines exhibited one or more exceedences above 1.7 LFT. *See* October 2003 Quarterly Report (based on line-specific review of load factor exceedence mapping).

the reasons discussed below, I find that the procurement of additional expansion buses is required to meet the 1.25 and 1.20 LFTs.

Based on more recent and updated information submitted by the Parties, as explained more fully below, I have modified the Proposed Order in several respects, including (1) increasing the number of expansion buses required by a total of 28 buses; (2) eliminating the requirement for 425,500 additional revenue service hours and instead directing the MTA to provide an additional 370,185 *in-service* hours (or an appropriate equivalent) to meet the 1.20 LFT on overcrowded bus lines; (3) requesting the MTA to provide additional information about funding sources for load factor remedies; (4) requesting the MTA to provide additional information and quantifiable targets to remedy missed trip exceedences, and (5) directing the JWG to review significant service curtailments proposed and/or implemented by the MTA to help meet the LFTs. A Final Order, amending the Proposed Order, is attached to this Memorandum. The analysis and findings contained in the September 5, 2003 Memorandum are incorporated herein, unless specifically modified, and will not be repeated.

## II. ANALYSIS AND FINDINGS

1. *May bus-budgeted funds be reallocated to pay for load factor remedies or must all funds used to remedy bus overcrowding be reprogrammed from other program sources?*

The BRU contends that Section II.A.4 of the Consent Decree prohibits the MTA from financing remedies to meet the load factor requirements with funds budgeted for the bus system. Rather, according to the BRU, Section II.A.4 requires the MTA to reprogram funds from other transportation programs to achieve the load factor targets. Response of Plaintiffs and the Plaintiff Class to the Special Master's Proposed Order and to the Underlying Memorandum



Decision at 5-22 (Oct. 20, 2003) (“BRU Response”). In the BRU’s view, the Decree does not permit the MTA to fund load factor remedies through curtailment of bus service system-wide. *Id.* at 11-17.

The BRU further contends that the alternative remedies to bus procurement suggested by the Honorable Terry J. Hatter in his September 23, 1999 decision, such as eliminating duplicative service and moving bus service from less crowded to more crowded lines, *see Labor/Community Strategy Ctr. v. LACMTA*, No. CV. 94-5936, slip op. at 5 (C.D. Cal. Sept. 23, 1999) (“Judge Hatter’s Order”), *aff’d*, 263 F.3d 1041 (9<sup>th</sup> Cir. 2001), *cert. denied*, 535 U.S. 951 (2002), do not justify the reallocation of bus-budgeted funds to meet the load factor targets. According to the BRU, the issues of funding sources and the interpretation of Section II.A.4 of the Consent Decree were not before Judge Hatter, and therefore Judge Hatter’s suggestions should be considered only in the context of the MTA’s obligation to comply fully with the reprogramming requirements of Section II.A.4 as properly construed under controlling law. BRU Response at 19-22. Under the BRU’s interpretation, only funds reprogrammed from other programs may be used to finance load factor remedies, although bus-budgeted savings from improved efficiencies can be used “to improve bus service in other parts of the bus system.” *Id.* at 17.

The MTA does not dispute that Section II.A.4 of the Consent Decree “mandates that if the MTA fails to meet the target load factors in a timely manner, the MTA shall ‘reallocate sufficient funds from other programs.’” The MTA’s Reply to the BRU’s Response to the Special Master’s Proposed Order on Remedial Service Plan to Meet 1.25 and 1.20 Load Factor Target Requirements at 4 (Nov. 3, 2003) (“MTA Reply”) (quoting Consent Decree Section II.A.4).

However, the MTA argues that an order to that effect “would be redundant of the Consent Decree,” and “any order mandating specific sources from which the MTA should reallocate funds would improperly intrude on the discretion entrusted to the MTA by law and by the Consent Decree for determining how load factor targets will be met.” *Id.* at 4.

The MTA further argues that issues related to source(s) of funding “are fundamentally irrelevant” since the “MTA does not challenge the service additions required under the Special Master’s Proposed Order” and, significantly, the MTA has not “asserted that the costs associated with the service additions are unattainable.” *Id.* at 5. *See also* Declaration of David Yale ¶¶ 4, 6, 36 (Nov. 3, 2003) (“Yale Decl.”). Moreover, the MTA contends that, contrary to the BRU’s claims, the MTA “does not reallocate service strictly for the purpose of meeting Consent Decree load factor targets,” MTA Reply at 8, and that “the service modifications complained of in the BRU Response would have been made regardless of the Consent Decree, in furtherance of the MTA’s obligation to minimize or eliminate unproductive or duplicative bus service.” *Id.*

The Parties’ discussion of this issue has been quite helpful, and I wish to clarify my findings as follows.

Where the MTA has failed to meet the load factor targets by the prescribed date(s), Section II.A.4 of the Consent Decree expressly requires that the “MTA shall meet the target as soon as possible and reallocate sufficient funds from other programs to meet the next lower target load factor as scheduled.” These “reprogrammed funds . . . shall be used to meet the target load factors.” Consent Decree Section II.A.4. Furthermore, the Consent Decree provides that the “MTA’s first priority for the use of all bus-eligible revenue realized in excess of funds already specifically budgeted 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 Section I.F. This provision was intended to implement the MTA Board's resolution, adopted in the Consent Decree, that the "highest priority" shall be "improvement of the quality of bus service in Los Angeles." See Consent Decree Section I.B.

Given these explicit Consent Decree mandates, it is clear that, where the MTA has failed to meet the load factor targets, it is obligated to reprogram funds *from other programs* to meet such targets as soon as possible in the future. Moreover, the MTA's *first priority* in the use of bus-eligible funds that have not been specifically budgeted for other purposes is to use such funds to comply with the Consent Decree, including achieving the specific load factor targets. This does not mean, as implied by BRU expert Thomas Rubin, that subsequent to the execution of the Consent Decree in October 1996, the MTA could not obligate any bus-eligible funds for other purposes. See Declaration of Thomas Rubin Re Reallocation of MTA Funds ¶¶ 16-18 (Oct. 20, 2003) ("Rubin Decl. Re Reallocation of Funds"). It does mean, however, that from the inception of the Decree, the MTA has been obligated to *prioritize foremost* the improvement of bus service in the agency's strategic and fiscal planning. It further means that when the MTA has failed to meet the load factor targets by the dates specified in the Decree and appropriate remedies have been determined, the MTA must reprogram sufficient *other* unobligated bus-eligible funds to implement remedies to meet these targets as soon as possible.

There is a practical, common sense reason for this as well. The LFTs were agreed to by the Parties in 1996 as performance indicators reflecting the MTA's progress in improving bus service system-wide. To simply shift around bus service to meet temporarily the load factor targets would distort the findings of these performance indicators and undermine the overarching purpose of the Decree.

The Consent Decree clearly contemplates that funds will be reprogrammed from outside

the bus budget. It would be in contravention of the Consent Decree to fund the load factor remedies primarily by reallocating funds within the bus system, *e.g.*, by freeing up funds through reductions in bus resources and service in other parts of the bus system. This principle also was clearly articulated during the 1.35 LFT remedy phase, when the Special Master noted that “the MTA should be mindful that the Decree would not permit significant reductions, elimination, or reallocation of existing service to meet the load factor target.” Memorandum Decision and Order In Re Load Factor Compliance at 36 (March 6, 1999) (“March 6, 1999 Order”).

I therefore find that the MTA is required under the Consent Decree to reprogram funds from *other* bus-eligible funding sources outside the current bus budget to implement the remedies required to meet the 1.25 and 1.20 load factor targets, and that the MTA *cannot* rely primarily on the internal reallocation of funds within the bus budget to do so.

This is not to say, as the BRU argues, that funds already within the bus budget may *never* be used to fund load factor remedies and that *only* funds reprogrammed from outside the bus budget may be used to meet the obligations of the Consent Decree. There is no such hard and fast rule embedded in the Decree. I find that if specific conditions are met, funds already within the bus budget may be used to provide some limited, partial funding of load factor remedies. Two requirements, however, must be satisfied, one suggested in the MTA Reply and the other well established in Consent Decree precedent.

First, any bus service cuts or adjustments resulting in savings that are applied to load factor reduction must be independently justified on objective efficiency and resource allocation criteria and *cannot* be implemented primarily for the purpose of reallocating funds to meet Consent Decree requirements. While the MTA has discretion to operate its overall transportation system in the most efficient and cost-effective manner possible, *see* MTA Reply at 8-9;

Declaration of Roderick Goldman ¶¶ 11-13 (Nov. 3, 2003) (“Goldman Decl.”), as discussed above, financing load factor remedies primarily by curtailing service in other parts of the bus system and reallocating funds already within the bus budget would contravene the letter and spirit of the Decree. Hence, any reductions or modifications in service that are applied to meet Consent Decree obligations must be independently justified and shown to improve the overall bus system to benefit the transit-dependent.

Second, any service reductions in other parts of the system cannot adversely affect the transit-dependent. In order to fulfill the fundamental purpose of the Consent Decree to improve bus service to the transit-dependent, the MTA bears the burden of demonstrating that any such bus service modifications will not “adversely affect[] existing service or impos[e] additional burdens on the MTA’s ridership.” *See* Memorandum Decision & Order re: Motion for Clarification and Modification at 5 (May 14, 1999) (“May 14, 1999 Order”); *see also* Remedial Methodology Order at 53; Memorandum Decision and Recommendations of the Special Master in re Night and Owl Service Modifications at 14-15 (February 24, 1998) (“Night Owl Decision”).

If these two conditions, which are discussed further in the following section, *see infra* at 16-21, are satisfied, then the MTA properly may consider the alternative capacity increasing measures set forth in Judge Hatter’s Order and utilize, if it so chooses, any savings it achieves through such service modifications to address partially the overcrowding on the monitored lines. This having been said, I find, especially given the significant, continuing levels of bus overcrowding reflected in the record, *see supra* at 6-7, that it is not possible for the MTA to meet its obligations under the Consent Decree primarily by reallocating funds within the bus budget. Funds must be reprogrammed from sources outside the bus budget to meet the 1.25 and 1.20 load

factor targets as required under the Decree.

The BRU not so subtly suggests that the Special Master has “characteristically showed deference and restraint” in mandating specific funding sources. *See* BRU Response at 20. However, perhaps fortunately for the Special Master, the MTA states that it has sufficient funds at this point to fund the overcrowding remedies, and that therefore a mandate of specific reprogramming requirements is unnecessary and irrelevant. *See* MTA Reply at 5; Yale Decl. ¶¶ 4, 6, 36. According to the MTA’s Mr. David Yale, the “MTA fully expects that it can meet the costs of the Consent Decree to which it agreed.” Yale Decl. ¶ 36; *see also id.* ¶ 4 (“MTA has sufficient financial capacity to meet its requirements under the Consent Decree”). Moreover, Mr. Yale acknowledges that “[s]ince the MTA has already dedicated *almost all eligible flexible funds* to bus operations,” additional bus operating funds to meet Consent Decree requirements “must come from other transit sources and further direct or indirect borrowing.” *Id.* ¶ 4. (emphasis added).

Continuing to exercise my “characteristic restraint,” I therefore will not make any specific determinations at this time as to sources of funding other than to state that the funding of the required load factor remedies must come in substantial part from other programs outside the bus budget. However, I am revising the Proposed Order to request the MTA to identify the specific funding sources from which the load factor remedy funds will be reprogrammed.

As noted above, I recognize that the MTA is facing significant financial constraints, including potentially substantial further reductions in federal, state, and sales tax support. These developments may well cause the MTA to defer or stretch out a number of projects. In this undoubtedly painful process of budget reevaluation, it is essential that the MTA meet, as a first priority, its legal obligations under the Consent Decree. It may be that some funds currently

allocated to projects that now must be deferred due to budget constraints can be reprogrammed to expand capacity on overcrowded bus lines. The MTA will need to make these decisions initially in the difficult fiscal environment facing it.

During times of severe fiscal constraints, it is especially critical that the MTA fulfill its Consent Decree mandates and ensure that the bus riders who depend on public transit for access to employment, education, health care and other activities are not the victims of budget cuts. Indeed, the Consent Decree arose out of a situation in which the plaintiff bus rider class alleged that the MTA had diverted resources from the maintenance of a quality bus system in order to develop rail and other new projects. To the extent that fiscal constraints require reduction in overall capital and operating expenditures, the MTA's *first obligation* must be to maintain and improve the quality of service to the vast majority of its riders who depend upon the bus system for their livelihoods. Only when those obligations are met can the MTA proceed with the development of other worthy new projects.

For the time being, the MTA continues to have the discretion to identify funding sources for load factor remedies and, as outlined below in the Final Order, will report on its funding decisions to the Special Master. If, however, the MTA does not identify specific funding sources from other programs to finance the additional capacity required to achieve the load factor targets, *see infra* Final Order at Section 6, then the Special Master will be obligated to make these determinations in the future in accordance with the procedures set forth in Sections II.A.4 and V.B of the Consent Decree. *See also* May 14, 1999 Order at 3 n.2; *Labor/Community Strategy Ctr. v. LACMTA*, 263 F.3d at 1049 (discussing MTA's obligation to reallocate funds from other programs to meet LFTs and that "[a]ny dispute about the fund reallocation" is to be "settled by the JWG, or if necessary, the Special Master"), *cert. denied*, 535 U.S. 951 (2002).

2. *Does the Consent Decree permit the MTA to meet the load factor requirements through service reductions and modifications in other parts of the bus system?*

The issue of the propriety of reallocating funds within the bus system to finance load factor remedies has been raised most specifically in the context of bus service reductions and modifications either implemented or proposed by the MTA. The BRU argues that, in the Proposed Order, the Special Master incorrectly allowed the MTA to “avoid the procurement of 30 expansion buses” necessary to meet the load factor targets by permitting the reallocation of existing service, equivalent to 30 buses and 70,000 revenue service hours, from other parts of the bus system to reduce bus overcrowding. BRU Response at 3-4, 31. According to the BRU, these service cuts are an impermissible way of funding the load factor requirements, *see supra* at 8-9, and, in any event, the MTA failed to meet its dual burden of demonstrating the “effectiveness and practicality” of the service reductions in precluding the need for 30 expansion buses, and of showing that the transit-dependent would not be adversely affected or additionally burdened. BRU Response at 33-36. The BRU further objects to the Special Master’s proposed remand of this issue to the JWG, allowing the JWG to consider the impact of these and other service reductions on the transit dependent and to take into account, *inter alia*, the effect of such service modifications on access to schools, jobs and health care.<sup>11</sup> *See* BRU Response at 35-36; *cf.* September 5, 2003 Memorandum at 54; Proposed Order at 3-4.

The MTA counters that the service modifications in question are not “strictly for the purpose of meeting Consent Decree load factor targets,” but rather “to match service to

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<sup>11</sup> In order to assess whether the MTA’s past and proposed curtailments or cancellations of bus service are in compliance with the Consent Decree, the JWG also was given the opportunity to review the impact on the transit dependent of the MTA’s reductions in service since 1996 of 87 buses and 92,900 revenue hours; the reduction in contract service of 30,000 revenue hours and 21 buses included in the MTA’s remedial service plan; and the service hour reductions included in the MTA’s FY04 Budget. *See* September 5, 2003 Memorandum at 54-55; Proposed Order at Section 4.



passenger demand and to be good stewards of the public dollar ....” MTA Reply at 8. Such modifications “would have been made regardless of the Consent Decree, in furtherance of the MTA’s obligation to minimize or eliminate unproductive or duplicative services.” *Id.* MTA argues that by objecting to the JWG review of the impact of service curtailments or cancellations on the transit-dependent, the BRU “is broadcasting its fiscally irresponsible and unreasonable unwillingness to ever even consider cutting a single hour of non-productive bus service.” *Id.* at 8.

As discussed above, *see supra* at 10-14, in accordance with the intent and meaning of Section II.A.4 of the Consent Decree, efficiency-producing modifications to scheduled bus service appropriately may be applied to reduce overcrowding when two factors are met: 1) such service reductions are independently justified on the basis of objective efficiency and resource allocation criteria; and 2) the transit-dependent are not adversely impacted. The purpose of these criteria are to ensure that existing bus service is not merely reshuffled within the system to meet temporarily the load factor targets. Thus, the MTA’s proposal to reallocate 30 buses and 70,000 revenue service hours to provide expansion capacity is permissible only if it meets this standard.

These criteria are consistent with the reasoning set forth in the Special Master’s September 5, 2003 Memorandum concerning service modifications. First, in assessing alternatives to the addition of expansion buses, the Special Master stated that, consistent with Judge Hatter’s September 1999 Order, the MTA “bears the burden of demonstrating the ‘effectiveness and practicality’ of its proposed alternative remedial measures in ‘reducing the number of expansion buses required ‘without adversely affecting existing service or imposing additional burdens on the MTA’s ridership.’” September 5, 2003 Memorandum at 32 (quoting Remedial Methodology Order). Second, in considering the MTA’s specific proposal to shift 30

buses and 70,000 revenue hours within the bus system to provide additional capacity on overcrowded lines, the Special Master emphasized that the Consent Decree requires that “any restructuring designed to achieve productivity and efficiency enhancements should be part of an overall plan to improve bus service to the transit-dependent population” and thus, “any evaluation of the impact of service modifications on the transit-dependent should take into account whether access to jobs, education, and health centers for the transit-dependent is improved or hindered.” *Id.* at 52-53 (quoting Night Owl Decision); *see also* Night Owl Decision at 4 (concluding that service modifications “designed to achieve productivity and efficiency enhancements should be part of an overall plan to improve bus service to the transit-dependent population,” a “fundamental purpose of the Consent Decree”).

The MTA provided some evidence that its proposed service changes to reallocate the equivalent of 30 buses and 70,000 revenue hours would “enhance the efficiency and functionality” of the overall bus system and that steps would be taken to mitigate any adverse effect on the transit dependent.<sup>12</sup> *See* Los Angeles County Transportation Authority Service Plan for Consent Decree Load Factor Compliance: January 2003/Revised March 2003 at Section III “Service & Scheduling Modifications” and Appendix C “Preliminary June 2003 Service Change Program” (submitted March 31, 2003) (“MTA Remedial Plan”); *see also* September 5, 2003 Memorandum at 53. On that basis, the Special Master accepted the modifications, but suggested that a more detailed analysis of the effect of these and other service changes on the transit-dependent would be needed in the future. *See* September 5, 2003 Memorandum at 53-54.

In adopting its new Transit Service Policy, the MTA has raised the need for more detailed

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<sup>12</sup> In its submissions commenting on the Proposed Order, the MTA further contends that its proposed service modifications are designed to improve the efficiency and functionality of the bus system, not to fund load factor reduction. *See* MTA Reply at 8 (service modifications were made independent of Consent Decree “to minimize or eliminate unproductive or duplicative bus services”); Goldman Decl. ¶¶ 11-12.

and specific criteria in order to “develop a framework for the efficient operation of bus and rail service.” *See* Goldman Decl. ¶ 13. The MTA’s Roderick Goldman states that the Transit Service Policy “outlines an objective process to measure route performance and take corrective actions to attempt to improve underperforming routes.” *Id.* If the MTA does propose to use such service changes, identified through application of the Transit Service Policy, to expand capacity to meet the load factor targets, the MTA should ensure that such modifications meet the criteria noted above: they are independently justified on the basis of objective criteria and do not adversely affect the transit dependent.

Additional information therefore is needed to show how the MTA applies objective criteria in identifying service modifications to provide expansion capacity. In the MTA Remedial Plan, the MTA generally describes three types of service changes comprising the proposed modifications (equivalent to 30 buses and 70,000 revenue hours): 1) cancellation or modification of routes duplicated by municipal bus operators; 2) cancellation or modification of low-performing bus routes; and 3) reallocation of excess service to time periods of greater passenger demand. *See* MTA Remedial Service Plan, Section III “Service & Scheduling Modifications.” It is not entirely clear, however, how the MTA applied objective criteria, such as those contained in the Transit Service Policy, in deciding to reallocate service from specific lesser traveled bus lines to monitored lines exhibiting a significant number of exceedences.

Moreover, the BRU questions whether the criteria contained in the Transit Service Policy are appropriate for determining what service changes are used to comply with the LFTs. According to the BRU, this issue is of increasing importance because the MTA has proposed to eliminate approximately 130 peak buses and 380,000 annual revenue service hours pursuant to the Transit Service Policy, *see* Declaration of Ted Robertson ¶¶ 9-10 and Exh. 5 (Oct. 20, 2003)

(“Robertson Decl.”), and to reduce contract service by approximately 185,000 revenue hours.<sup>13</sup> See Goldman Decl. ¶ 11; Robertson Decl. ¶ 7 and Exh. 4. The BRU contends that the MTA may be planning additional service reductions in the future. The MTA’s Annual 5309 Report submitted to the federal government in August 2002 apparently included plans for a “reduction in service of 213 buses” over a nine-year period and elimination of an aggregate 400,871 revenue hours during fiscal years 2004 through 2010. See Robertson Decl. ¶ 11 and Exhs. 6 (excerpt of MTA Annual 5309 Report) and 7 (MTA 10-Year financial forecast attached to MTA Annual 5309 report); *but see* Goldman Decl. ¶ 14 (“annual revenue service hour reductions” referenced by BRU “are not being included in the plan”).

For the foregoing reasons, while the Final Order incorporates the limited service modifications as set forth in the MTA Remedial Plan in order to provide the additional ESUs equivalent to 30 buses and 70,000 revenue service hours, the Final Order has been revised to direct the JWG to review the effect on the transit-dependent of these and other significant service reductions that might impact the MTA’s ability to meet its Consent Decree obligations and be used by the MTA to fund load factor remedies.<sup>14</sup> This is not intended to immerse the JWG in the MTA’s ongoing responsibility to make schedule changes and service modifications that improve system efficiency and reflect changing demographics. Rather, the JWG’s mandate is to review significant service modifications, in particular changes that might involve the reallocation of bus

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<sup>13</sup> The MTA’s Roderick Goldman states that the MTA’s fiscal year 2004 budget “does include a reduction of nearly 185,000 revenue hours for contracted services.” Goldman Decl. at ¶ 11. The BRU provides slightly different figures, stating that as of October 2003, the MTA has approved a reduction of 118,188 annual revenue contract service hours, for a total drop in annual revenue service hours of 193,835. See Robertson Decl. ¶ 7.

<sup>14</sup> This review also may include the Consent Decree-related implications of the MTA’s reductions in service since 1996 of 87 buses and 92,900 revenue hours; the reduction in contract service of 30,000 revenue hours and 21 buses included in the MTA’s Remedial Plan; the service hour reductions included in the MTA’s FY04 Budget; and the proposed reductions referred to in the MTA’s Annual 5309 Report. See September 5, 2003 Memorandum at 54-55; Proposed Order at Section 4. If the MTA is proposing or planning to introduce any other significant service reductions that will reallocate service to the monitored bus lines, the JWG also may review the effect of such proposed changes.

service to meet the LFTs, in order to determine (1) whether such service modifications are independently justified; (2) whether such service curtailments adversely affect the transit-dependent; and (3) whether the overall effect of the service modifications is to improve bus service systemwide. In pursuing this limited mandate, the JWG shall consider:

- the appropriateness of the criteria set forth in the Transit Service Policy, or other criteria proposed by the MTA, to modify or curtail significantly existing bus service in meeting Consent Decree obligations;
- whether service curtailments proposed to be applied to meet Consent Decree obligations are justified independently on the basis of such objective criteria; and
- the adequacy of steps taken to mitigate any adverse effect of such service curtailments on transit-dependent riders.

Where there is agreement within the JWG, service adjustments that address these concerns can be made at any time. Where there is no agreement within the JWG concerning the appropriateness of past or future service curtailments that are reallocated to meet the load factor targets, either party may submit its recommendations and relevant evidence on such matter(s) to the Special Master by June 30, 2004, with the findings of the Special Master to be incorporated in the December 2004 basic service change.

**3. *Should load factor remedies be measured solely by expansion service units (ESUs) without reference to additional buses or revenue service hours?***

A primary issue of contention is whether the load factor remedies should be measured solely by the number of bus trips or expansion service units (“ESUs”) to be added to the bus system, or whether the MTA should be directed to place into service a specific number of expansion buses and additional revenue service hours.

The MTA states that it “accepts the Proposed Order and agrees to comply fully with the number of expansion service units (“ESUs”) to be added.” The MTA’s Response to the Special

Master's Proposed Order on Remedial Service Plan to Meet 1.25 and 1.20 Load Factor Target Requirements at 2 (October 20, 2003) ("MTA Response"). The MTA requests, however, that the Final Order simply "mandate the number of bus trips (or their equivalents) that the MTA must add in order to achieve the 1.25 and 1.20 load factor targets, but not mandate a particular number of buses to purchase and place into service." *Id.*

The MTA bases this proposition primarily on the additional service capacity that it states will be provided by the application of upgraded HASTUS scheduling software. According to the MTA, by using the new software during the June 2003 shake-up, it took "substantial measures consistent with the Proposed Order in order to achieve compliance with the Consent Decree ...." *Id.* at 3. The MTA was able to implement 250 of the 336<sup>15</sup> A.M. peak ESUs and 336 of the 453 P.M. peak ESUs "ordered by the Special Master,"<sup>16</sup> *id.* at 3, by adding only 8 buses during the A.M. peak period and 18 buses during the P.M. peak period.<sup>17</sup> *See* Declaration of Roderick Goldman ¶ 2 (Nov. 26, 2003) ("Goldman Decl. II"). This was possible, the MTA asserts,

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<sup>15</sup> Although the Proposed Order directed the MTA to implement 336 ESUs during the A.M. peak hours, *see* Proposed Order at Section 2, the correct number of ESUs for the A.M. peak period is 331, the number determined by the JWG to be necessary to achieve the 1.25 and 1.20 LFTs. *See* September 5, 2003 Memorandum at 10. This correction is reflected in the Final Order.

<sup>16</sup> For purposes of clarification, since the Proposed Order was issued on September 5, 2003, *after* the June 2003 service change, the MTA's addition of ESUs (250 A.M. peak ESUs and 336 P.M. peak ESUs) in June 2003 was not done pursuant to the Proposed Order. Rather, the MTA's actions appear to be in response to the Special Master's March 18, 2003 Order directing the MTA to implement the baseline components of the MTA's Initial Service Plan upon which the Parties agreed, specifically "to implement at least 245 A.M. and 336 P.M. weekday peak expansion service units (at least 125 buses and 287,500 revenue hours)," until issues disputed by the Parties could be resolved by the Special Master. *See* March 18, 2003 Order at 4; *supra* at 2-4.

<sup>17</sup> As the BRU notes, the MTA has provided inconsistent information concerning the amount of ESUs added during the June 2003 change-over. In contrast to the MTA Response, the MTA states in its most recent Quarterly Report that, in June 2003, it added the full complement of ESUs identified by the JWG's application of the remedial methodology -- "784 service units," 331 A.M. peak ESUs and 453 P.M. peak ESUs. *See* October 2003 Quarterly Report at 3-4. In the previous Quarterly Report, the MTA also contended that "[b]y utilizing optimization techniques" such as HASTUS software, the MTA "incorporated the additional 784 service units" in the June 2003 service change with "23 additional buses and a 70,000-hour increase in annual service hours." Consent Decree Quarterly Report for the Period Ending June 30, 2003 at Section II "Additional Expansion Service Capacity (dated July 2003) ("July 2003 Quarterly Report"). According to the BRU, however, the MTA has indicated during JWG meetings that, during the June 2003 change-over, the MTA added the number of ESUs referred to in its Response -- 250 A.M. peak ESUs and 336 P.M. peak ESUs -- not 784 ESUs. *See* Letter brief from Ted Robertson to Special Master at 2 (dated Nov. 17, 2003).

because the bus scheduling efficiencies generated by the new HASTUS software substantially increased the number of hours that MTA buses are “actually servicing passengers” and decreased the number of unproductive hours consumed by layover and deadhead time. MTA Response at 3-6. The MTA contends that, as a result, it apparently added 58,000 in-service revenue hours using only 18 additional peak buses, rather than the previous estimate that 125 additional peak buses would be required to supply the additional trips. *Id.* at 6; *cf.* Goldman Decl. II ¶ 2 (clarifying that 18, not 68, peak buses added during June 2003 change-over).<sup>18</sup>

Furthermore, the “standard of measurement to assess increased bus service levels,” the MTA asserts, was altered by the Special Master’s December 2002 Remedial Methodology Order, which by introducing the ESU concept, “shifted the focus of measuring bus service levels away from the number of buses added to the amount of trips and seating capacity needed to meet load factor targets.” MTA Response at 4.

Finally, as further discussed below, the MTA asserts that an order mandating a specific number of expansion buses is unnecessary because it “should be permitted to increase service by means other than simply adding new buses,” specifically by adding “substantial additional transport services through its debut of the Gold Line rail system, which links Pasadena to downtown Los Angeles.” *Id.* at 2.

In the BRU’s view, the MTA’s contentions that upgraded HASTUS scheduling software and operation of the new Pasadena Light Gold Rail Line can supply the required expansion capacity are “based on no proof whatsoever, and certainly are not based on any evidence about trips, buses, and revenue hours needed to be added to the 75 bus lines with sample overcrowding horribly in violation of the Consent Decree’s load factor requirements.” Reply of Plaintiffs and

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<sup>18</sup> As noted previously, the MTA provides inconsistent information in its July 2003 Quarterly Report, stating that the MTA “deploy[ed] 23 additional buses and a 70,000-hour increase in annual service hours” in the June 2003 service change. *See* July 2003 Quarterly Report, Section II “Additional Expansion Service Capacity.”

the Plaintiff Class to MTA's Response to the Special Master's Proposed Order on Remedial Service Plan to Meet 1.25 and 1.20 Load Factor Requirements at 3-4 (Nov. 3, 2003) ("BRU Reply"). The BRU asserts that these new proposals should be viewed in the context of the MTA's many attempts to avoid procuring expansion buses. First, in 2002, the MTA proposed to develop an "entirely new" remedial methodology that "would require no fleet-expansion remedies." *Id.* at 1. Second, in 2003, the MTA recommended alternative remedies other than the purchase of expansion buses to provide the equivalent of 185 buses and 425,500 revenue hours identified by the JWG's application of the refined remedial methodology.<sup>19</sup> *Id.* at 2-3. Now, the BRU contends that the MTA appears "to have abandoned its foregoing exemption arguments, and to have expanded its cuts-in-service arguments, in yet another last-gasp attempt to prevent any expansion of its bus fleet needed to comply with the long past due 1.35, 1.25, and 1.20 load factor reduction requirements." *Id.* at 3. MTA's "most recently argued" position is that "all ESUs maybe or probably now might be covered by its enhanced Hastus scheduling software program and by its costly operation of the new Pasadena Light Rail Gold Line." *Id.*

The BRU insists that the additional bus service capacity needed to remedy bus overcrowding must be measured by "trips, buses and revenue hours." *Id.* at 5. The BRU states that "[m]atching additional bus trips for load factor remedies to additional buses and revenue hours continues to be how actual expansion of the bus system is achieved and measured, whether scheduled by hand or by computer," *id.* at 6, and points out that, in its scheduling process, the MTA determined the amount of service hours and the number of bus trips prior to the use of the

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<sup>19</sup> In its Remedial Plan proposal, the MTA contended that the procurement of new expansion buses was not necessary to implement load factor remedies to achieve the 1.25 and 1.20 LFTs. The MTA asserted that it could implement the number of ESUs determined by the JWG to be necessary to meet the LFTs without any expansion buses, but rather through narrowly-tailored exemption remedies such as Metro Rapid Service and Limited Stop Service, the use of HASTUS software designed to increase scheduling efficiency, service modifications, and the reallocation of 55 spare buses to the active fleet. See September 5, 2003 Memorandum at 14-23.



HASTUS software. Opposition of Plaintiffs and the Plaintiff Class to MTA's Proposal Re Demonstration of HASTUS Software at 4 n.2 (Dec. 5, 2003) ("BRU HASTUS Opposition"); cf. MTA's Proposal Re Demonstration of HASTUS Software at Exh. A (Nov. 26, 2003) ("MTA HASTUS Proposal"). Measuring system expansion solely by bus trips, rather than buses and revenue hours, the BRU asserts, "would allow MTA to cut resources from other parts of the system in order to add trips for load factor." BRU Reply at 7. In the BRU's view, this would "legitimize [the] practice of having shorter spans of service, longer frequencies of service, fewer stops, shorter trips, less layover time, fewer whole lines, etc. – all negatively affecting riders – in order not to expand [the] bus system." *Id.* at 7-8. The BRU contends that the MTA's request that the Special Master specify only the number of bus trips to be added to the system "is nothing but a mask to hide its ongoing practice of not reallocating funds to expand its bus system." *Id.* at 8.

Having considered the arguments of the Parties, I have concluded that eliminating any requirement that additional buses be mandated to meet the load factor targets would substantially change the way the Consent Decree has been interpreted and applied, as confirmed by the courts, since its inception. Perhaps if more progress had been achieved by the MTA in reducing load factor exceedences on the monitored bus lines, or if the MTA's strategic and operational plans had provided for the addition of more expansion buses to the active fleet, then it is possible that the MTA's proposed technological improvements and route structure realignments might warrant this substantial departure from longstanding precedent. However, we are not there yet.

There has been considerable turnover at the MTA since the Parties voluntarily entered into the Consent Decree in 1996. It is therefore worth repeating here that the most intractable and disputed issue during negotiation of the Consent Decree was the specific number of buses

that the MTA would be required to obtain to alleviate overcrowding and to improve the quality of bus service. *See* May 14, 1999 Order at 2. This issue was so deeply contested that it threatened to unravel any agreement between the Parties. The settlement impasse finally was overcome with the introduction of the LFT concept; “[r]ather 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.” *Id.* Thus, the load factor targets were incorporated in the Consent Decree as a surrogate for the number of buses to be procured by the MTA. While the MTA was given the opportunity initially to demonstrate that it could meet these targets through a less ambitious bus procurement program than the BRU thought necessary, it was the intention of the Parties in forming the Decree that the MTA reduce bus overcrowding by procuring additional buses to expand the size of its active fleet.

This is evident in the language of the Consent Decree. Under Section II.A of the Consent Decree, which is captioned “Reducing Overcrowding By Adding New Service,” Section II.A.3 states that “MTA will plan to make available *sufficient additional buses* and other vehicles to meet these target load factors.” (emphasis added). Furthermore, Section II.A.3 continues that “when MTA makes its scheduled modification to its long range plan it shall incorporate plans to insure the *availability and operation of the additional buses* and other vehicles required to meet these targets.” (emphasis added). Thus, the history and language of the Consent Decree support the proposition that the MTA has a contractual obligation to obtain and operate a sufficient number of “additional buses” to expand the fleet to provide the service capacity required to meet the prescribed load factor targets.

The propriety of measuring load factor remedies by the number of expansion buses, rather than simply bus trips, is well established in Consent Decree precedent. During the 1.35 LFT remedy phase, the MTA raised the same argument 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.” May 14, 1999 Order at 7 n.9. The MTA’s current argument on HASTUS efficiency echoes the MTA’s contention at that time that advanced scheduling techniques could reduce the number of buses needed to supply the additional bus trips found by the Special Master to be necessary to meet the 1.35 LFT. *See id.* at 5, 22-23. The Special Master concluded, however, that “[g]iven the history and language of the Consent Decree . . . a finding on the specific number of expansion buses (or equivalent vehicular capacity) is critical to the resolution of this dispute.” *Id.* at 7 n.9. In the current 1.25 and 1.20 LFT remedy phase, the MTA has not provided sufficient evidence to justify a departure from this precedent.

Rather, the MTA has had substantial notice that the purchase of additional expansion buses likely would be required to meet the 1.25 and 1.20 load factor requirements. As the Special Master earlier stated during the 1.35 LFT remedy phase, the “MTA has had ample signs (through preliminary point check data) that additional bus capacity was needed to meet the upcoming load factor targets. . . . 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.” *Id.* at 19. In fact, as the MTA well knows, expansion buses were mandated as part of the 1.35 remedial plan approved by the courts. *See* Judge Hatter’s Order at 4-5 (affirming Special Master’s order that MTA procure 350 expansion buses), *aff’d*, 263 F.3d 1041, 1048 (9<sup>th</sup> Cir. 2001) (concluding “the [1.35 LFT] remedial plan was based on a correct

interpretation of the consent decree”), *cert. denied*, 535 U.S. 951 (2002).

The evidentiary record in this phase of this proceeding likewise reflects significant and ongoing patterns of overcrowding on the monitored bus lines that warrant additional bus expansion capacity. Based on point check data collected by the MTA and the BRU, the Special Master determined in September 2002 that the MTA had not met the 1.25 LFT on 75 non-exempt bus lines and the JWG determined in November 2002 that the MTA had not met the 1.20 LFT on 72 non-exempt bus lines. *See* September 5, 2003 Memorandum at 7. Moreover, as discussed above, *see supra* at 6-7, the most recent Quarterly Reports prepared by the MTA show that, between January 2003 and June 2003, 74 monitored lines exhibited exceedence(s) above 1.20 LFT, and between July 2003 and September 2003, 71 of the monitored lines exhibited exceedence(s) above the 1.20 LFT. *See* October 2003 Quarterly Report (based on line-specific review of load factor exceedence mapping).

Over a period of years the MTA has argued that alternative means, such as improved schedule adherence, scheduling techniques, new technologies and software, improved field supervision, service restructuring and modifications, Limited Stop service, Rapid Bus service, radio system monitoring, and sector reorganizations would be sufficient to meet the load factor targets without procuring additional expansion buses. *See, e.g.*, March 6, 1999 Order at 16-17; May 14, 1999 Order at 22-23; MTA Remedial Plan, Section II “Narrowly-Tailored Remedies.”

However, with the exception of missed trip exceedences where there has been improvement largely due to the replacement of aged, dilapidated buses, the MTA has not demonstrated success in meeting the load factor targets through such other means without expanding the size of the active fleet. For example, during the 1.35 LFT remedy phase in 1998-1999, the MTA asserted that poor schedule adherence was the cause of 29.1% of exceedences

and proposed various remedial measures other than the addition of expansion buses, such as automated passenger counters, radio system monitoring techniques, and the deployment of additional on-street supervisors. *See* March 6, 1999 Order at 16, 28. In March 2002, the MTA acknowledged that although such remedial measures were included in its 1.35 LFT remediation plan, lack of schedule adherence still accounted “for nearly half of all violations over the last 3 years.” *See* MTA March 2002 Report at 37. Nonetheless, the MTA proposed a new compliance plan that it characterized as “a *similar intensive effort* devoted to improving schedule adherence, particularly early operation.” *Id.* (emphasis added).

In this current remedy proceeding for the 1.25 and 1.20 LFTs, the MTA similarly has contended that some bus lines that “have experienced overcrowding solely due to poor schedule adherence” should be “excluded from the addition of service units” and instead “targeted for increased field supervision to improve bus spacing and relieve passenger overcrowding.” *See* MTA Remedial Plan, Section II “Narrowly-Tailored Remedies.” Yet, as discussed in my September 5, 2003 Memorandum, the MTA stated in its July 2003 Quarterly Report that the “rate of load factor exceedences per peak hour *increased* slightly” during the monitoring period *after* the increase in field supervision in March 2003. *See* September 5, 2003 Memorandum at 42 (emphasis added). Moreover, in my review of the most recent October 2003 Quarterly Report, I found that, between July 2003 and September 2003, 19 of the 32 lines with increased field supervision exhibited exceedences above 1.20 LFT during the time(s) of day and at the point check location(s) targeted for supervision; there were exceedences as high as 1.92 LFT. *See* October 2003 Quarterly Report (conducted line-specific review of load factor exceedence mapping); *see also* MTA Remedial Plan, Section II “Narrowly-Tailored Remedies” (list of 32 targeted lines by direction, time of day, and location). Increased on-street supervision in

conjunction with expanded service, however, appears to have helped to reduce overcrowding on certain lines.<sup>20</sup>

The MTA also has argued in this proceeding that implementation of “narrowly-tailored remedies” like Metro Rapid Service on Lines 45, 111, 204, and 561 and Limited Stop Service on Lines 60 and 66 would result in “faster” bus operations that would provide “additional trips [that] should have the effect of reducing overcrowding on these lines,” thereby enabling the MTA to “provide the identified number of service units without the addition of buses and revenue service hours.” *See* MTA Remedial Plan, Section II “Narrowly-Tailored Remedies”; *see also* September 5, 2003 Memorandum at 15-16 (describing MTA Rapid Bus and Limited Stop service proposals). Yet, despite these initiatives, these bus lines continue to exhibit excessive overcrowding.

For example, after the introduction of Rapid Bus service on Lines 111 (Florence Avenue) and 561 (Van Nuys Blvd.) in June 2003, there was no noticeable reduction in overcrowding levels. Indeed, bus overcrowding conditions worsened on Line 111 (Florence Avenue) after the inauguration of Rapid Bus service. The eastbound Line 111 exhibited no exceedences during the weekday peak hours from January 2003 through June 2003, yet exhibited five exceedences attributable to lack of schedule adherence and insufficient capacity, ranging from 1.27 LFT to 1.7 LFT, during the weekday peak hours between July 2003 and September 2003. *See* October 2003 Quarterly Report (review of mapping of load factor exceedences on Line 111). Whereas the westbound Line 111 exhibited two exceedences attributable to lack of schedule adherence

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<sup>20</sup> While increased field supervision was deployed on the 32 targeted lines in March 2003, *see* July 2003 Quarterly Report, Section III at 1, the MTA apparently added bus trips to most of these lines in the June 2003 service change. *See* October 2003 Quarterly Report at Appendix A (listing of line level service changes in June 2003 shakeup program). This appears to have resulted in some improvement in reducing overcrowding. As noted above, after the June 2003 shake up, 19 of the 32 targeted lines exhibited load factor exceedences from July 2003 through September 2003, compared to 22 lines during the March 2003 through June 2003 period. *Cf.* September 5, 2003 Memorandum at 42.

and insufficient capacity during the weekday peak hours from January 2003 through June 2003, it exhibited seven such exceedences, ranging from 1.23 LFT to 1.81 LFT, during weekday peak hours between July 2003 and September 2003.<sup>21</sup> *See id.*; *see also* September 5, 2003 Memorandum at 34-38 (discussing persistent overcrowding on Lines 45 and 204 despite introduction of Rapid Bus service).

Overcrowding similarly persists on Lines 60 (Long Beach Blvd.) and 66 (E. Olympic Blvd.) even after the introduction of Limited Stop Service in June 2003. For example, from January 2003 through June 2003, the eastbound Line 66 (E. Olympic Blvd.) exhibited 33 exceedences (based on 18 point checks) attributable to lack of schedule adherence and insufficient capacity during weekday A.M. peak hours at the Ninth & Figueroa checkpoint. *See* October 2003 Quarterly Report (conducted review of mapping of load factor exceedences on Line 66). After the inception of Limited Stop service in June 2003, from July 2003 through September 2003, the eastbound Line 66 exhibited 14 exceedences (based on eight point checks) attributable to lack of schedule adherence and insufficient capacity, ranging as high as 1.43 LFT, during weekday A.M. peak hours at the same location. *See id.*

In contrast, the MTA added Limited Stop service *and* additional bus trips to Line 60 (Long Beach Blvd.) in June 2003, which appears to have resulted in some progress in reducing overcrowding. According to the October 2003 Quarterly Report, 11 A.M. bus trips and 16 P.M. bus trips were added to Line 60. *See* October 2003 Quarterly Report, Appendix A at A23 (description of changes made on Line 60-360 during June 2003 service change). Whereas the eastbound Line 60 exhibited eight exceedences (based on 17 point checks) attributable to lack of

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<sup>21</sup> Line 561 (Van Nuys Blvd.), which was replaced by Rapid Bus Line 761 similarly did not experience a reduction in overcrowding as a result. Whereas Line 561 exhibited a total of 20 exceedences attributable to lack of schedule adherence and insufficient capacity from January 2003 through June 2003, its Rapid Bus replacement Line 761 exhibited 20 such exceedences during the shorter time period of July 2003 through September 2003. *See* October 2003 Quarterly Report (conducted review of mapping of load factor exceedences on Lines 561 and 761).

schedule adherence and insufficient capacity during weekday A.M. peak hours at the Seventh & Alameda checkpoint between January 2003 through June 2003, it exhibited only two such exceedences (based on eight point checks) during weekday A.M. peak hours at the same point check location from July 2003 through September 2003. *See* October 2003 Quarterly Report (conducted review of mapping of load factor exceedences on Line 60). Moreover, the magnitude of exceedences appeared to decrease. Compared to five non-missed trip exceedences of 1.3 LFT or greater in magnitude between January 2003 and June 2003, there was only one non-missed trip exceedence above 1.3 LFT between July 2003 and September 2003. *See id.*

Given the judicially confirmed interpretation of the Consent Decree and the continuing number and magnitude of exceedences on the monitored lines through the most recent quarter for which data are available, I have concluded that additional expansion buses are an important component of the remedies required to meet the 1.20 LFT. I therefore cannot accept at this time the MTA's proposal that essentially would scuttle well-established precedent and the recently refined methodology, and accord it carte blanche to meet the ESU requirements without any mandate of additional buses through whatever means or devices it chooses, *e.g.*, as most recently suggested in its Response to the Proposed Order, through the upgraded HASTUS software program and the introduction of light rail.<sup>22</sup>

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<sup>22</sup> MTA's new management apparently is not pleased with the way the Consent Decree entered into by its predecessors has been implemented. In his declaration, David Yale states that "the Consent Decree has had no benefits that could not have been achieved without the Decree, and it has diverted significant financial resources in process to questionable bus service expansions," Yale Decl. ¶ 19, which are "a poor investment of scarce public funding." *Id.* ¶ 17. Moreover, according to Mr. Yale, "the Consent Decree has, and will continue to have, detrimental impacts on the Regional Transportation System in Los Angeles County for many years to come." *Id.* ¶ 4. Without the Decree, Mr. Yale states that the MTA "would have had additional financial resources" for highway construction. *Id.* Mr. Yale candidly acknowledges that "the MTA has carefully developed a short range plan that balances these needs as best it can under the constraints of the Consent Decree ...." *Id.* (emphasis added). However, Mr. Yale continues, "any further unanticipated financial changes that are needed for the Decree will have to be undone as soon as the Decree expires in early FY 2007...." *Id.* (emphasis added).

Given these views on the alleged shortcomings of the Consent Decree presented by an MTA planning official in the record of this proceeding, it is all the more imperative that the MTA commit to a specific bus capacity expansion program that will provide lasting improvements in the quality of bus service for the transit-dependent -- in



The HASTUS program and the Gold Line are discussed below in greater detail; however, it is important to recognize that the concept of the ESU was developed in response to the MTA's request that a more refined methodology be developed to determine what remedies are appropriate to meet load factor target exceedences. *See generally* Defendant MTA's Proposal Re Comprehensive Briefing Re Load Factor Compliance and Suitable Remedies (August 16, 2002); *see also* Remedial Methodology Order at 6. The ESU concept, based on additional bus trips required to address exceedences in specific sliding 20-minute windows, was created to give the MTA additional flexibility in determining the appropriate response to the expansion capacity needs of particular bus lines. *See* Remedial Methodology Order at 52-55. For example, the MTA has entered into contracts to procure larger buses, including articulated buses, and the

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accordance with the letter and spirit of the Consent Decree -- beyond the expiration of this Decree. It should be noted that Mr. Yale's views present an interesting contrast to what the MTA staff apparently wrote, at least with respect to the procurement of new buses, in a briefing for the MTA Board on the Consent Decree. The staff outlined the benefits of compliance with the Decree, including the transformation of the MTA bus fleet from "the oldest to the newest fleet of major bus companies," and stated that "MTA's new buses are worth every penny." *See* Declaration of Thomas A. Rubin Re Consent Decree Costs at Attachment II (Oct. 14, 2003) ("Rubin Decl. Re Consent Decree Costs") (briefing update on Consent Decree prepared by MTA staff dated September 19, 2002).

Furthermore, the BRU and its expert, Thomas Rubin, who have been sharply critical of the MTA's implementation of the Decree, also have presented a more positive view of the benefits achieved by the Decree in improving bus service for transit-dependent riders, which is, after all, the singular purpose of the Decree. In his Declaration Re Reallocation of MTA Funds, Mr. Rubin analyzes in detail the effects of the Consent Decree, finding that in the six-year post-Consent Decree period, the MTA has gained a total of 81.6 million annual riders. Rubin Decl. Re Reallocation of Funds ¶ 23. According to Mr. Rubin, MTA ridership increased from 364 million in 1996 to 445 million in 2002, resulting in an increase in total fare revenues of \$100.5 million over the six-year period. Rubin Decl. Re Consent Decree Costs at 3. This is in stark contrast to a loss of 133.6 million annual passengers over the eleven year period preceding the Consent Decree. Rubin Decl. Re Reallocation of Funds ¶ 23. Mr. Rubin also shows that, even taking into account what he views as "extremely overstated" Consent Decree expenditures per new rider, the cost per new rider -- 83% of whom are bus riders -- is still far below other transit modes. *Id.* ¶¶ 25, 26, 28. Mr. Rubin describes other benefits of the Consent Decree: "The [Consent Decree] has made great progress in reducing overcrowding, and pass-by's, on MTA bus routes . . . MTA service has also become more reliable and the condition of MTA's bus fleet improved substantially as the average age has decreased. The fares to ride MTA bus and rail have been kept low for MTA's huge numbers of extremely low-income riders. The service added for CD compliance has meant shorter headways, and the reduced overcrowding has decreas[ed] running times, speeding travel for these bus riders. The Rapid Bus Program, which MTA has claimed as a [Consent Decree] cost . . . is another significant benefit for bus riders. Many new bus lines have begun service. The speed-up of bus replacement has meant cleaner air for all Los Angeles County residents . . . All in all, hundreds of thousands of MTA bus and rail riders *each day*, and many more non-transit users, are receiving benefits in lower cost transit; a faster, higher quality, and more reliable transit experience; access to new destinations; and improved environmental quality and traffic flow -- all due to the workings of the [Consent Decree]." *Id.* ¶ 27.

Hopefully, these benefits are not the temporary results of a "short range plan" due to expire at the end of the Consent Decree but rather are permanent improvements in the quality of bus service that will be sustained well beyond the Decree's expiration.

refined methodology was intended to give the MTA additional flexibility to determine precisely how to add the additional capacity required on each overcrowded line.<sup>23</sup> The ESU concept, however, was not intended to excuse the MTA altogether from its obligation to expand the size of the active fleet to meet the capacity shortfalls that are a significant part of the load factor exceedence problem. *See* Remedial Methodology Order at 53 (“Given the levels of overcrowding reflected in the number of exceedences in the data record, it is likely that additional expansion buses will be needed to provide the supplemental operating capacity required to comply with the Consent Decree. Accordingly, the Service Plan must set forth specifically the total number and type of expansion buses that will be required to meet the 1.25 and 1.20 LFTs . . .”).

In the end, the MTA has not demonstrated sufficiently that it can meet the load factor targets and achieve the improvements in the quality of bus service required by the Consent Decree by simply shifting resources within the bus system. The refined remedial methodology provides the MTA a great deal of flexibility, but it does not relieve the MTA of its obligation to expand capacity rather than simply rearrange it. For the foregoing reasons, the MTA’s request that the Final Order delete reference to the procurement of additional expansion buses is denied.

**4. *Does the HASTUS scheduling software program optimize the use of resources so as to preclude the need for additional expansion buses?***

In addition to the MTA’s contention in its Remedial Plan proposal that use of the upgraded HASTUS software program will optimize scheduling efficiency to provide the equivalent of 40 buses and 150,000 revenue service hours, *see* September 5, 2003 Memorandum

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<sup>23</sup> According to the October 2003 Quarterly Report, the MTA Board of Directors approved the issuance of a RFP in 2001 to purchase 45-foot and 60-foot articulated CNG buses. The MTA awarded a contract to NABI for 30 45-foot buses, with an option for 70 more that was exercised in January 2003. These buses are scheduled for delivery in FY2004-2005. The MTA also is procuring 200 CNG articulated buses, with delivery beginning in FY2005, with an option to procure up to 400 more. October 2003 Quarterly Report at 5.

at 20, the MTA now asserts for the first time in its Response to the Proposed Order that mandating the purchase of a specific number of expansion buses is unnecessary due to its “now demonstrated ability to add required trips with a minimum of buses through the use of HASTUS scheduling software . . . .” MTA Response at 4. Since, as discussed above, I have concluded that the Consent Decree requires that load factor remedies include a specific number of expansion buses and revenue service hours, not just bus trips, I hereby revisit, in light of additional evidence submitted by the MTA, the MTA’s position that increased HASTUS scheduling efficiency precludes the need for 40 expansion buses.

According to the MTA, the upgraded HASTUS software was utilized during the June 2003 change-over to automate the “blocking” process of assigning bus trips to vehicles, resulting in an increase in the number of hours that MTA buses are actually servicing passengers and a decrease in the unproductive components of revenue hours. MTA Response at 2, 5. By reducing layover time by 11.4% and deadhead time by almost 7.9%, the HASTUS software “allow[ed] the resources used previously for unproductive hours to be used instead to increase the amount of ‘In-Service Time’ . . . which represents time the bus is actually serving passengers.”<sup>24</sup> *Id.* at 5-6. The MTA posits that it “made over 100 improvements to the bus system” in the June 2003 change-over, adding 269,110 more bus trips than were operated in December 2002 and increasing annual in-service time by 58,405 hours. *Id.* at 6 and Exh. A; *see also* Goldman Decl. ¶ 10; Goldman Decl. II ¶ 3. According to the MTA, “the more than 58,000 additional service hours were achieved using” 8 additional buses during the A.M. peak period and 18 buses during the P.M. peak period “whereas, prior to the MTA’s implementation of the optimization applications of HASTUS, such an increase was estimated to require approximately 125

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<sup>24</sup> It should be noted that reductions in layover and deadhead time also may result when bus service is reduced, for example, when bus lines are cancelled, frequency of service is reduced, or routes are shortened.

additional peak buses.”<sup>25</sup> MTA Response at 6; *see also* Goldman Decl. ¶¶ 9-10; Goldman Decl. II ¶ 2 (18 peak buses, not 68 buses, were added between December 2002 and June 2003).

While the MTA stated earlier in this proceeding that it “does not request a hearing on the Proposed Order,”<sup>26</sup> it did offer to provide a demonstration for the Special Master on the HASTUS software to discuss its capabilities and effect. MTA’s Offer of Hearing/Demonstration Re the Special Master’s Proposed Order on Remedial Service Plan to Meet 1.25 and 1.20 Load Factor Target Requirements at 1 (Oct. 6, 2003) (“MTA HASTUS Demonstration Offer”). After having been reminded of this offer, the MTA submitted to the Special Master on November 26, 2003, after the conclusion of the comment period on the Proposed Order, a proposal for presentation of the HASTUS software that will be admitted into the record of this proceeding. The proposal outlines the role of the HASTUS software in the context of the MTA’s overall bus service planning and scheduling, and includes an offer to conduct a one-to-two day demonstration in early February 2004. *See* MTA HASTUS Proposal at 2-3 and Exh. A.

The BRU asserts that the MTA has not met its burden of demonstrating the “effectiveness and practicality” of the HASTUS software in providing the equivalent of 40 expansion buses and 150,000 revenue hours, nor of showing that its proposal “would not adversely affect existing service or impose burdens on MTA’s ridership.” BRU Response at 36-37. In the BRU’s view, Section II.A.4 of the Consent Decree prohibits the reallocation of any savings resulting from application of the HASTUS software to fund load factor remedies. BRU HASTUS Opposition at

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<sup>25</sup> The MTA earlier provided inconsistent accounts of the amount of expansion capacity and the number of expansion buses added during the June 2003 service change. As discussed earlier, *see supra* at 22 n.17, in the July 2003 Quarterly Report, the MTA stated that it added 784 ESUs with “23 additional buses and a 70,000-hour increase in annual service hours.” *See* July 2003 Quarterly Report, Section II “Additional Expansion Service Capacity” at 1. The MTA thereafter stated that it added 250 A.M. peak ESUs and 336 P.M. peak ESUs in the June 2003 shake-up, MTA Response at 3, with the operation of 68 additional peak buses. Goldman Decl. ¶ 9.

<sup>26</sup> Despite the Special Master’s invitation, neither party requested a hearing at this stage of the proceeding, and, accordingly, none has been held. A hearing was held on refining the remedial methodology in October 2002. *See* Remedial Methodology Order at 6.

1-2. The BRU also opposes the MTA's offer to demonstrate the use of the HASTUS software, contending that the proposal is untimely because the procedural schedule for submitting additional data and documentation pertaining to the Special Master's Proposed Order has already concluded, and if permitted, would prejudice the plaintiffs by inappropriately reopening the record in this remedy proceeding. *Id.* at 2-3.

In support of its position that a specific number of expansion buses and revenue hours should be ordered by the Special Master, the BRU further notes that according to the MTA's proposed demonstration outline, "the amount of service hours and the number of trips to be added" in the scheduling process are determined "prior to the use of the HASTUS software." *Id.* at 4 n.2; *cf.* MTA HASTUS Proposal at Exh. A. In other words, once a decision *already has been made* as to the number of trips and service hours allocated to a bus line, the HASTUS software helps to maximize the productivity of assigned buses in increasing their in-service time. It does not, however, determine in a vacuum how many buses need to be assigned to the route to reduce overcrowding.

In the September 5, 2003 Memorandum and Proposed Order, I denied the MTA's request to provide 40 of the 185 buses deemed necessary by the JWG to meet the load factor requirements through savings resulting from application of the HASTUS software. I concluded that the MTA had not met its burden of proof to demonstrate the "effectiveness and practicality" of the HASTUS software in "reducing the number of expansion buses required 'without adversely affecting existing service or imposing additional burdens on the MTA's ridership.'" September 5, 2003 Memorandum at 56. I also stated that the Parties could request a hearing and/or "provide additional data and documentation relevant to the issues" raised in the Proposed Order pursuant to a procedural schedule set forth in the Memorandum. *Id.* at 4; *see also id.* at

70-71. In addition to offering to conduct a demonstration of the HASTUS software program, the MTA has submitted supplemental data concerning the results of utilizing the HASTUS software during the June 2003 change-over. Having considered carefully the MTA's presentation offer and the additional documentation submitted, I find that the MTA has proffered adequate evidence to modify the Proposed Order to reflect a credit equivalent to 10 expansion buses.

I turn first to the issue of the MTA's proposal to conduct a demonstration of the HASTUS software in February 2004. Although the MTA "offer" to convene such a presentation might provide some helpful information, it is important to clarify that the MTA did not request a hearing on the matter.<sup>27</sup> Rather, the MTA stated that it was "open to providing a *demonstration* of the HASTUS software and engaging in a detailed discussion of its capabilities and effect" and therefore "invite[d] the Special Master to attend a *demonstration and/or discussion* of the HASTUS software." MTA HASTUS Demonstration Offer at 1-2 (emphasis added). In light of the open-ended nature of the MTA's invitation, as compared to a request for a hearing on the specific issues raised in the Proposed Order, and the need to implement "as soon as possible" remedies to achieve the past-due load factor targets, *see* Consent Decree Section II.A.4, I find that deferring a final ruling on remedies until after February 2004 would cause undue delay. The MTA has not requested a delay in issuing this Final Order and, moreover, as further discussed below, was afforded the opportunity to submit additional data and documentation on the HASTUS issue. The MTA did so, providing evidence which I have reviewed and considered in issuing this Final Order. I therefore conclude, particularly given the extent of bus overcrowding requiring timely remedial measures, that it would not be appropriate to delay issuance of a Final

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<sup>27</sup> Although the MTA's pleading was entitled "MTA's Offer of Hearing/Demonstration Re the Special Master's Proposed Order on Remedial Service Plan to Meet 1.25 and 1.20 Load Factor Target Requirements," (Oct. 6, 2003), the MTA specifically stated that "the MTA hereby *does not request a hearing* on the Proposed Order." MTA HASTUS Demonstration Offer at 1 (emphasis added).

Order for the purpose of conducting a demonstration of the HASTUS software in February 2004.<sup>28</sup>

I turn next to the MTA's submission of additional evidence relating to application of the HASTUS software, including Exhibit A to the MTA Response, which the MTA claims is "proof regarding scheduling efficiencies resulting from" HASTUS, *see* MTA Reply at 9, various declarations, and attached exhibits, all of which I have reviewed carefully. The issue therefore is whether, on the basis of these supplemental data, the MTA has met its burden of demonstrating (1) the "effectiveness and practicality" of the HASTUS software in providing expansion capacity equivalent to 40 buses and 150,000 revenue hours; and (2) that such actions will not adversely affect the transit dependent. *See* September 5, 2003 Memorandum at 56. Moreover, as discussed above, *see supra* at 12-14, 17, in order to allocate such savings in existing bus service to fund load factor remedies, the MTA must independently justify such modifications on the basis of objective efficiency and resource allocation criteria.

At issue is whether the MTA has demonstrated adequately that 40 buses and 150,000 revenue hours can be provided "effectively and practically" by application of the HASTUS software.<sup>29</sup>

The MTA asserts that, in the June 2003 service change, "passenger service was greatly increased with a relatively small increase in peak buses" due to the "optimization applications of HASTUS." MTA Response at 6. According to the MTA, 250 ESUs were added during the A.M. peak hours and 336 ESUs during the P.M. peak hours, *see id.* at 3, consistent with the

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<sup>28</sup> I will defer any decision on whether it is useful to have a demonstration of the HASTUS software until after the Parties have reviewed the Final Order attached hereto and considered further whether a demonstration would still be beneficial.

<sup>29</sup> As noted above, in its Response to the Proposed Order, the MTA argues that the increased scheduling efficiencies of the HASTUS software should afford the MTA complete flexibility to determine the means by which to implement the JWG-designated amount of ESUs (equivalent to 185 buses and 425,500 revenue hours). *See* MTA Response at 2-6. Thus, the MTA now appears to be taking the position that application of HASTUS can provide a greater amount of expansion service capacity than just 40 buses and 150,000 revenue hours.

number of ESUs that the MTA earlier contended were required to meet the 1.25 and 1.20 LFTs, and which it posited would necessitate the equivalent of 125 buses and 287,500 revenue hours.<sup>30</sup>

*See* JWG Submission on MTA Initial Service Plan; September 5, 2003 Memorandum at 11.

Instead of 125 buses, however, the MTA claims that due to efficiencies resulting from the HASTUS software, it was able to implement the required amount of expansion capacity with only 8 additional buses during the A.M. peak hours and 18 additional buses during the P.M. peak hours. *See* MTA Response at 6; Goldman Decl. ¶ 9; Goldman Decl. II ¶ 2. Moreover, according to Mr. Goldman, although total revenue service hours directly operated by the MTA decreased by approximately 126,100 hours between the December 2002 and June 2003 service changes, in-service revenue hours, the time that buses actually spend serving passengers, increased by 58,405 hours.<sup>31</sup> Goldman Decl. ¶ 10; *see also* Goldman Decl. II ¶¶ 2-3; MTA Response at Exh. A. Mr. Goldman states that the reduction in directly-operated revenue hours was attributable to the decrease in unproductive layover and deadhead time. Goldman Decl. ¶ 10; *see also* MTA Response at 5-6 and Exh. A.

A closer analysis of the submitted evidence in the record of this proceeding, however, raises questions as to whether, and to what extent, the increase in in-service revenue hours was

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<sup>30</sup> After applying the remedial methodology issued in December 2002 by the Special Master, the JWG determined that the amount of expansion capacity required to meet the 1.25 and 1.20 LFTs was 331 weekday A.M. peak ESUs and 453 weekday P.M. peak ESUs, necessitating the addition of at least 185 expansion buses and 425,500 revenue hours. *See* JWG Submission on MTA Initial Service Plan; September 5, 2003 Memorandum at 10-11. The MTA contended, however, that by implementing alternative narrowly-tailored remedies, a lesser amount of expansion capacity was required: 245 weekday A.M. peak ESUs and 336 weekday P.M. peak ESUs, requiring 125 (rather than 185) buses and 287,500 (rather than 425,500) revenue hours. *See* JWG Submission on MTA Initial Service Plan; MTA Remedial Plan, Section VII “Financial Impacts”; September 5, 2003 Memorandum at 11. On March 18, 2003, the Special Master ordered the MTA to implement in its June 2003 service change the amount of expansion capacity upon which there was baseline agreement within the JWG: at least 245 A.M. and 336 P.M. weekday peak ESUs (the equivalent of at least 125 buses and 287,500 revenue hours). *See* March 18, 2003 Order at 4.

<sup>31</sup> This raises the question as to how the MTA added 250 A.M. peak ESUs and 336 P.M. peak ESUs with the addition of 58,405 in-service revenue hours when earlier the MTA estimated that the implementation of this number of ESUs would require the equivalent of 287,500 revenue hours. *See* JWG Submission on MTA Initial Service Plan; MTA Remedial Plan, Section VII “Financial Impacts”; September 5, 2003 Memorandum at 11.



attributable to scheduling efficiencies effected by HASTUS or to the addition of the 8 and 18 buses during the A.M. and P.M. peak periods, respectively. The following is a step-by-step analysis of the primary evidence submitted by the MTA, in particular Exhibit A attached to the MTA Response as clarified by the MTA's Mr. Goldman. *See* Goldman Decl. II ¶¶ 2-3.

First, although the MTA states that in-service revenue hours increased by a total of 58,405 hours in the June 2003 service change, the rise in annual *weekday* in-service revenue hours was slightly less – 45,500 hours.<sup>32</sup> *See* MTA Response at Exh. A. Second, since 8 buses were added during the A.M. peak hours and 18 buses were added during the P.M. peak hours, it is fair to say that an average of 13 buses were added to service during the relevant peak periods.<sup>33</sup> Third, based on the JWG's determination that expansion capacity equivalent to 185 buses and 425,500 hours is necessary to meet the load factor requirements, each additional bus is assumed to provide, on average, the equivalent of 2,300 annual revenue hours.<sup>34</sup> Fourth, according to Exhibit A of the MTA Response, the HASTUS software enables the MTA to realize in-service revenue hours at the rate of approximately 87% of total revenue hours for directly

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<sup>32</sup> According to Exhibit A attached to the MTA Response, the 58,405 hour increase in in-service time includes weekend service. Since this 1.25 and 1.20 LFT remedy proceeding thus far has focused on overcrowding during the weekday peak hours and the 8 and 18 buses were added during the A.M. and P.M. peak hours, respectively, (for a discussion of off-peak expansion service, *see infra* at 58-59), it is appropriate to review the impact of HASTUS in improving scheduling efficiency during the weekday hours. The 175 hour increase in weekday in-service time, *see* MTA Response at Exhibit A, computes to a 45,500 annual increase in weekday in-service revenue hours. This figure includes peak and off-peak in-service hours, and thus likely is higher than the actual increase of in-service hours during the weekday peak hours. In the context of this analysis, this should work in the favor of the MTA.

<sup>33</sup> This again should favor the MTA, by assuming for purposes of this analysis that 13 peak buses, rather than 18 buses, were added during the service change.

<sup>34</sup> This 2,300 revenue hours per bus figure also is consistent with the MTA's earlier position that an equivalent of 125 buses and 287,500 revenue hours were needed to meet the 1.25 and 1.20 load factor targets. It varies, however, from the MTA's contention that utilization of the HASTUS software could provide the equivalent of 40 buses and 150,000 revenue hours. Using the MTA's numbers associated with HASTUS, each additional bus provides 3,750 revenue hours, rather than 2,300 revenue hours. To be consistent with the JWG's position, I will use the 2,300 hours per bus figure in this analysis. This favors the MTA by crediting the additional buses with fewer revenue hours than if the 3,750 hour number were used, thereby enhancing the efficiencies attributed to application of the HASTUS program in the June 2003 service change.

operated service.<sup>35</sup> Thus, if each additional bus provides 2,300 revenue hours, the HASTUS software should enable each bus to provide actual in-service time of approximately 2,001 hours. Fifth, the 13 buses (average of 8 A.M. and 18 P.M. peak buses) added to service in the June 2003 change-over should provide 26,013 annual in-service hours.<sup>36</sup> Therefore, the 13 additional buses contributed 26,013 of the 45,500 *weekday* in-service hours that were added in June 2003. Sixth, the difference of 19,487 weekday in-service hours attributable to application of the HASTUS software is approximately equivalent to 10 additional buses (19,487 in-service hours divided by 2,001 in-service hours per bus).<sup>37</sup>

Based on the foregoing analysis, I find on the record of this proceeding that the MTA adequately has demonstrated that scheduling efficiencies resulting from application of the HASTUS software can provide in-service capacity equivalent to approximately 10 buses and 23,000 revenue hours (or 20,010 in-service hours) – not 40 buses and 150,000 revenue hours. This analysis is based on and limited to the evidence submitted by the MTA concerning the use of the HASTUS software in the June 2003 basic service change-over. It should not be considered precedent in any future proceeding.<sup>38</sup>

Moreover, as discussed above, the MTA also must independently justify such changes on

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<sup>35</sup> The realization rate for the HASTUS software was computed based on the revenue service hours and in-service hours data contained in Exhibit A attached to the MTA Response. The MTA submitted this Exhibit A to provide “an overview of the change in bus service hours between December 2002 and June 2003” and to demonstrate the “results of the June Service Change.” MTA Response at 6. According to the MTA, after the June 2003 service change, of a total 21,025 weekday revenue hours, 18,191 of those were in-service hours *See id* at Exhibit A. Based on these numbers, the realization rate provided by HASTUS software was approximately 87%, rounded up. In December 2002, prior to the use of HASTUS in the June 2003 change-over, the in-service realization rate for weekday revenue hours was approximately 84%. *See id.* (calculation based on December 2002 total revenue hours and in-service hours).

<sup>36</sup> This number is derived by the following calculation: (13 buses x 2,001 in-service hours per bus).

<sup>37</sup> This figure comes out to slightly less than 10 and has been rounded up, again to the advantage of the MTA.

<sup>38</sup> This is appropriate considering the MTA’s acknowledgement that application of the HASTUS software during the June 2003 service change was not without complications. During the runcutting process, a “portion of the ESUs . . . did not fall completely within the time periods identified” and were “misplaced” as “an unintended consequence of the scheduling process.” MTA Response at 3 n. 1. The MTA intended to correct this in the December 2003 service change. *Id.* As the MTA gains additional experience with HASTUS, we should have better and more consistent information as to how effective a tool it can be in meeting the load factor targets.

the basis of objective efficiency and resource allocation criteria. I find that the MTA has met this burden in showing that, through use of the HASTUS software, unproductive deadhead and layover time decreased while in-service revenue hours increased. *See* MTA Response at 3-6 and Exhibit A; Goldman Decl. ¶ 10; Goldman Decl. II ¶ 3. For the same reason, I conclude that because the HASTUS software resulted in improved efficiency by reducing the time when buses are not providing service to riders and commensurately increasing the time buses are in actual service, it is reasonable to assume that the transit-dependent will get more service out of each bus and that the increased efficiency of the overall bus system will benefit all bus riders. *See* MTA Response at Exh. A. In the future, however, additional detailed information about the actual impact on the transit-dependent from the service and scheduling changes attributable to the HASTUS program will be necessary.

**5. *Should the Pasadena Light Rail Gold Line be deemed a load factor remedy for overcrowded bus lines?***

In support of its position that it “should be permitted to increase service by means other than simply adding new buses,” the MTA asserts that the new Metro Gold Line between Pasadena and downtown Los Angeles “has added a significant amount of passenger capacity to the region . . . .” MTA Response at 2, 7. According to the MTA, the Gold Line operates an “equivalent of 30.4 bus trips (assuming 40-seat buses) in each direction per hour, or the equivalent of a bus operating every two minutes.” *Id.* at 7. While the MTA apparently did not count in its initial Remedial Plan the added rail capacity of the Gold Line in providing the ESUs determined by the JWG as necessary to meet the 1.25 and 1.20 LFTs, the MTA now posits that “the benefits of service expansion through rail service are equally as valuable as bus service and should be considered in evaluating and measuring the service levels provided by the MTA to its

riders.” *Id.*

Not surprisingly, the BRU takes exception to the MTA’s position, suggesting that MTA’s comments about the Gold Line “reflect MTA’s categorical rejection of MTA’s Consent Decree’s promise that MTA will give priority to improvement of its bus system.” BRU Reply at 9. According to the BRU, the MTA’s contention that light rail operations should be deemed remedies for bus overcrowding is “contrary to the Consent Decree’s mandate that MTA reallocate funds to meet the load factor requirements imposed on its bus system and on every bus line not in compliance . . . .” *Id.* The BRU points out “that this case began in large part when funds were siphoned from the bus system, in the form of fare increases and elimination of the monthly bus passes, so as to feed the Pasadena Light Rail Line,” *id.*, and “that the purpose of the Consent Decree in this case is to improve bus service to the transit-dependent population of Los Angeles.” *Id.* at 9-10. In the BRU’s view, appropriate remedies must entail improvements to the monitored bus lines to meet the load factor targets.

This dialogue presents an opportunity to address an issue that has dogged this proceeding from its inception.

First, the fundamental, overarching purpose of the Consent Decree, voluntarily entered into by the Parties in 1996, is the “improvement of the quality of bus service” for the transit-dependent in Los Angeles County. *See* Consent Decree Section I.B; *see also* Night Owl Decision at 12 (“central, overriding purpose of the Consent Decree is the improvement of bus service for the transit-dependent”). As the Ninth Circuit reiterated, “[u]nder the consent decree’s terms, MTA agreed to make service improvements in the bus fleet to alleviate overcrowding and agreed to a set fare structure and fare increase procedure.” *Labor/Community Strategy Ctr. v. LACMTA*, 263 F.3d 1041, 1044 (9<sup>th</sup> Cir. 2001), *cert. denied*, 535 U.S. 951 (2002). In keeping

with the intent of the Parties, the language of the Consent Decree focuses on improvement of the *bus* transportation system, ranging from reduction of bus overcrowding in Section II.A to improved access of the transit-dependent (via bus) to jobs, education, and health centers in Section II.C to the role of the JWG in developing bus service improvement plans in Section IV. The Consent Decree is silent on the issue of rail transportation provided by the MTA. Thus, any remedies designed to meet the MTA's Consent Decree obligations properly should focus on improvement of bus service to the transit-dependent, not on other modes of transportation, such as rail or highways. As discussed above, *supra* at 10-12, the Consent Decree mandates that enhancement of the bus system be the foremost planning and strategic priority of the MTA.

Second, there exists a precedential remedial methodology, recently refined, that sets forth a framework for determining appropriate remedial measures to meet the Consent Decree load factor targets. *See generally* Remedial Methodology Order. This refined methodology was the result of extensive briefing, discussions, hearings, and decisions rendered pursuant to the dispute resolution process contained in Sections II.A.4 and V.B of the Consent Decree. *See id.* at 5-6. Such remedies include implementing additional service capacity on the overcrowded bus lines and improving the scheduling and operation of those lines. *See id.* at 53. The success of these remedies, which appropriately focus on the MTA's *bus* system, will be measured by the ongoing load factor monitoring reflected in the Quarterly Reports produced by the MTA and reviewed by the JWG. *See id.* at 56-57. If the effect of the Gold Line is to reduce overcrowding on specific bus lines in that corridor, this will be reflected in future Quarterly Reports; however, the Gold Line cannot be considered a Consent Decree-sanctioned remedy for load factor purposes. The MTA has not provided adequate evidence to support such a departure from precedent, nor has it demonstrated in the record of this proceeding the effectiveness of the Gold Line as a load factor

remedy in supplying the necessary ESUs to alleviate bus overcrowding.

Thus, in fashioning specific remedies to address overcrowding on each and every bus line that exhibits unacceptable levels of load factor exceedences, as required by the Consent Decree,<sup>39</sup> it is not appropriate to take into account the additional capacity provided by rail service. Indeed, the MTA has not to date attempted to credit rail capacity in calculating how it will provide the additional ESUs that the JWG has determined are necessary to achieve the 1.25 and 1.20 LFTs on overcrowded bus lines.

Having said this, the MTA is a public agency responsible for overseeing a comprehensive transportation system in Los Angeles County, and would be derelict in its responsibilities if it did not integrate efficiently rail and bus service throughout the county. Presumably, if the planning for the MTA's overall transportation network properly takes into account the Consent Decree mandate that the MTA *prioritize foremost* the improvement of the quality of bus service, *see supra* at 10-12, one effect of the introduction of additional light rail (such as the Gold Line) will be to reduce overcrowding on the monitored bus lines and to significantly improve the quality of bus service. An efficiently integrated transportation system should benefit both bus and rail riders, and these benefits should be reflected in fewer LFT exceedences in future Quarterly Reports.<sup>40</sup>

The litigation that gave rise to the Consent Decree is sometimes misperceived as a battle between bus and rail, like the old range wars between the cowboys and the farmers. This is not the case, however. The MTA has determined, with the support of the taxpayer, that both bus and rail service have important roles to play in providing an integrated transportation system. The

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<sup>39</sup> See March 6, 1999 Order at 6 ("Section II of the Decree requires that the load factor targets be met on each and every bus line"); *Labor/Community Strategy Ctr. v. LACMTA*, 263 F.3d 1041, 1048 (1.35 LFT "remedial plan was based on a correct interpretation of the consent decree"), *cert. denied*, 535 U.S. 951 (2002).

<sup>40</sup> It is consistent with the Consent Decree that the MTA have flexibility to structure bus routes to be integrated efficiently with the rail system so long as the overall transit experience for bus riders is improved.

purpose of the Consent Decree is to ensure that bus riders are treated fairly and that the quality of the bus service is improved, not diminished, as the MTA goes about the very expensive investment required to expand the rail system. In signing the Consent Decree, the MTA undertook a contractual obligation and a solemn promise to ensure that as a first priority the quality of bus service would be improved in Los Angeles County. As long as the MTA meets its obligations to bus riders under the Consent Decree, there are no limits or constraints on the development and maintenance of an efficient rail system. The Consent Decree simply requires that the interests of the bus rider be central in the MTA's fiscal, strategic, and operational planning and that the development of a rail system not be accomplished to the detriment of the bus rider.

6. *Should the MTA be permitted to reduce its spare bus ratio from 20% to 17%?*

In the Proposed Order, the Special Master accepted the MTA's proposal to provide 55 of the 185 expansion buses deemed necessary by the JWG by reducing its bus spare ratio from 20% to 17%. *See* September 5, 2003 Memorandum at 57-59. The Special Master did so on the grounds of the increased mechanical reliability of the MTA bus fleet, the lack of federal minimum bus spare ratio requirements, the significantly reduced average age of the fleet, industry surveys and research indicating that a 17% spare ratio is within an acceptable range for large transit systems, and District Court precedent on the issue of spare buses. *See id.*

The BRU objects to this provision of the Proposed Order, asserting that the MTA has never used a 17% spare ratio (19.7% in 1995 being the lowest spare ratio ever used by the MTA) and has not attained a level of bus maintenance and operations performance that would enable it to do so. *See* BRU Response at 39; Declaration of Thomas A. Rubin Re MTA's Spare Ratio ¶¶

13-17, 22-25 and Exhs. 2 and 3 (Oct. 16, 2003) (“Rubin Spare Ratio Decl.”). If the MTA’s bus spare ratio is reduced below 20%, according to the BRU, there would be fewer spare buses available to fill in when buses from the active fleet experience mechanical problems, therefore leading to an increase in missed trip exceedences and bus overcrowding. BRU Response at 39-40.

The BRU’s expert, Thomas Rubin, also questions the data contained in a 1995 Transit Cooperative Research Program (“TCRP”) study cited by the Special Master for the proposition that a 17% bus spare ratio is not out of line for a bus fleet of the size and average age of the current MTA bus fleet. *See* Rubin Spare Ratio Decl. ¶¶ 5-11 and Exh. 1; *cf.* September 5, 2003 Memorandum at 58. According to Mr. Rubin, the relevant portion of the TCRP study was “based on a small and non-representative data set.” Rubin Spare Ratio Decl. ¶ 6. Although the seven U.S. transit operators (including the MTA) mentioned in the report exhibited in 1995 a “range of spare ratios from a low of 12% to a high of 22 and a simple average of 17.4%,” Mr. Rubin states that the “overall average of the seven operators for the five later years [from 1997 to 2001] was 19.4%, two full percentage points higher than the 17.4% for these same operators” in the 1995 TCRP report. *Id.* ¶¶ 7-9; *see also id.* at Exh. 1.

A closer analysis of the data provided by Mr. Rubin, however, suggests that the 17% spare ratio proposed by the MTA and permitted by the Special Master in the Proposed Order is within reasonable range of the spare ratios maintained by similarly large bus transit systems. For example, Exhibit 1 attached to Mr. Rubin’s declaration shows that the Washington Metropolitan Area Transit Authority had a five-year spare ratio average of 15.4% from 1997 to 2001, ranging from a low of 12% in 1995 and 1997 to a high of 18% in 2001. *See id.* at Exh. 1. Similarly, the New York City Metropolitan Transportation Authority, which has a higher passenger load than



the MTA, *see id.* ¶ 11.B, had a five-year spare ratio average of 17.4%, ranging from a low of 15% in 1995 and 2001 to a high of 20% in 1998. *See id.* at Exh. 1. Overall, from 1997 to 2001, five of the seven operators had a spare ratio average of less than 20%; four had an average of less than 19%; and two had an average of less than 16%. *See id.* at Exh. 1.

The MTA, however, has altered its position and “subsequently determined on its own that it will not presently operate with a 17% spare ratio, but will continue to operate with a 20% spare ratio.” MTA Reply at 10. This likely is prudent at this point in time given that the MTA Fleet Management Department and Division Maintenance Managers believe operating with a spare ratio below 19% limits their ability to achieve bus maintenance goals. *See* Declaration of Hector Rojas ¶ 4 (Nov. 3, 2003) (“Rojas Decl.”); *see also* October 2003 Quarterly Report at 10-14, 24 (showing deterioration during the third quarter of 2003 in indicators measuring mechanical performance).

The MTA does not seek a modification of the Proposed Order, however, because it asserts it “should be permitted the discretion to determine the spare ratio it needs to operate efficiently and should not be bound by an inflexible and arbitrary standard.” MTA Reply at 10. In support of its claim that it should have such discretion, the MTA has submitted new evidence that right after the June 2003 service change, due to a delay in the opening of the Metro Gold Line, it operated with a spare ratio below 19%. *See* MTA Reply at 10; Rojas Decl. ¶¶ 3-4.

If the MTA plans to continue operating with a 20% bus spare ratio, however, the question arises as to how the MTA will add to scheduled peak operating service the 55 expansion buses it previously had proposed to provide by reallocating buses from the spare to the peak scheduled fleet. With the retention of a 20% spare ratio, those 55 buses will remain in the spare fleet and therefore cannot be counted toward the number of expansion buses in scheduled daily peak

service that are needed to meet the LFTs. I therefore have no choice but to find that the MTA should purchase an additional 55 buses to provide the expansion capacity determined by the JWG to be necessary to meet the past-due 1.25 and 1.20 LFTs.<sup>41</sup> The Final Order reflects this modification.

On the issue of whether the MTA should have the discretion to set its spare ratio at whatever percentage it deems appropriate, I believe that this is a matter best left to the bus maintenance and operations expertise of the MTA. Particularly given the wide range of spare ratios exhibited by comparable bus transit agencies across the nation, it is appropriate that the MTA determine the optimal spare ratio that will enable it to achieve its maintenance goals and operate an efficient, manageable, and reliable fleet. As discussed in my September 5, 2003 Memorandum, although there remains room for improvement, since the inception of the Consent Decree the MTA has substantially reduced the average age of its fleet and improved the mechanical reliability of its buses. *See* September 5, 2003 Memorandum at 57-58. Moreover, the MTA appears to be addressing the causes of some recent deterioration in mechanical performance over the past quarter. *See* October 2003 Quarterly Report at 8-23. On further reflection, I do not believe the Special Master should intrude upon the MTA's discretion and flexibility to adjust its bus spare ratio based on changing conditions.<sup>42</sup> I therefore do not find it necessary or appropriate at this time for the Special Master to fix a specific spare ratio for the MTA.

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<sup>41</sup> It is worth noting that the MTA, as part of the JWG, agreed that expansion service capacity equivalent to 185 expansion buses is required to meet the 1.25 and 1.20 LFTs. *See* JWG Submission on MTA Initial Service Plan. In the Proposed Order, the Special Master accepted the MTA's proposal to reallocate 55 of those buses from the spare to scheduled peak fleet in lieu of purchasing new buses. Now the MTA has decided not to reduce the spare ratio but to maintain the current 20% spare ratio, thereby necessitating that the 55 expansion buses be supplied through other means.

<sup>42</sup> As discussed in the September 5, 2003 Memorandum, the MTA should consider several factors in determining the appropriate bus spare ratio percentage, including "age and condition of the fleet, the number of miles between roadcalls, changes in service patterns, or the status of bus maintenance programs . . ." September 5, 2003 Memorandum at 59.

My conclusion also is based on my reconsideration of the spare bus issue as directed by Judge Hatter in his September 1999 Order during the 1.35 LFT remedy phase. Judge Hatter noted the “apparent increased reliability of the MTA’s current fleet” and requested the Special Master to “reconsider whether the additional 49 buses he ordered the MTA to purchase for spares are still needed.” Judge Hatter’s Order at 4. Judge Hatter did not include any spares in the buses he ordered the MTA to purchase at that time. *Id.*; see also *Labor/Community Strategy Ctr. v. LACMTA*, 263 F.3d 1041, 1047 (9<sup>th</sup> Cir. 2001).

Having reconsidered the spare bus issue once again, and having considered the arguments and evidence presented by the parties, I now conclude that it is unnecessary for the Special Master to direct the MTA to purchase a specific number of spare buses to supplement the expansion buses contained in the bus procurement requirements of the Final Order. The issue of spare buses and the setting of an appropriate ratio will be left to the MTA’s determination. In the Proposed Order, I had included 17 spare buses in addition to the 100 expansion buses to be procured by the MTA. In the Final Order I will not require that the MTA purchase a specific number of spare buses in accordance with an established spare ratio. The procurement of spare buses will not be a required component of the remedial plan to meet the 1.25 and 1.20 LFTs. Instead, the MTA will have the discretion to determine how to ensure that there are a sufficient number of spare buses available to support the expanded scheduled peak operations discussed below, *see infra* at 59-73.

By the same token, I cannot credit the MTA with 55 buses that it initially proposed to transfer from the spare fleet to scheduled peak service. Accordingly, on the issue of spare buses, the Final Order includes a net increase in the number of expansion buses of 38.

7. ***Should the Special Master direct the MTA to terminate the MTA's Traffic Loader Demonstration Program on Line 66?***

The BRU recommends that the MTA be ordered to terminate its traffic loader demonstration program on Line 66 (E. Olympic Blvd.) on the grounds that it violates Section II.A.2 of the Consent Decree, which states that “load factors shall not be achieved by bypassing passengers at bus stops.” BRU Response at 28 (quoting Consent Decree).

The MTA acknowledges the Special Master's admonition that the demonstration project must be conducted in a way that is “sensitive to the prohibition on passbys,” and agrees to add vehicular service expansion on Line 66. MTA Reply at 11. Given the short headways and traffic congestion on Line 66, *see* September 5, 2003 Memorandum at 18, I find that an appropriate remedial measure to reduce overcrowding on the line is to place into service articulated buses. Until these articulated buses are available, however, the demonstration project offers an opportunity for the MTA to reduce overcrowding caused by bunching. I find that if handled with appropriate sensitivity to passenger convenience and comfort, and unless there is specific evidence to suggest otherwise, the MTA's demonstration project on Line 66 will not be deemed to circumvent the load factor targets through by-passing waiting passengers. The pilot program may be continued at the MTA's discretion so long as the results are reported in the Quarterly Reports.

8. ***Should the MTA be ordered to implement specific missed trip remedies?***

The BRU recommends that the MTA be ordered to implement specific missed trip remedies by the December 2003 service change, and that the Special Master order the MTA to set its goal of miles between mechanical road calls at 8,000 miles in place of the MTA's current goal of 7,500 miles. *See* BRU Response at 40-43; Robertson Decl. ¶ 22.

The MTA “does not object to the creation of specific missing bus remedies” and plans to implement the specific remedies set forth in its Quarterly Report “as soon as possible.” MTA Reply at 12. The MTA suggests, however, that there are “inherent problems in designing a program of specific remedies without a specific target for compliance identified.” *Id.* Although the MTA’s “present target is to further reduce the percentage of missing trips causing exceedences,” which it contends already has been reduced from 50% to 14%, the MTA asserts that the BRU’s position that the target should be zero missing trips is impracticable and “would require wasteful expenditures of resources.” *Id.* Moreover, according to the MTA, the BRU’s request that the Special Master set a goal of 8,000 miles between mechanical road calls instead of the MTA’s own goal of 7,500 miles is “simply an arbitrary, unsubstantiated target with no logical end result.” *Id.*

The October 2003 Quarterly Report unfortunately shows that, of the total number of load factor exceedences, the percentage of exceedences attributable to missed trips has increased from 14% in the second quarter of 2003 to 23% in the third quarter of 2003, although this may be partly attributable to the unavailability of mechanics, operators, and service attendants during the recent quarter. *See* October 2003 Quarterly Report at 24. The next Quarterly Report likely also will contain data distortions reflective of the mechanics’ strike. The percentage of total exceedences attributable to missed trips is not the key determinant, however, because in keeping with the purpose of the Consent Decree, the MTA has an obligation to reduce the absolute number of missed trips by taking specific actions that address their various sub-causes, including various types of mechanical failure, lack of vehicle maintenance, and unavailability of operators, mechanics, and service attendants. *See id.* at 8-23.

The October 2003 Quarterly Report describes the actions that the MTA is taking to

identify the sub-causes of missed trips, the specific measures that are being implemented to address such sub-causes, and the progress being made in each of these areas. *See* October 2003 Quarterly Report at 7-24 and Appendices F, G, H, I. The MTA is to be commended for the development of this action and reporting plan, which tracks the MTA's progress in several critical areas. After examining in detail the extensive submissions proffered by the Parties on the issue of missed trips, including the MTA's Quarterly Reports, I find that the remedial measures set forth in the MTA's October 2003 Quarterly Report appear to be reasonable and responsive to the requirements of the Consent Decree and past remedial directives.

Based on my review of the evidence, I also find that the MTA's action plan to reduce the number of missed trip exceedences should be clarified to include the following components, many of which have been recommended by the MTA. Progress on these remedial measures should be actively monitored and reported in the Quarterly Reports.

- (1) Strict adherence to the Preventive Maintenance Program (PMP) recommended by each bus manufacturer;
- (2) Ongoing training of mechanics;
- (3) Random Simulated California Highway Patrol (CHP) safety inspections with follow-up corrective actions;
- (4) Reduction and maintenance over time of average age of the fleet; and
- (5) Hiring and retention of a sufficient number of operators, mechanics and service attendants to reduce work run cancellations due to the lack of operators or lack of equipment.

The effectiveness of the MTA's action plan also properly should be gauged by monitoring and reporting progress on each of the following indices in the Quarterly Reports:

- (1) Total Road Calls;
- (2) Miles Between Total Road Calls and Miles Between Chargeable Mechanical Road Calls;

- (3) In-Service Equipment Failure by Bus Type;
- (4) Equipment Failure per 100,000 Hub Miles by Bus Type;
- (5) Equipment Failure by Cause;
- (6) Status of Preventive Maintenance Program;
- (7) Scheduled Operator Training Classes for Next Quarter;
- (8) Status of Simulated CHP Inspections;
- (9) Average Age of Bus Fleet by Month;
- (10) Cancelled or Late Pullouts Due to Unavailability of Operators, Lack of Equipment, or Other Reasons;
- (11) Cancelled or Late Pullouts as a Percentage of Total Pullouts;
- (12) Operator to Assignment Ratio on a Weekly Basis;
- (13) Availability of Mechanics by Week; and
- (14) Availability of Service Attendants by Week.

*See* October 2003 Quarterly Report at 8.

I also conclude, based on the evidentiary record, that a few observations are in order concerning the MTA's efforts to reduce the number of missed trips.

First, until approximately March 2002, the MTA made substantial progress in reducing the total number of road calls; however, progress appears to have stalled since then. *See* October 2003 Quarterly Report at 9. While the upward trends in Miles Between Total Road Calls (MBTRC) and Miles Between Chargeable Mechanical Road Calls (MBCMRC) have been generally positive over the past three years, the significant downward trend in MBCMRC during this past year is of concern. *See id.* at 10. The MTA attributes this to mechanical failures due to unusually hot weather, less than optimal completion of preventive maintenance measures (PMP), and the anticipated work stoppage by mechanics. *Id.* The trend in availability of mechanics, which the MTA has targeted at a level intended to meet a PMP to bus ratio of 0.5, also took a

sharp fall during the July 2003 – September 2003 quarter, which the MTA attributes to the impending work stoppage. *See id.* at 22; *see also id.* at 23 (decline in availability of service attendants in July 2003-September 2003 quarter).

Nonetheless, now that the mechanics' dispute has been settled, the MTA should reestablish quantifiable goals for Preventive Maintenance Programs, Total Road Calls, Miles Between Total Road Calls, Miles Between Chargeable Mechanical Road Calls, reduction of equipment failures by bus type(s), hiring and retention of a sufficient number of highly trained mechanics with appropriate supervision, and the other indices listed above. I reject, however, the BRU's recommendation that I require the MTA to increase its goal of miles between mechanical road calls from 7,500 to 8,000. The BRU has not presented persuasive evidence in support of this change, and I will leave it to the MTA's discretion to decide whether to retain the 7,500 miles goal or to increase it when it files the report on quantifiable goals to remedy missed trips required by the Final Order.

Second, since the inception of the Consent Decree the MTA has made enormous progress in reducing the average age of the active bus fleet; nevertheless, the average age is again creeping upward, having risen from 4.3 years in September 2002 to 5.2 years one year later. *See id.* at 17.<sup>43</sup> These trend lines confirm the importance of keeping the accelerated replacement bus program on schedule and separate and distinct from the procurement of expansion buses.<sup>44</sup> This issue is also addressed in the Final Order.

Third, the sharp increase in the number of work runs cancelled due to lack of bus operators during the past quarter also is of concern, although the MTA attributes this to the

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<sup>43</sup> The MTA explains that this increase is attributable to the need to retrofit buses in the existing fleet to accommodate the new Advanced Transportation Management System (ATMS). *Id.* at 17.

<sup>44</sup> The MTA states that one strategy for minimizing missed trips due to mechanical reasons is if the "[a]verage age of active bus fleet is carefully monitored and sufficient number of buses are procured at regular intervals to ensure that average age does not deteriorate over time." *Id.* at 8.



aberration of the impending work stoppage. *See id.* at 18-20. The factual record indicates, however, that the operator to assignment ratio has been below the MTA's target of 1.18 since early 2003. *See id.* at 21. It is important that the MTA take steps to ensure that it consistently meets or exceeds its Operator to Assignment ratio of 1.18.

Because of the work stoppage, the recent quarterly data may be somewhat of an aberration, and the next Quarterly Report may contain similar distortions. The MTA nevertheless must redouble its efforts to resume the positive trend lines as it seeks to reduce the number of load factor exceedences due to missed trips. As suggested by the BRU, *see* Robertson Decl. ¶ 22, and the MTA, *see* MTA Reply at 12, it would be helpful to quantify the MTA's specific objectives so that progress can be measured against specific goals. The Final Order has been revised to direct the MTA to set forth quantifiable objectives to address the issue of missed trip exceedences. *See infra*, Final Order at Section 1.

The BRU has recommended that the Special Master order specific actions to address the missed trip exceedences by the December 2003 basic service change. Given the time required to review the voluminous filings and objections by the Parties to the Proposed Order, it obviously is not now feasible to order specific remedies by the December 2003 changeover. However, the October 2003 Quarterly Report shows that the MTA is addressing these issues and, with the addition of quantifiable targets, an action plan should be well in place and specific steps implemented by the June 2004 changeover.

9. *What level of expansion service should be added to alleviate bus overcrowding during off-peak hours?*

While this proceeding thus far has focused on alleviating overcrowding during the weekday peak periods, the Consent Decree also requires that the load factor targets be met during off-peak hours.<sup>45</sup> In the Remedial Methodology Order issued in December 2002, I directed the MTA to “provide the JWG with mapping of load factor exceedences during off-peak hours” in order to apply the remedial methodology to “develop appropriate remedies.” Remedial Methodology Order at 49 n.26.

In January 2003, I clarified that the MTA was to complete its analysis of off-peak load factor data by April 30, 2003 and to incorporate appropriate off-peak service expansion in the June 2003 service change. *See* Letter Order from Special Master to JWG at 2 (dated Jan. 27, 2003). The MTA later indicated that it would “calculate expansion service units for off-peak service by August of 2003 in preparation for implementation as part of the December 2003 Service Change Program.” *See* Letter from Rod Goldman to Ted Robertson at 1 (dated June 23, 2003). According to the MTA, however, “due to problems with data retrieval for information going back to June 2000,” the MTA “is still assessing the ESU impact of off-peak service.” Goldman Decl. ¶ 16.

In voluntarily entering the Consent Decree in 1996, the MTA undertook the obligation to meet the load factor targets on each bus line during peak *and* off-peak periods. *See* Consent Decree Section II.A.2. As we now are more than seven years into the Consent Decree and the 1.20 LFT has been in effect since June 30, 2002, the MTA has taken far too long to address bus overcrowding during the off-peak hours. I therefore find that the MTA must complete

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<sup>45</sup> Section II.A.2 of the Consent Decree states that, whereas the load factor during peak periods is to be computed “during any 20 minute weekday peak period in the peak direction of travel on each bus line,” the “load factor computation” is “based on a one hour time interval during non-peak periods.”

expeditiously its analysis of off-peak load factor exceedences and provide relevant load factor mapping to the JWG by March 15, 2004.<sup>46</sup> The JWG thereafter should apply the remedial methodology and determine the number of off-peak ESUs to be implemented by the MTA in the June 2004 service change. Since peak fleet requirements are greater than off-peak requirements, this should not necessitate the procurement of any additional expansion buses, but it will require an appropriate increase of bus in-service hours during the relevant off-peak periods.

**10. *Should the MTA modify its bus procurement plan to purchase additional expansion buses to meet the 1.25 and 1.20 load factor targets?***

In the September 5, 2003 Memorandum and Proposed Order, the Special Master invoked as a starting point the JWG's joint determination that the MTA must add the equivalent of 185 expansion buses and 425,500 revenue service hours to meet the 1.25 and 1.20 LFTs.<sup>47</sup> See September 5, 2003 Memorandum at 62-64; JWG Submission on MTA Initial Service Plan. Based on careful review of the extensive data and evidence in the record, the Special Master initially found that the MTA had shown that the equivalent of 85 of the 185 40-seat expansion buses deemed necessary by the JWG could be provided through service modifications and reduction of the bus spare ratio from 20% to 17%. See September 5, 2003 Memorandum at 63. Accordingly, the Special Master concluded that the MTA should purchase a minimum of 100 additional 40-seat buses (plus 17 spares) or their vehicular equivalent to achieve the load factor requirements. *Id.* at 64. Based on the Parties' agreement that 381 buses will need to be replaced during fiscal years 2003 through 2007 as they become overage, *i.e.*, 12 years old, the Special

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<sup>46</sup> In the MTA's Remedial Plan, the MTA included an estimate for adding 40 buses and 125,000 annual revenue hours for off-peak service. See MTA Remedial Plan, Section VII "Financial Impacts." This suggests that the MTA has completed at least an initial analysis of the extent of overcrowding during off-peak hours and the number of ESUs needed to meet the load factor requirements.

<sup>47</sup> Whereas the BRU stated that *at least* 185 buses and 425,500 revenue hours would be required to implement the required number of ESUs, the MTA contended that *only* 185 buses and 425,500 revenue hours would be necessary.

Master also included a requirement that the MTA purchase 381 replacement buses to maintain the reliability and functionality of the fleet. *Id.* at 64-65.

The Special Master's Proposed Order would have required the MTA to purchase the vehicular equivalent of 498 40-seat buses. On a seat equivalency basis, this was *less than* the total number of 420 buses (100 of which are articulated vehicles), *equivalent to 519 40-foot buses*, that the MTA has stated *it already intends to purchase and place into service* through fiscal year 2007. *Id.* at 65; *see also* Letter from Roderick Goldman to Special Master attached to MTA Remedial Plan (dated March 31, 2003); MTA Remedial Plan, Section VI "Bus Procurement Schedule." The MTA's bus procurement plan "provides for 21 more 40-seat bus equivalents than the number required to retire 381 old buses and to add 100 expansion buses (plus 17 spares) to meet the 1.20 LFT." September 5, 2003 Memorandum at 65.

Both Parties advocate modification of the bus procurement provisions of the Special Master's September 5, 2003 Memorandum and Proposed Order. The BRU reiterates its position that a total of 727 buses are required over the next three years, composed of 381 buses to retire overage buses and an additional 346 buses to expand the size of the fleet.<sup>48</sup> *See* Robertson Decl. ¶ 16; Bus Riders Union Consent Decree Load Factor Service Plan at 26-28 (submitted March 31, 2003) ("BRU Remedial Plan"). The BRU also contends that any articulated buses procured by the MTA should replace 40-foot buses at a 1:1 ratio to prevent longer wait times for bus riders. Robertson Decl. ¶ 17. The MTA, on the other hand, "agrees to comply fully with the number of expansion service units" determined by the JWG, MTA Response at 2, but contends that "it is unnecessary for the MTA also to be ordered to use any particular number of buses to add those ESUs." MTA Reply at 3.

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<sup>48</sup> The BRU's contention that 346 expansion buses are necessary is based on the aggregate of: 1) the 185 buses identified by the JWG (plus 37 spares); 2) 87 buses to restore cuts in service since 1996 (plus 15 spares); and 3) 18 buses for San Fernando Valley BRT (plus 4 spares). *See* BRU Remedial Plan at 27.

As discussed above, based on my review of the additional data and evidence presented by the Parties, I have modified my findings concerning the number of expansion buses and associated service capacity that can be provided by the upgraded HASTUS software program and the reallocation of spare buses. First, I find that the MTA has demonstrated that utilization of the HASTUS software in the June 2003 service change resulted in scheduling efficiencies that provide additional service capacity equivalent to 10 40-seat buses. *See supra* at 39-43. Second, as the MTA intends to maintain its 20% bus spare ratio, it will not be able to provide 55 expansion buses through reallocation of spares to scheduled peak service. *See supra* at 49-51. The MTA therefore should procure an additional 55 buses to supply the expansion capacity deemed necessary by the JWG to meet the 1.25 and 1.20 LFTs. Third, in accordance with Judge Hatter's September 1999 Order, I do not find it necessary to mandate procurement of a specific number of spare buses. *See supra* at 51. While the MTA should have a sufficient number of spares to maintain the reliability and functioning of its overall bus fleet, the MTA should exercise its discretion and judgment in determining the appropriate number of additional spare buses needed to support the expansion of the fleet. The provision of the Proposed Order concerning procurement of 17 spare buses therefore is stricken.

Taking into account these modifications, I find that the MTA has demonstrated adequately that it can provide the equivalent of 10 40-seat buses through utilization of the HASTUS software and 30 40-seat buses through service modifications for a total of the equivalent of 40 40-seat buses. Accordingly, I find that the MTA should purchase and place into service the remaining 145 of the 185 expansion buses designated by the JWG. This is an increase of 28 buses over the 100 expansion buses (and 17 spares) designated in the Proposed Order. In doing so, the MTA is not limited to the purchase of 40-seat buses, but has the

discretion to add higher capacity (or lower capacity) vehicles to the fleet, so long as the fleet expands by the equivalent of 145 40-seat vehicles. The MTA will have the discretion to utilize articulated vehicles where appropriate, for example, on heavily congested bus routes with short headways. These buses must be added to the active scheduled operating fleet and result in an overall increase in the size of the active fleet of 145 40-seat buses or their vehicular equivalent. While it is intended that these expansion buses be scheduled efficiently to reduce overcrowding, the MTA retains the discretion as to how and where they will be deployed throughout the bus system. The MTA will decide how these buses will be used.

Furthermore, in light of the MTA's sworn statements about the effectiveness of the HASTUS software in increasing the in-service productivity of buses and reducing non-productive layover and deadhead time, *see* Goldman Decl. ¶ 10; Goldman Decl. II ¶ 3, I am eliminating the specific requirement in the Proposed Order that revenue service hours be increased by a specific amount. Instead, I am substituting a requirement that *in-service* hours be increased by an amount commensurate with the addition of the 185 expansion buses (or their alternate equivalents, *e.g.*, service modifications and application of HASTUS) deemed necessary by the JWG to meet the 1.25 and 1.20 LFTs. To establish a target for increased in-service hours, I have applied the formula set forth above, *see supra* at 42, whereby each bus is presumed annually to provide 2,001 in-service hours. This would create a presumptive target of 370,185 additional in-service hours (185 buses x 2,001 in-service hours per bus) to be added to the bus system to reduce overcrowding. Thus, instead of mandating the 425,500 revenue hours found by the JWG to be the equivalent of 185 expansion buses needed to meet the ESU requirement, I am ordering a presumptive increase of 370,185 in-service hours to reduce overcrowding. Either party, however, may offer evidence, based on more experience with the HASTUS software, in

support of an alternate in-service hour target that would provide service capacity equivalent to that provided by 185 expansion buses (or their equivalents).

In addition, the requirement in the Proposed Order that the MTA retire and replace overage buses on an ongoing, timely basis is unchanged. As both Parties agree, the MTA should replace 381 buses as they reach 12 years of age from fiscal years 2003 through 2007. *See* September 5, 2003 Memorandum at 64; Letter from Roderick Goldman to Special Master attached to MTA Remedial Plan (dated March 31, 2003); BRU Remedial Plan at 27, Attachment 8.

Thus, I find that a total of 526 40-seat buses (or their vehicular equivalents) should be procured and added to the MTA bus fleet to meet and maintain the load factor requirements of the Consent Decree. In total numbers, this is generally consistent with the MTA's existing bus procurement plan, requiring only seven (7) more 40-seat buses or their vehicular equivalents than the 420 buses (equivalent to 519 40-foot buses) that the MTA states that it plans to purchase and place into service through fiscal year 2007. *See* September 5, 2003 Memorandum at 65; Letter from Roderick Goldman to Special Master attached to MTA Remedial Plan (dated March 31, 2003); MTA Remedial Plan, Section VI "Bus Procurement Schedule." Given the MTA's existing bus procurement plans, the procurement of these buses should be achievable in an accelerated timeframe. This bus procurement requirement cannot be completely unanticipated because the MTA, as part of the JWG, participated in the analysis and deliberations during which the JWG determined that 185 expansion buses and 425,500 revenue hours are required to meet the 1.25 and 1.20 LFTs. *See* JWG Submission on MTA Initial Service Plan.

While the MTA's existing bus procurement plan should facilitate its taking immediate, concrete steps to purchase and place into service the 526 40-seat buses (or their vehicular

equivalents), as more extensively discussed in the September 5, 2003 Memorandum at 65-66, the MTA does not appear to have contracted for all of the 420 buses that it plans to place into service through fiscal year 2007. The bus procurement plan contained in the MTA's October 2003 Quarterly Report confirms that only 320 buses have been purchased and scheduled for delivery, with 200 of the 320 buses slated for delivery in June 2005. *See* October 2003 Quarterly Report at Appendix E "Bus Procurement Plan". However, the MTA apparently has available an option for 696 buses set to expire in July 2004,<sup>49</sup> and an option for 400 articulated buses, both of which apparently have not yet been exercised, *see* October 2003 Quarterly Report at Appendix E "Bus Procurement Plan", and which may facilitate further the MTA's ability to add the expansion capacity necessary to meet the 1.25 and 1.20 LFTs "as soon as possible." *See* Consent Decree at II.A.4. If the MTA were to exercise its options, it also would have additional bus capacity to implement the New Service Plan, *see* Consent Decree Section II.C, and other projected restructuring and enhancements of service, including the establishment of bus expressways and the expansion of Rapid Bus service in San Fernando Valley and elsewhere. *See* October 29, 2002 Hearing Transcript at 91:6-11 (Testimony of Roger Snoble) (planned expansion of Rapid Bus service to total of 26 routes in next five years).

The expansion of the bus fleet by a minimum of 145 40-seat buses (or their vehicular equivalents) is fully consistent with past remedial measures developed and implemented to meet the 1.35 LFT. During the 1.35 LFT remedy phase in 1999, the MTA operated an "aging bus fleet" that "experienced substantial mechanical difficulties with the use of alternative fuel vehicles," causing the MTA to retain "some 910 buses in the fleet that exceed[ed] the 12-year

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<sup>49</sup> *See* Report to Management Audit Services Department of the LACMTA In Connection With Response to Memorandum Decision and Order Issued by Special Master Donald T. Bliss at Attachment A, note 4 (Aug. 30, 2002) ("BDO Seidman Audit") (report prepared by BDO Seidman, LLP for MTA on compliance with Judge Hatter's September 1999 Order, attached to August 30, 2002 Letter from Roderick Goldman to Special Master).



age for planned retirement.” March 6, 1999 Order at 10, 12. Moreover, the record reflected a “substantial decrease in the MTA fleet of total, active and operational buses” between 1988, when the MTA “had a total fleet of 2,957 buses, 2,554 active buses, and 1,998 operational buses” and 1997 when “there were 2,416 total buses, 2,103 active buses, and 1,666 operational buses.” *Id.* at 34 (citing Mundle & Associates, Review of LACMTA’s Bus Operating Plans at V-2, V-9. Admin. Record 77).

At the conclusion of considerable deliberation and briefing concerning appropriate steps to achieve the 1.35 LFT, the Special Master directed the MTA (1) to “fully implement its accelerated bus procurement plan by replacing 538 aging vehicles with new CNG buses by June 2000,” March 6, 1999 Order at 52, (2) to remedy an “undersized fleet” by “procur[ing] an additional 102 new buses to satisfy the requirement of Section II.B of the Consent Decree, for delivery on or before June 30, 2002,” *id.* at 55, and (3) to purchase “248 buses to add trips to the lines with ‘insufficient capacity’ violations to meet the 1.35 LFT” plus 49 spares. May 14, 1999 Order at 29. The District Court modified the Special Master’s finding concerning 49 spare buses, stating that “[g]iven the apparent increased reliability of the MTA’s current fleet, the Special Master shall reconsider whether the additional 49 buses he ordered the MTA to purchase for spares are still needed,” Judge Hatter’s Order at 4, but affirmed most of the Special Master’s other findings including the replacement of overage buses under the accelerated procurement plan and the purchase of 350 new expansion buses. *See id.* at 4-5. Thus, pursuant to Judge Hatter’s Order, assuming replacement of overage buses on a one-for-one basis, the MTA was obligated to expand the size of the bus fleet by 350 buses to meet the 1.35 LFT.<sup>50</sup> *See id.* at 4-5;

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<sup>50</sup> On May 6, 2002, the Special Master issued a Procedural Order, requesting, *inter alia*, information about the MTA’s compliance with Judge Hatter’s Order of September 23, 1999, specifically the MTA’s obligation to procure 102 new buses pursuant to Section II.B of the Consent Decree; 248 expansion buses to remedy “insufficient capacity” findings; and replacement buses pursuant to the accelerated procurement plan. *See* Procedural Order at 2

*see also* Order Re: MTA's Report on Compliance with District Court Order of September 23, 1999 at 1-4 (July 29, 2002).

The BRU has raised questions as to whether the MTA bus fleet has expanded by the requisite number of buses. Citing the MTA's annual National Transit Database ("NTD") submissions to the U.S. Federal Transit Administration from 1996 through 2002, the BRU contends that the size of the MTA's active fleet increased a total of only 174 buses during this time period. Rubin Decl. Re Consent Decree Costs at 2-3, 9-11. Based on information reported by the MTA in its NTD submissions, the BRU's Thomas Rubin compared the number of active buses in the fleet (including spares) as of June 30, 1996, which was 2,350 buses, to the number of active buses in the fleet (including spares) as of June 30 of each subsequent year. *Id.* at 9-10 and Attachment VIII. Mr. Rubin determined that the active fleet increased by 174 buses, from 2,350 buses in 1996 to 2,524 buses in 2002. *Id.* at 10-11 and Attachment VIII. Taking into account differences in seating capacity, Mr. Rubin concluded that fleet size increased by an equivalent of 140 buses. *Id.* at 3, 11-13.<sup>51</sup>

In response, the MTA does not challenge the accuracy or validity of the BRU's contentions and instead asserts that Mr. Rubin used a "different set of information and

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(May 6, 2002). The MTA submitted two reports on the extent of its compliance with the District Court Order. *See generally* Report on Compliance with Judge Terry Hatter's September 1999 Memorandum Order (submitted May 17, 2002); Supplement to Report on Compliance with Judge Terry Hatter's September 1999 Memorandum Order (submitted May 23, 2002). Citing the need for clarification of some of the issues raised in the MTA's submissions, I requested the MTA to provide additional information about its compliance with Judge Hatter's Order. *See generally* Order Re: MTA's Report on Compliance with District Court Order of September 23, 1999 (July 29, 2002). On August 30, 2002, the MTA responded with additional and more detailed information, including a report prepared by BDO Seidman, concerning its efforts to procure and place into service additional buses to meet its Consent Decree obligations. *See* Letter from Roderick Goldman to Special Master (Aug. 30, 2002) and attached BDO Seidman Audit. This section of this Memorandum addresses some of the issues raised by the variable information contained in the MTA's various submissions on the subject of its compliance with Judge Hatter's Order.

<sup>51</sup> Mr. Rubin points out that, since the Consent Decree was agreed upon in 1996, the MTA has retired many of its older 40-foot buses which commonly had 43 seats and replaced them with low-floor 40-foot buses that have 40 seats. *See id.* at 11-12. Given the importance of low floor buses in meeting the needs of the transit dependent, including physically challenged passengers, I believe it appropriate to adopt as the standard the 40-seat bus in place of the 43-seat bus that was the standard at the time the Special Master issued the 1.35 LFT remedial plan affirmed by the District Court in 1999.

assumptions” than the MTA in arriving at his conclusion that the MTA fleet has expanded by 174 buses. *See* Declaration of Pedro (Pete) Cruz ¶ 2 (Nov. 3, 2003) (“Cruz Decl.”). According to the MTA’s Pete Cruz, the MTA does “not believe that the Special Master has accepted the NTD reports as the ultimate basis for deciding which buses were purchased for the Consent Decree program.” *Id.* Rather, the MTA relied on the “Chronology of Weekday Peak Bus Changes” report in determining that 548 buses had been purchased for the Consent Decree.<sup>52</sup> *Id.*

According to the MTA, from the inception of the Consent Decree until the June 30, 2002 final deadline for the 1.20 LFT, the MTA added approximately 360 buses for load reduction purposes. *See* Letter from Roderick Goldman to Special Master attached to BDO Seidman Audit (Aug. 30, 2002); BDO Seidman Audit at Attachment C (Chronology of Weekday Peak Bus Changes); Supplement to Report on Compliance with Judge Terry Hatter’s September 1999 Memorandum Order at 1 (May 23, 2002). Total annual revenue service hours increased during this period from 6,332,500 to 7,336,100, an increase of 1,003,600 revenue service hours. *See* Robertson Decl. at Attachment 1 (Chronology of Annualized Revenue Service Hour Changes prepared by MTA). The BDO Seidman Audit of the MTA’s compliance with the 1.35 LFT remedial order issued by the District Court also indicated that the scheduled active fleet increased from 2,032 in July 1996 to 2,483 in July 2002 (an increase of 451 buses), and that the number of buses assigned to the active fleet increased from 2,113 buses on July 1, 1996 to 2,486 buses on July 1, 2002 (an increase of 373 buses). BDO Seidman Audit at 3-5; *see also id.* at Attachment A (chart containing data on MTA bus fleet size).

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<sup>52</sup> The “Chronology of Weekday Peak Bus Changes” report, which is prepared by MTA staff, appears to track buses that are added to bus lines for various purposes such as load reduction or New Service, and to include buses that may be reallocated from elsewhere on the bus system rather than only new additions to the fleet. *See* BDO Seidman Audit at Attachment C (Chronology of Weekday Peak Bus Changes). For example, the BDO Seidman Audit states that “[p]er the Chronology of Weekday Peak Bus Changes . . . the equivalent of 87 buses were re-assigned from non-Consent Decree services to Consent Decree services.” BDO Seidman Audit at 2.

With respect to changes in fleet size since Judge Hatter's September 1999 Order, the BDO Seidman Audit also indicated that the size of the MTA bus fleet increased from a total fleet size of 2,609 buses (total active fleet of 2,339 buses) during the third quarter of 1999 to a total fleet size of 2,981 buses (total active fleet of 2,486 buses) during the third quarter of 2002 – an increase of 147 active buses and 372 total buses.<sup>53</sup> *See id.* at Attachment A (chart containing data on MTA bus fleet size). Furthermore, from September 12, 1999 to June 30, 2002, MTA records indicate that it added 159 buses during weekday peak hours for load reduction purposes.<sup>54</sup> *See id.* at Attachment C (Chronology of Weekday Peak Bus Changes).

Given the apparently inconsistent information provided by the MTA in NTD reports to the federal government and in various submissions to the Special Master, the precise number of expansion buses that the MTA has procured and added to service since 1996 to comply with the Consent Decree is unclear. For example, the MTA has not explained how the data in the NTD reports are consistent with the information provided in the “Chronology of Weekday Peak Bus Changes” chart and the BDO Seidman Audit. Furthermore, the various numbers provided by the MTA concerning the addition of expansion buses to the total bus fleet, active fleet, and peak scheduled fleet over different periods of time, while presumably accurate, convey different pictures of the precise status of the MTA's bus fleet plan. Because the MTA has reassigned buses from other parts of the system to overcrowded lines, buses that have been added to the

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<sup>53</sup> Thus, although as required by the 1.35 LFT remedial orders issued by the Special Master and the District Court, the total fleet size increased by more than 350 buses from the third quarter of 1999 (when Judge Hatter's Order was issued) to June 2002, the active fleet appears to have increased by only 147 buses during this period – fewer than the 248 buses mandated to meet the 1.35 LFT. While the total fleet size did increase by 372 buses, the purpose of the 1.35 LFT remedial orders was to expand the number of active buses in order to provide additional service and reduce overcrowding to permissible levels.

<sup>54</sup> The MTA states that it added additional capacity to the overcrowded lines in various ways. For example, 87 additional buses were made available for load factor reduction as a result of the reduction in buses on other lines due to “rail expansion, service transfers to other operators, and service efficiencies.” *See* Letter from Roderick Goldman to Special Master attached to BDO Seidman Audit (Aug. 30, 2002). Thus, some of the buses added for load reduction purposes were not new expansion buses, but were existing buses reallocated from other parts of the bus system.

monitored lines since 1996 are not necessarily expansion buses, *i.e.*, buses that increase the size of the active fleet. While this may explain some of the differences between the numbers proffered by the MTA and the BRU, it also highlights the need for an accurate, consistent, and straightforward mechanism for evaluating and reporting on the planning and operational status of the bus fleet as steps are taken to implement remedies to achieve and maintain the 1.20 LFT. Seven years into the Consent Decree, it is important that these steps result in lasting improvements in the quality of bus service. While some of these improvements can be accomplished through more efficient scheduling, operations, and new technologies, expansion of the active fleet is an essential part of the MTA's obligations under the Consent Decree.

To meet the LFTs, the MTA must have a firm bus procurement plan in place to expand the fleet, and there must be a clear, consistent means of evaluating and ensuring that the appropriate number of expansion buses are procured and added to service. This is particularly important given the concerns raised by the BRU about past fleet expansion, and more importantly, future bus fleet, service, and operational planning. For example, the BRU cites bus system reductions in the MTA fiscal year 2004 budget, potential curtailments pursuant to the new Transit Service Policy, and proposed reductions in service of 213 buses and 400,871 revenue hours contained in the MTA's Annual 5309 Report. *See* Robertson Decl. ¶¶ 7-11 and Exhs. 5, 6, and 7. The MTA has strongly objected to the BRU's reference to the Annual 5309 Report, stating that the annual revenue service hour reductions have been reconsidered as the "plan is currently being modified."<sup>55</sup> *See* Goldman Decl. ¶ 14. Presumably, these ongoing planning modifications will take into account the remedies set forth in this Final Order.

These uncertainties – past and future – illustrate the importance, going forward, of

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<sup>55</sup> Although the MTA states that the "annual revenue service hour reductions . . . are not being included in the plan," the MTA is silent on whether the proposed reduction in service of 213 buses is still being considered in its operational and financial planning. *See* Goldman Decl. ¶ 14.

making sure that all parties to the Consent Decree and all relevant governmental agencies have a clear and consistent understanding of the changing status of the bus fleet and its composition. I therefore am requesting that the JWG prepare a chart setting forth the number of buses and seats in the total bus fleet and the active bus fleet as of January 1, 2004 (broken down by relevant subcategories, including scheduled peak buses and spares, MTA operated and contract buses, overage buses, load factor reduction buses, New Service buses, and whatever other categories the JWG deems appropriate). The JWG should report this information to the Special Master by February 15, 2004. These numbers shall constitute the baseline by which to gauge the MTA's progress in replacing the 381 buses that become overage through fiscal year 2007 and in adding to service the 145 expansion buses (or their vehicular equivalent). By April 15, 2004, the MTA shall file with the Special Master a timeline outlining its plans to meet the bus procurement requirements of the Final Order, and showing the projected additions to the total fleet and active fleet for the next five (5) years, including replacement, expansion, and other buses. Progress on this timeline and the ongoing status of the bus fleet shall be included in subsequent Quarterly Reports.

Just as the MTA took steps after the 1.35 LFT remedy phase to replace aging buses and expand the bus fleet – with concomitant benefits – the MTA similarly has an opportunity now to make additional service improvements to the bus system in accordance with the purpose and requirements of the Consent Decree. Substantial progress has been made in modernizing the fleet and improving bus service, but as is evidenced by the persistent and ongoing levels of overcrowding reflected in the most recent Quarterly Report, *see supra* at 6-7, additional fleet expansion is still needed.

Indeed, the MTA has recognized the benefits of its past efforts to improve and expand the

bus fleet to comply with the 1.35 LFT requirement of the Consent Decree. In a briefing apparently for the MTA Board on the Consent Decree prepared by the MTA Management Audit Services Department, the MTA stated that the "MTA purchased 487 buses and 93 spares specifically for load reduction or New Service." Rubin Decl. on Consent Decree Costs at Attachment 2 (Consent Decree Update dated September 19, 2002). According to the report, 361 of these buses added 598,000 annual service hours to reduce overcrowding, and 127 buses were added for New Service on 16 new bus lines. *Id.* Among the benefits listed were: (1) "MTA went from the oldest to the newest fleet of major bus companies," and (2) "Reliability, comfort and maintenance efficiencies have been achieved." *Id.* Under "Costs," the report stated: "No negatives." *Id.* The report reached the conclusion: "*MTA's new buses are worth every penny.*"<sup>56</sup> *Id.* (emphasis added).

By acting on a firm commitment to purchase the 526 new replacement and expansion buses set forth above in a reasonable time frame, there will be a presumption that the MTA has taken substantial and reasonable good faith steps to meet the expansion bus procurement requirements of Section II.A of the Consent Decree.

Thus, based on the extensive evidence and data contained in the record of this proceeding, including the JWG's determination that the equivalent of 185 buses and 425,500 revenue hours are required to meet the 1.25 and 1.20 LFTs, I hereby revise the Proposed Order attached to the September 5, 2003 Memorandum, and find that the MTA should modify its bus procurement plan and schedule in the following ways:

1. The MTA should complete as soon as possible implementation of its accelerated

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<sup>56</sup> In a March 2002 report, the MTA characterized as "unacceptable" the "condition of MTA bus service" prior to implementation of remedies to comply with the Special Master's 1999 1.35 LFT remedial orders and stated that "[n]ew buses have been a major contributor to the success of the MTA [remedial] plan." MTA March 2002 Report at 18.

procurement plan as approved by the MTA Board.

2. The MTA should purchase and place into service, within a reasonable timeframe, 381 buses to replace overage buses for FY03 through FY07.
3. The MTA should purchase and place into service 145 40-seat expansion buses (or their vehicular equivalents), in addition to the 381 buses referred to above. By exercising its existing options, the MTA should consider purchasing and placing into service these 145 expansion buses on an accelerated timetable. In any event, the MTA should place these 145 new expansion buses (or their vehicular equivalents) into service by the June 2005 service change, or as soon thereafter as possible, and no later than the December 2005 service change.
4. While the MTA retains discretion to determine what time periods and on which line(s) within the total bus system to schedule and place into service the replacement and expansion buses, the MTA should ensure that at least 370,185 *additional* in-service hours are provided to meet Consent Decree obligations. These additional in-service hours should be added to the bus system as soon as feasible, but in any event, by the December 2004 basic service change. Either party may petition to revise the required number of in-service hours, based on an evidentiary showing that an alternate in-service hour target would provide service capacity equivalent to that provided by 185 expansion buses (or their equivalents). The MTA shall include in its Quarterly Reports the amount of in-service hours added to each bus line for load factor purposes and any net changes (positive or negative) in in-service hours on each monitored bus line.



5. The MTA should prepare a transitional plan to employ 145 buses on a temporary basis to meet the 1.20 LFT as soon as possible (through lease, use of contract buses, delayed retirement of overage buses, or other means) until the 145 newly purchased buses (or their vehicular equivalents) arrive. A significant portion of these 145 temporary buses (or their vehicular equivalents) should be placed into service in the June 2004 service change, and the remainder no later than the December 2004 service change.
6. The JWG shall determine the bus fleet baseline as of January 1, 2004, setting forth the number(s) and size(s) of the Total Fleet and the Active Fleet (broken down into relevant categories determined by the JWG) and report this information to the Special Master by February 15, 2004.
7. Using the January 1, 2004 bus fleet baseline agreed to by the JWG, the MTA shall prepare a timeline setting forth how it plans to meet the bus procurement requirements of this Final Order and showing its projected additions to the Total and Active Fleets for each of the next five (5) years. This report should be filed with the Special Master by April 15, 2004.
8. The MTA shall include in its Quarterly Reports information concerning the status of its bus fleet from 1996 through the present, including but not limited to: the size of the Total Fleet (broken down into relevant categories), size of the Active Fleet (broken down into relevant categories), and fleet projections for the next ten (10) years.

The MTA should bear in mind that its bus procurement plan should take into account the

new buses that it will need to purchase in addition to and separate from the 145 40-seat buses (or their vehicular equivalents) necessary to reduce overcrowding and the 381 40-seat buses (or their vehicular equivalents) to retire overage buses from FY03-FY07. For example, the MTA will want to plan for the procurement of buses to implement the New Service Plan, *see* Consent Decree Section II.C, and other projected restructuring and enhancements of service.

Consistent with the steps outlined above, the MTA should inform the JWG about any changes to bus procurement plan and timeline. The MTA should provide regular status updates in the Quarterly Reports.

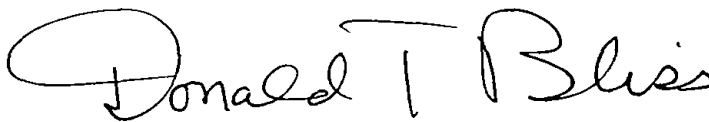
**11. *What are the appropriate parameters for monitoring and remedying bus overcrowding in excess of permissible load factor levels on an ongoing basis?***

At issue are the appropriate parameters for monitoring and remedying bus overcrowding levels in order to achieve and maintain the 1.20 LFT during the lifetime of the Consent Decree. In my Remedial Methodology Order, I discussed the importance, particularly given the limited amount of point check data at the time, to “monitor the effectiveness of the remedies implemented” by the MTA and “to ascertain whether additional remedial measures are required.” Remedial Methodology Order at 56. I directed the MTA to include in its Quarterly Reports its progress in implementing remedies to meet the load factor requirements, the effect of such remedies in reducing load factor exceedences, and any significant changes (and the reasons for such changes) to the MTA’s service plan. *Id.* The Quarterly Reports were to “serve as the basis for the JWG’s monitoring activities.” *Id.* Moreover, pursuant to Section II.A.2 of the Consent Decree which provides for JWG monitoring of compliance with the load factor targets, I directed the JWG to conduct a “complete status review of the MTA’s compliance with the 1.20 LFT . . . in early 2004 after all the data for 2003 has been reviewed by the JWG.” *Id.* at 56-57.

the amount of ESUs required to achieve the 1.25 and 1.20 LFTs was limited, spanning June 30, 2000 through September 30, 2002. *See Remedial Methodology Order at 29-30.* Based on the assumption that the MTA would have implemented a remedial service plan sometime in 2003, I therefore directed the JWG to conduct a comprehensive review in early 2004 of the effects of such remedial measures on bus overcrowding in order to determine whether additional expansion service capacity is needed. Since, however, this remedial proceeding has entailed considerable briefing and analysis due to the voluminous submissions proffered by the Parties, the MTA has not yet implemented an approved remedial service plan to meet the 1.25 and 1.20 LFTs.

Thus, based on the foregoing, I find that a comprehensive JWG review of the status of the MTA's compliance with the 1.20 LFT on each bus line in early 2004 would be helpful for informational rather than remedial purposes at this point in time. Moreover, because of the recent mechanics' strike, the data collected during the fall quarter is likely to be incomplete and somewhat distorted. While in early 2004, the JWG should assess the point check and other data collected from October 2002 to the present, I believe it would be premature for the JWG to identify and conclude that additional ESUs are required before first assessing the impact of remedies to be implemented, pursuant to this Final Order, in the June 2004 service change. It would be more appropriate for the JWG to conduct such a review of the June 2004 service changes in early 2005, after some time has elapsed, to gauge the effects of the remedies and to determine whether additional remedial measures are warranted. This additional time also would enable the MTA to demonstrate the practical results of its application of the HASTUS software in providing additional in-service capacity more efficiently. To ensure cost efficiency and effectiveness, any additional remedies should be implemented during the MTA's regular six-month service change in June 2005.

As discussed in the Remedial Methodology Order, the MTA should continue to include in its Quarterly Reports information relevant to its compliance with the 1.20 LFT, including load factor mapping and data concerning the remedial measures it implements, and the effects of such measures. Consistent with Section II.A of the Consent Decree, the JWG regularly should review and discuss the contents of the Quarterly Reports to evaluate whether the MTA is meeting its load factor obligations under the Decree. Any additional remedies deemed necessary to meet and maintain the 1.20 LFT thereafter should be implemented during the MTA's regular six-month service changes.

A handwritten signature in black ink that reads "Donald T. Bliss". The signature is written in a cursive style with a large initial "D" and a distinct "T" and "B".

Donald T. Bliss  
SPECIAL MASTER

Dated: January 12, 2004

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PROCEEDING BEFORE SPECIAL MASTER DONALD T. BLISS

LABOR/COMMUNITY STRATEGY	)	
CENTER, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case No. CV 94-5936 TJH (MCx)
	)	
vs.	)	<b>MEMORANDUM DECISION II</b>
	)	<b>AND FINAL ORDER ON</b>
LOS ANGELES COUNTY METROPOLITAN	)	<b>REMEDIAL SERVICE PLAN</b>
TRANSPORTATION AUTHORITY, <i>et al.</i>	)	<b>TO MEET 1.25 AND 1.20</b>
	)	<b>LOAD FACTOR TARGET</b>
Defendants.	)	<b>REQUIREMENTS</b>
_____	)	

**FINAL ORDER**

The Special Master has determined, based on the foregoing, that in order to achieve compliance with the 1.25 and 1.20 load factor targets set forth in Section II.A of the Consent Decree, the MTA should amend its Remedial Plan to implement the measures outlined below. The MTA is directed to move expeditiously to:

**1. Remedy exceedences attributable to missed trips**

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

- (a) complete its causal analysis of exceedences attributable to missed trips;
- (b) complete its analysis of exceedences for which no causal factor is currently documented;
- (c) amend its Remedial Plan to set forth specific, quantifiable objectives and specific, tailored remedies to address the sub-causes of missed trip exceedences, including but not limited to: average age of bus fleet, total monthly road calls, miles

between road calls, miles between chargeable mechanical failures, reduction of equipment failures by bus type(s), cancelled or late pullouts due to lack of equipment or other reasons, cancelled or late pullouts due to unavailability of operators, cancelled or late pullouts as a percentage of total pullouts, operator to assignment ratios, and hiring of additional operators, mechanics and service attendants;

(d) include in the next Quarterly Report the amendment to the Remedial Plan setting forth the quantifiable objectives and specific remedies requested in paragraph (c) above;

(e) implement the remedies for missed trip exceedences required by paragraph (c) above in the June 2004 service change-over, or as soon thereafter as possible; and

(f) include in each subsequent Quarterly Report hereafter information concerning the status of the MTA's efforts in implementing specific, tailored remedies to achieve and maintain the quantifiable objectives developed pursuant to paragraph (c) above to reduce exceedences attributable to missed trips.

2. **Remedy exceedences attributable to lack of schedule adherence and insufficient capacity**

In order to achieve compliance with the Consent Decree and to meet and maintain the 1.20 LFT, the MTA shall amend its Remedial Plan and develop a timetable to provide for the number of expansion service units determined by the JWG's application of the remedial methodology: 331 expansion service units for the weekday A.M. peak hours (6:00 a.m. – 9:00 a.m.) and 453 expansion service units for the weekday P.M. peak hours (3:00 p.m. – 6:00 p.m.). As determined by the JWG, this will require the equivalent of

185 40-seat buses and 425,500 additional annual revenue hours. While the MTA has discretion in scheduling this expansion capacity on specific bus lines and during specific time periods throughout the bus system, the MTA should deploy this additional service to meet the objective of alleviating bus overcrowding to achieve the 1.20 LFT on each and every bus line. To accomplish this, the MTA shall:

(a) If it has not already done so, implement its proposed service modifications, *see* MTA Remedial Plan at Section III “Service & Scheduling Modifications,” to provide the service capacity equivalent of 30 expansion buses and 70,000 additional annual revenue hours (or 60,030 additional annual in-service hours) to meet the 1.20 LFT on overcrowded bus lines;

(b) Through more efficient scheduling and utilization of in-service hours resulting from application of the upgraded HASTUS software program, provide the equivalent of ten (10) additional buses and 23,000 additional annual revenue hours (or 20,010 additional annual in-service hours) to meet the 1.20 LFT on overcrowded bus lines;

(c) Purchase the vehicular equivalent of 145 new 40-seat expansion buses that should be delivered and placed into service by the June 2005 service change, or as soon thereafter as possible, but in any event, not later than the December 2005 service change. While the MTA retains the discretion as to how to deploy and schedule these 145 expansion buses (or their vehicular equivalents) throughout the bus system, an additional 290,145 annual in-service hours should be provided to meet the Consent Decree obligations;

(d) For the scheduled operating fleet, provide a total of at least 370,185 additional annual in-service hours to meet Consent Decree obligations. The MTA should amend its Remedial Plan to show the total amount and sources of the in-service hours that will be added during the June 2004 service change, and provide a timetable for implementing the remainder of the required expansion service capacity. These in-service hours should be added to the bus system as soon as possible, and no later than the December 2004 service change. Either party may petition to revise the required number of 370,185 additional in-service hours, based upon an evidentiary showing that an alternate in-service hour target would provide service capacity equivalent to that provided by 185 expansion buses (or their equivalents);

(e) Expeditiously complete the analysis of off-peak load factor exceedences and provide relevant load factor mapping to the JWG by March 15, 2004. The JWG thereafter should apply the remedial methodology and determine the required number of expansion service units for the off-peak hours. These expansion service units are to be added to the bus system in the June 2004 service change, or as soon thereafter as possible;

(f) Hire additional full-time operators to operate the expansion service, as required;

(g) Hire additional mechanics as needed to meet the expansion service requirements;

(h) Hire additional service attendants as needed to meet the expansion service requirements;

(i) Obtain (through lease, use of contract buses, delayed retirement of overage



buses, or other means) the equivalent of 145 40-seat buses on a temporary basis to meet the 1.20 load factor target as soon as possible until the 145 newly purchased expansion buses arrive. A significant portion of these 145 temporary buses should be placed into service on or before the June 2004 service change-over, and the remainder no later than the December 2004 service change-over;

\* \* \*

The MTA is not limited to the purchase of 40-seat buses, but instead has discretion to procure and place into service higher capacity (or lower capacity) vehicles so long as the equivalent of 145 40-seat expansion buses (as measured by total seats) are added to the fleet.

Full implementation of the expansion capacity requirements of this Section 2, together with the other requirements of this Final Order, shall constitute good faith, substantial compliance with the load factor targets of the Consent Decree and create a presumption that the expansion bus procurement requirements of Section II.A of the Decree have been met.

**3. Expanding the size of the Active Fleet**

To measure progress in increasing the size of the active bus fleet to meet the requirements of the Consent Decree:

(a) The JWG shall determine the bus fleet baseline (by vehicles and seats) as of January 1, 2004, setting forth the number(s) and size(s) of the Total Fleet and the Active Fleet (broken down into relevant subcategories, including scheduled peak buses and spares, MTA operated and contract buses, overage buses, load factor reduction buses, New Service buses, and whatever other categories the JWG deems appropriate) and

report this information to the Special Master on or before February 15, 2004; and

(b) Using the January 1, 2004 bus fleet baseline provided by the JWG, the MTA shall prepare a timeline setting forth its plans to meet the bus procurement requirements of this Final Order and showing its projected additions to the Total and Active Bus Fleets for each of the next five (5) years, including replacement, expansion, and other buses. This report shall be filed with the Special Master by April 15, 2004 and the information updated in each subsequent Quarterly Report.

4. **Maintain capacity and reliability of bus fleet in order to maintain 1.20 LFT**

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

(a) Within a reasonable timeframe, purchase the equivalent of 381 40-seat buses to replace overage buses for FY03 through FY07, and report on these actions in the Quarterly Reports.

5. **Evaluate reductions in service**

To address whether significant service modifications (such as curtailments, cancellations, or reallocations of bus service) that are used to meet the load factor targets are in compliance with the Consent Decree, the JWG shall:

(a) Review the following issues and agree upon recommendations, if any, to the MTA:

- Appropriateness of the criteria set forth in the MTA's Transit Service Policy, or other criteria proposed by the MTA, used to modify or curtail significantly existing bus service in meeting Consent Decree obligations;
- Whether significant service curtailments proposed to meet Consent Decree obligations are justified independently on the basis of such objective

criteria;

- Effect of such service curtailments on transit-dependent riders; and
- Adequacy of steps taken to mitigate any adverse effect of such service curtailments on transit-dependent riders.

(b) Taking into account the issues set forth in (a) above:

(1) Analyze whether MTA's proposed service modifications (involving reallocation of 30 buses and 70,000 revenue hours) will adversely impact the transit-dependent and, if necessary, recommend service adjustments to address these adverse impacts; and

(2) Review any past or proposed significant reductions in service that have been allocated to load factor reduction, review the impact of such service changes on the transit-dependent, and, if necessary, recommend service adjustments.

If the JWG and counsel to the parties are unable to reach agreement on the issues set forth in (a) and (b) above, the matter(s) may be submitted to the Special Master by June 30, 2004 for resolution in accordance with the procedures set forth in the Consent Decree. *See* Consent Decree Sections II.A.4 and V.B. If the Special Master determines additional service adjustments are required to comply with the Consent Decree, such adjustments shall be made, if feasible, in the December 2004 basic service change.

**6. Report on funding of Consent Decree remedies**

(a) On or before June 30, 2004, the MTA shall file a report with the Special Master detailing the specific source(s) and amount(s) of funding for fiscal years 2005, 2006 and 2007 that shall be used to implement the Consent Decree remedies set forth in this Final Order. Funding source(s) and amount(s) shall be specifically identified for the following categories:

- (1) Procurement of new expansion buses.
- (2) Procurement of replacement buses.
- (3) Obtaining temporary buses.
- (4) Additional costs of expanded bus fleet operations.
- (5) Program to reduce missed trips.
- (6) Monitoring and reporting on Consent Decree compliance.

(b) The Report to the Special Master shall identify specific bus eligible funds that have been reprogrammed from other MTA programs to meet the load factor targets as provided for in Section II.A.4 of the Consent Decree.

**7. Provide for adequate monitoring and reporting**

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

(a) Continue to conduct point checks three times a month on the top 20 lines with heaviest ridership volumes and once a month on the remaining monitored bus lines.

(b) Provide in the January 2004 Quarterly Report an update on the remedial measures implemented in the June 2003 and December 2003 service change-overs. This should include, but not be limited to, information concerning the specific actions taken to

implement the Special Master's March 18, 2003 Order and the status of such implementation; other remedial actions taken during the June 2003 and December 2003 service changes; and the effect of such remedial measures on reducing overcrowding levels to meet the 1.20 LFT. Such information should be provided on a line-specific and system-wide basis.

(c) In early 2005, the JWG should conduct a review of the June 2004 service change to gauge the effect of the remedies implemented therein and to determine whether additional remedies are warranted. If additional remedies are required, they should be implemented during the MTA's regular six-month service change in June 2005. Thereafter, the JWG regularly should review and discuss the contents of the Quarterly Reports to evaluate whether the MTA is meeting its load factor obligations under the Consent Decree. Any additional remedies deemed necessary to meet and maintain the 1.20 LFT should be implemented during the MTA's regular six-month service changes.

- (d) Supplement the regular Quarterly Reports with the following information:
- Status of (i) the MTA's efforts in implementing specific, tailored remedies to reduce exceedences attributable to missed trips, and (ii) the MTA's progress in achieving specific, quantifiable objectives to reduce missed trip exceedences;
  - Number of bus lines that did not meet the 1.20 LFT during the quarter and a list of those lines;
  - Total number of new bus trips added to or eliminated from each bus line, the time period(s) and date(s) during which the bus trips were added or

eliminated; and the sources of the additional service capacity (*e.g.*, expansion bus, service or scheduling changes, etc.);

- Significant service and scheduling changes on a line-specific and system wide basis;
- Impact of service changes on the transit-dependent;
- Actions taken with respect to municipal operators;
- Net increases or reductions in revenue service hours and in-service hours (compared to previous quarter) on a line-specific and system wide basis;
- Status and timeline of the MTA's bus procurement plan, including but not limited to, procurement, delivery, and in-service operation of 145 new expansion buses to meet the 1.20 LFT, 381 buses to replace buses that become over age during FY03-07, and other buses identified by category. Using the January 1, 2004 baseline determined by the JWG, this information should include the projected additions to the Total and Active Bus Fleets for each of the next five (5) years, including replacement, expansion, and other buses by category; and
- Status of the MTA bus fleet from 1996 through the present, including but not limited to the size of the Total Fleet (broken down into relevant categories), size of the Active Fleet (broken down into relevant categories), and fleet projections for the next ten (10) years.

8. Additional procedural issues

(a) The Special Master will not entertain any petitions or motions for reconsideration of this Final Order.

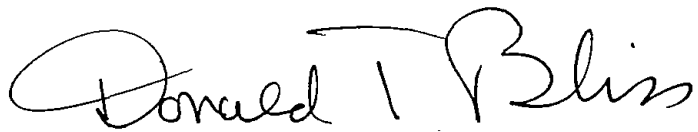
(b) Either or both Parties may seek review of this Final Order by the Honorable Terry J. Hatter in the United States District Court for the Central District of California. *See* Consent Decree Section V.B.

(c) Parties intending to seek review of this Final Order should notify the Special Master in writing of such intention on or before February 15, 2004.

(d) After February 1, 2004, either party may submit a request for clarification of any matter raised by the Final Order, except that such request shall not exceed five (5) pages and shall be served on all parties.

(e) Either party, upon good cause shown, may submit a motion for a waiver or extension of any provision in this Final Order.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Donald T. Bliss". The signature is written in a cursive style with a large, looping initial "D".

Donald T. Bliss  
SPECIAL MASTER

Dated: January 12, 2004

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**PROCEEDING BEFORE SPECIAL MASTER DONALD T. BLISS**

LABOR/COMMUNITY STRATEGY	)	
CENTER, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	CASE NO. CV 94-5936 TJH (MCx)
	)	
vs.	)	<b>SUPPLEMENT TO MEMORANDUM</b>
	)	<b>DECISION II AND FINAL ORDER ON</b>
LOS ANGELES COUNTY	)	<b>REMEDIAL SERVICE PLAN TO</b>
METROPOLITAN TRANSPORTATION	)	<b>MEET 1.25 AND 1.20 LOAD FACTOR</b>
AUTHORITY, <i>et al.</i>	)	<b>TARGET REQUIREMENTS</b>
	)	
Defendants.	)	
_____	)	

**SUPPLEMENT TO MEMORANDUM II**

On Tuesday, January 13, 2004, the Special Master received from the Los<sup>†</sup>Angeles County Metropolitan Transportation Authority (“MTA”) a document entitled Consent Decree Quarterly Report for the Period Ending September 30, 2003 LOAD FACTOR (September Data REVISED) (“Revised Data”) revising some of the load factor exceedence mapping contained in the Consent Decree Quarterly Report for the Period Ending September 30, 2003 (dated October 2003) (“October 2003 Quarterly Report”). According to Mr. Roderick T. Goldman, Deputy Executive Officer of Service Development at the MTA, the Revised Data contain “corrected Maps and Causal Analysis for the month of September 2003 . . . due to technical problems during the collection of the Point Check Data.” Letter from Roderick T. Goldman to Special Master (dated Jan. 9, 2004) (attached to Revised Data).



I have reviewed the revised load factor mapping in order to determine whether it alters any of the data referenced in my Memorandum Decision II and Final Order on Remedial Service Plan to Meet 1.25 and 1.20 Load Target Requirements issued on January 12, 2004 (Jan. 12, 2004) (“Memorandum II”). Based on this review of the revised mapping, the following data cited in my Memorandum II should be revised as follows:

**I. Extent of Overcrowding on Monitored Lines (pp. 6-7, 28 of Memorandum II)**

In the Revised Data, the MTA included a monitored line -- Line 489 -- that was not incorporated in the prior version of load factor exceedence mapping contained in the October 2003 Quarterly Report. Other revisions involved changes in the mapping of load factor exceedences for September 2003, including recategorization of the cause(s) of exceedence(s) (e.g., non-missed trip exceedence recategorized as missed trip exceedence and vice versa), and alterations in the magnitude(s) of exceedence(s) (primarily downward, and some upward, adjustments) and time period(s) during which exceedence(s) occurred. Based on this review, data cited on the number of monitored bus lines exhibiting one or more exceedences above a certain magnitude should be revised as follows for the *July 2003 - September 2003 quarter*:

<b><u>Exhibited one or more exceedence(s) above</u></b>	<b><u>Memorandum II</u></b>	<b><u>Revised Data</u></b>	<b><u>Net Difference</u></b>
<b>1.20 LFT</b>	71	72	+1
<b>1.35 LFT</b>	57	58	+1
<b>1.5 LFT</b>	40	41	+1
<b>1.6 LFT</b>	26	23	(-3)
<b>1.7 LFT</b>	15	14	(-1)

Accordingly, the references on pages 6 and 28 of Memorandum II to the number of bus lines on which the 1.20 LFT was exceeded during weekday peak hours for the July 2003-

September 2003 quarter should be increased from 71 to 72. Moreover, the references on p. 7 of the Memorandum II to the number of monitored bus lines that exhibited one or more exceedences above a specific magnitude during weekday peak hours for the July 2003 through September 2003 quarter should be revised as follows: 58 (not 57) lines exhibited one or more exceedences above 1.35 LFT; 41 (not 40) lines exhibited one or more exceedences above 1.5 LFT; 23 (not 26) lines exhibited one or more exceedences above 1.6 LFT; and 14 (not 15) lines exhibited one or more exceedences above 1.7 LFT.

**II. Lines Targeted for Improved Field Supervision (pp. 29-30 of Memorandum II)**

A review also was conducted of the revised load factor exceedence mapping for the 32 lines targeted for improved field supervision by the MTA.

(1) In discussing the level of overcrowding on the 32 lines, the Memorandum II stated that “exceedences as high as 1.92 LFT” were observed in a review of load factor mapping for the 32 lines for the time(s) of day and at the point check location(s) targeted for increased field supervision. *See* Memorandum II at 29. Based on my review of the Revised Data, this reference to the highest magnitude exceedence should be revised from 1.92 LFT to 1.85 LFT.

(2) I also should clarify that, based on my review of the revised load factor mapping for the July 2003 to September 2003 quarter, 19 of the 32 lines exhibited exceedence(s) above 1.20 LFT *attributable to insufficient capacity and lack of schedule adherence* during the time(s) of day and at the point check location(s) targeted for increased field supervision. *See id.* at 29, 30 n.20. This analysis excluded exceedences attributable to missed trips. In addition, in footnote 29, the 22 of the 32 lines that exhibited exceedence(s) above 1.20 LFT from the March 2003 through June 2003 period involved only non-missed trip exceedences. *See id.* at 30 n.20.

### **III. Specific Limited Stop and Metro Rapid Examples (pp. 30-32 of Memorandum II)**

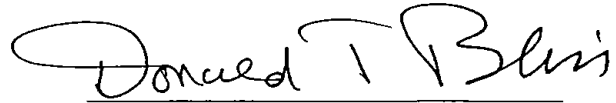
There were three changes based on the Revised Data:

(1) Rapid Bus Line 111 – The Memorandum II stated that the eastbound Line 111 exhibited exceedences ranging from 1.27 LFT to 1.7 LFT during the weekday peak hours between July 2003 and September 2003. *See* Memorandum II at 30. Based on the Revised Data, the low end of this range should be revised from 1.27 LFT to 1.26 LFT. The Memorandum II also stated that the westbound Line 111 exhibited exceedences ranging from 1.23 LFT to 1.81 LFT during the weekday peak hours between July 2003 and September 2003. *See* Memorandum II at 30-31. Based on the Revised Data, the high end of this range should be revised from 1.81 LFT to 1.55 LFT.

(2) Limited Stop Line 66 – The Memorandum II states that the eastbound Line 66 exhibited 14 non-missed trip exceedences during the weekday A.M. peak hours at the Ninth & Figueroa checkpoint from July 2003 through September 2003. *See* Memorandum II at 31. Based on the Revised Data, the eastbound Line 66 exhibited 13 (not 14) non-missed trip exceedences during weekday A.M. peak hours at that location during the July 2003 through September 2003 quarter. The cause of one exceedence was re-categorized from insufficient capacity and lack of schedule adherence to missed trip(s).

(3) I also should clarify that footnote 21 on page 31 of the Memorandum II, discussing the extent of overcrowding on Line 561 and its Rapid Bus replacement Line 761, refers only to exceedences exhibited during the *weekday peak hours*.

Having reviewed the Revised Data, I do not find any significant changes that would alter in any way the findings, conclusions and remedies ordered in Memorandum II and the Final Order.

A handwritten signature in black ink that reads "Donald T. Bliss". The signature is written in a cursive style with a large initial "D" and "B".

Donald T. Bliss  
SPECIAL MASTER

January 15, 2004