

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.	)	FINAL MEMORANDUM DECISION
	)	AND ORDER ON THE MTA’S REVIEW OF
LOS ANGELES COUNTY	)	SERVICE REDUCTIONS AND
METROPOLITAN TRANSPORTATION	)	TRANSIT POLICY REVISIONS
AUTHORITY, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

MEMORANDUM DECISION

A recurrent disputed issue in proceedings under the Consent Decree is the extent to which bus service cuts made during the semi-annual service change process adversely affect the transit-dependent. Has the Los Angeles Metropolitan Transportation Authority (“MTA”) taken sufficient actions to mitigate such adverse effects by providing alternative service options that do not involve significant increases in waiting, walking or travel time, transfers or fares? Are such service reductions independently justified, based on objective criteria, and part of a restructuring program that results in an overall net benefit for the transit-dependent? Or, are service cuts being made in the system to reallocate resources to meet the load factor targets or new service plan mandates of the Consent Decree, other new rail and bus initiatives, or simply for cost reduction purposes?

These issues go to the heart of the Consent Decree, the overriding purpose of which is to improve the quality of bus service for the transit-dependent *system wide*. Meeting the load

factor targets and implementing the New Service Plan cannot come at the cost of unmitigated cuts in other bus services that adversely affect riders who depend on such service for personal mobility. If the Consent Decree results in simply rearranging the deck chairs then it will have failed to achieve its purpose. On the other hand, the MTA must have the flexibility to restructure its route system to improve productivity, to respond to changing demographics and patterns of passenger demand, and to integrate the many facets of public transportation efficiently – Metro Local, Limited, Metro Rail Feeder and Shuttle, Metro Rapid, Metro Express and Metro Liner bus services, light rail and subway lines. To address these and related issues, the Special Master issued, on May 26, 2005, a Memorandum Decision and Order on Service Reductions (“Service Order”).

In the Service Order, the MTA was directed to conduct a detailed evaluation of the service modifications and reductions to 13 bus lines in the service change programs for June 2003, February 2004, June 2004, and June 2005, and to report on any additional steps it plans to take to mitigate any adverse impact on the transit-dependent. The MTA further was to review and revise the Transit Service Policy to ensure that future service change programs meet the requirements of the Consent Decree. Finally, the MTA was directed to report to the Special Master by July 31, 2005 on actions taken pursuant to the Service Order. Service Order at 46.

At the request of the MTA, the deadline for the MTA’s report was extended until September 30, 2005 “[i]n light of the election of a new Mayor of Los Angeles, who appoints three members of the MTA Board” in order to give new Board members “additional time to address critical budget, bus procurement and staffing issues.” Procedural Order and Clarification In Re New Service Plan and Service Reductions dated June 10, 2005 at 10 - 11.

On September 30, 2005, the MTA submitted its Review of Past Service Changes and Revisions to the Transit Service Policy (“MTA Report”). On October 20, 2005, the Plaintiffs Community Legal Strategy Center, *et al.* (“Plaintiffs” or “BRU”) filed and served Comments of the Plaintiffs and the Plaintiff Class on MTA’s Recent Review of Past Service Cuts and on its Policy Changes (“BRU Comments”) and the Declaration of Layla Welborn in support thereof (“Welborn Decl.”). On November 4, the MTA submitted Defendant’s Comments Re Past Service Cuts and Transit Service Policy (“MTA Reply”).

After reviewing the parties’ filings, declarations and exhibits, I issued a list of questions for the parties on November 7th. On November 14th, the parties provided written answers to my questions (“BRU Response” and “MTA Response” respectively).

Having reviewed the MTA’s Report of September 30, the Revised Transit Service Policy, the BRU’s Comments, the MTA’s Reply, the various Declarations, Exhibits and Maps provided for the Record and the parties’ answers to my questions, I will address the following issues in determining whether the MTA has satisfied the requirements of the Consent Decree and the Service Order:

1. Does the MTA’s revision of its Route Performance Index (“RPI”) satisfy the requirement in the Service Order that the RPI not be skewed toward routes that do not meet the load factor targets?
2. Does the MTA’s new “Impact Analysis” methodology -- calculating annual passenger minutes saved -- meet the requirement of the Service Order that the MTA determine that the effect of each service change program is a net benefit to the transit-dependent?

3. Does the MTA's revised Transit Service Policy ensure that bus service cuts are independently justified on the basis of objective criteria and that specific actions are taken to mitigate the adverse effect on the transit-dependent of service modifications on each affected line?
4. Has the MTA taken steps to evaluate service cuts to the 13 illustrative bus lines at issue and taken sufficient action to mitigate the effect of such cuts on the transit-dependent?
5. Has the MTA fulfilled all of the remaining requirements of the Service Order?

The BRU argues that the MTA has failed to respond to the specific issues set forth in the Service Order and that, under the circumstances, the appropriate remedy is the full restoration of all bus service cuts by the MTA. BRU Comments at 32 – 34. This remedy would include, at a minimum, the restoration of 156,200 in-service hours on the illustrative 13 lines under analysis. *Id.* at 33. Such service should be provided by a fleet-expansion of 42 buses, which would benefit 31,819 transit-dependent riders whom the BRU says were adversely affected by the prior cuts. *Id.* In addition, the BRU requests that the Special Master order the MTA to revise further its “budget-driven Transit Service Policy” in order to include: (1) objective standards serving to measure adverse impact on the transit-dependent; and (2) minimum service thresholds. *Id.* at 34.

I. **REQUIREMENTS OF THE SERVICE ORDER**

The Service Order restated the longstanding interpretation of the Consent Decree that bus service reductions must be independently justified on the basis of objective efficiency and resource allocation criteria, and must not adversely impact the transit-dependent. Service Order at 6 - 12, 44. The Service Order further stated that if the MTA can show it has taken cost-effective steps to mitigate any adverse impact on the transit-dependent from service cuts or

modifications *and* that there has been a positive net benefit to transit-dependent riders system wide, the service modifications would not then be deemed to impact adversely the transit-dependent. *Id.* at 44. In making service changes, however, the MTA cannot be guided solely by cost-cutting constraints since the priority in the use of bus eligible funds must be the improvement of bus service. *Id.* at 43.

In addition, the Service Order required two changes to the MTA's Transit Service Policy:

(1) The RPI should be modified so that: (a) the performance of individual bus routes is not measured by a standard that rewards overcrowding and calculates efficiency and performance on the basis of lines that are in violation of the Consent Decree's load factor targets; and (b) mitigation strategies are implemented when bus service is cancelled based on the RPI formula. *Id.* at 21-28, 45.

(2) The MTA should adopt standards and a process for determining specifically the impact of proposed service changes on the transit-dependent, including such factors as increased wait time, additional transfers, travel time, walk time to the bus stop, and increased fares. *Id.* at 45.

Additionally, the Service Order directed the MTA to: (a) clarify the 30-minute frequency standard and its practical application, so that there is a "full and careful evaluation of adverse impact and specific plan to mitigate;" (b) "...include an effective mechanism for evaluating and mitigating the potential adverse impact experienced by the transit-dependent who rely on transit service outside the span of service hours to get to places of employment, education and health care;" and (c) validate through customer surveys on specific lines, its statements that MTA customers perceive rail service to be a "higher" quality service than bus

service, so that it is clear the elimination of duplicate bus service is not based solely on internal MTA priorities. *Id.* at 16, 18, 21.

II. **POSITION OF THE PARTIES**

A. **Route Performance Index Revisions**

The RPI is a measure that is used by the MTA to determine the relative performance of a bus route and to identify bus routes requiring corrective action during the service change process. MTA Report at 5. The RPI was initially based on the weighted average of three factors: boardings per service hour, passenger miles per seat mile, and subsidy per passenger. *Id.*

The Service Order expressed the concern that the RPI was inconsistent with the Consent Decree because it gave too much weight to lines that exceeded the Consent Decree load factor targets. Service Order at 27 – 28. Overcrowded bus lines had large numbers of boardings per service hours and high passenger miles per seat mile, and therefore low subsidies per passenger; however, many of these lines experienced numerous load factor exceedences and therefore were not meeting Consent Decree requirements. *Id.* at 23 – 25. As drafted, the RPI created a tension between the high utilization of buses (which reduces the subsidy per passenger) and the Consent Decree requirement that the quality of bus service be improved as measured by reducing the amount of overcrowding and the number of passengers required to stand on bus trips. *Id.* at 25.

In response to this directive, the MTA has revised the RPI to add a fourth factor called “Passenger Comfort,” which is a measurement of the “percent of observed time periods conforming to the Consent Decree load factor standard.” MTA Report at 5. This fourth factor has equal weight with the other three components and has the effect of lowering the performance of a route that experiences higher levels of passenger overcrowding. MTA Report at Appendices 1 and 2; MTA Reply at 6, Ex. 4.

The BRU argues that: (1) the MTA's proposed revision of the RPI continues to be budget-driven and improperly credits the low subsidies of overcrowded bus lines; and (2) the MTA's percentage-of-compliance calculation proposed for inclusion in the RPI was previously rejected by the Special Master as inconsistent with the Consent Decree. BRU Comments at 21 – 26. The BRU suggests that instead of adding the fourth “percentage-of-compliance” factor to the RPI formula, overcrowded lines be eliminated from the RPI calculation altogether. *Id.* at 24 *citing* Welborn Decl. ¶¶ 9 – 10.

The MTA responds first that the *revised* RPI is not budget-driven. It has improved the productivity score of bus routes that have a high rate of load factor compliance and reduced the number of bus routes not meeting the minimum RPI standard. MTA Report at 5 *citing* Appendix 2; MTA Reply at 6 and Ex. 4 (showing upward adjustment in the FY05 productivity index on numerous lines). Further, the MTA argues that the entire process of reviewing under-performing routes, as identified by the RPI, includes detailed ridership impact analysis, consideration of a variety of possible corrective actions, a public meeting, and a Governance Council review. MTA Reply at 2 - 4, Exhibits 1 and 3.

Second, the MTA argues that the percentage-of-compliance measurement was previously disallowed by the Special Master as a stand-alone measurement, and not, as here, as a component of the RPI. *Id.* at 7. Third, the MTA asserts that it would be inappropriate to exclude overcrowded lines from the RPI calculation because “[...]the RPI] is a measure of the relative performance of individual bus routes within the overall bus system, [and therefore] the elimination of a number of bus routes from the index excludes a segment of the overall bus performance data, and renders the index effectively meaningless.” MTA Response at 13.

B. Calculation of Impact of Service Change Programs on Transit-Dependent Riders

In response to the Service Order, the MTA also has developed a new methodology and process for determining the net benefit/detriment to transit-dependent riders of service change programs, called an “Impact Analysis.” MTA Report at 6. The new Impact Analysis procedure is included in the revised Transit Service Policy at Section 5.0 (“Service Change Process.”) *Id.* This Impact Analysis is to be conducted by each of the five MTA Service Sectors, which are to take into consideration such factors as the average trip length, passenger wait time, transfer requirements, changes in walking distance to the bus stop, and others. *Id.* See also MTA Reply at 5.

A series of standardized worksheets has been created to determine ridership impacts. *Id.* at Appendix 1. These worksheets translate the impacts into increases or decreases in “annual person minutes of travel.” *Id.* at 6. The MTA states that, “[i]ncreased travel time is considered to be a negative impact, and reductions in travel time are considered to represent a positive impact to the transit-dependent rider.” *Id.* After reviewing the lines and service change programs at issue (discussed more fully below), the MTA concluded, “[t]he combined benefits from all four programs that were evaluated were overwhelmingly positive for transit users.” *Id.* at 12.

The BRU argues that the MTA’s proposed Impact Analysis disregards demonstrated and actual adverse impacts and fails to account for some of the most severe impacts of MTA’s service cuts. BRU Comments at 26 – 30; Welborn Decl. at ¶¶ 14 – 34. Indeed, Plaintiffs assert that the new methodology does not measure adverse impact on the transit-dependent, but “is a hoax that not only masks adverse impact but makes it vanish altogether.” BRU Comments at 28.

The Plaintiffs lodge several specific complaints about the MTA's proposed Impact Analysis and its findings that each of the service change programs resulted in a net benefit for the transit-dependent:

- the MTA's Impact Analysis excludes any consideration of fare increases due to added transfers and increased personal safety risks because of longer walks in dangerous neighborhoods;
- the MTA inappropriately includes pre-existing service with more frequent headways as an overall benefit of restructuring despite the fact that transit-dependent riders who used a less frequent service that was eliminated always had access to the pre-existing service, but chose not to utilize it;¹
- the Impact Analysis considers rail service on the Gold Line to be a benefit to bus riders who have had their "preferred" service cut;
- service reductions on small and medium-sized lines are outweighed by service additions to "faster overcrowded bus lines," which the BRU argues grants the MTA "an unlimited right to continue to cut its bus service;"
- the Impact Analysis does not contain objective standards to: (1) measure or protect against adverse impact on individual lines or guarantee minimum service coverage, (2) guarantee compliance with the Consent Decree requirement that the MTA reallocate funding from non-bus programs to meet Consent Decree

¹ For example, Declarant Welborn points out that in its worksheets for cancelled Line 107, the "MTA calculates that riders who previously used Line 107's 50-minute peak service, and who now have to walk to use pre-existing Line 108/358's 9-minute peak service, benefit from a travel time saving of 17.2 minutes per trip (+20.5 minutes "change in wait time" and -3.3 minutes "change in access time."). This and other similar calculations of alternative services result in the "MTA's conclusion that the cancellation of Line 107 yielded 3.7 million positive passenger minutes of impact," even though most of the positive impact was based on service options previously available to the riders and not the result of any actions taken to mitigate the adverse effect of the cancellation. Welborn Decl. at ¶¶ 20 - 23.

obligations, and (3) protect against service reductions solely for budgetary reasons.

Id. at 29 – 30. Welborn Decl. at ¶¶ 14 – 34.

The MTA responds that while the new methodology for measuring annual passenger minutes does not specifically take into account increased fares and personal safety, these issues are addressed in the public review process conducted by the Sector Governance Councils. MTA Response at 11 - 12 (including examples of proposed service changes rejected by Governance Councils after public feedback). The MTA argues that by empowering the five local Service Sector Governance Councils to review and make final determinations on service modification proposals, the MTA Board has encouraged public interaction, community input, and relating the ridership impact of individual bus service changes to the overall effect on riders of the entire service change program in a process that is not entirely budget driven and fulfills the Consent Decree obligations. MTA Reply at 4 – 5.

With regard to safety, the MTA argues that:

[d]ue to the subjective nature of the question of personal safety, the myriad of factors which are involved in assessing a person’s safety and the fact that the safety of citizens is addressed by other governmental agencies, it cannot be set forth as a separate identifiable factor to be assessed.

Id. at 12. The MTA further asserts that personal safety is subsumed in the calculation of increased walking and waiting time. *Id.* Moreover, the MTA explains that under the revised policy “a collection of service changes,” even if designed to improve budgetary performance, cannot be implemented if they do not result in overall mobility improvement.” MTA Reply at 6.

C. **Mitigation of Adverse Impact**

The MTA concluded, after finding that the service change programs resulted in an overall net benefit for transit-dependent riders, that neither restoration of service nor additional

mitigation is needed for the 13 lines under review. MTA Response at 10. The MTA provided an update on the mitigation strategies for Lines 607, 611, and 761 (as required by the Service Order at 46), but determined that no addition or change of service was warranted. MTA Reply at 7 – 8.²

MTA argues, however, that the revised Transit Service Policy provides for the consideration of possible mitigation strategies, or deferral of service reductions completely, thorough the Sector Governance Councils.³ MTA Response at 10. The MTA cites the evaluation of Route 220, a route with historically low ridership, as an example. MTA Reply at 2 - 4. Instead of canceling this under-performing route, steps were taken to improve its productivity. *Id.* The MTA offers several examples of service reductions rejected or deferred by the Governance Councils after feedback received during public meetings, including: Line 20 (Wilshire Blvd.) (proposal to terminate service west of Wilshire & Westwood rejected), Line 21 (Wilshire Blvd. – UCLA) (proposal to cancel service rejected), Line 304 (Santa Monica Blvd.) (proposal to terminate service west of Sepulveda and Santa Monica rejected), Line 442 (South Bay Galleria to Union Station Express) (proposal to eliminate 2 of 12 bus trips rejected), and Line 439 (Redondo Beach) (proposal to cancel service deferred until alternative service in the corridor commences.) *Id.* at 11 - 12.

² The MTA provided the following update on its mitigation strategies for Lines 607, 611, and 761: (1) Line 607 – the MTA reviewed Line 607 for the addition of midday service (after the cancellation of Line 107) but found other midday services available in the Inglewood area; (2) Line 611 – the MTA monitored the schedule adherence on Line 611 but found only two passenger complaints in the last six months; and (3) Line 761 – the MTA discussed with the Culver City Municipal Bus Line the coordination of Line 761 with Culver City Line 6 but both agencies found no customer dissatisfaction with service connectivity.

³ The MTA explains that the Sector Governance Councils “have been established in each of the five service sectors and have been empowered by the MTA Board of Directors to review and make final determinations regarding service proposals,” and that the membership of the Councils are “comprised of members of the local community that utilize transit services.” MTA Response at 11, n.1.

Lastly, the MTA provided examples of mitigation strategies it implements when considering special circumstances such as personal safety concerns or elderly and/or disabled riders, which include: (1) interaction with local law enforcement, (2) relocation of bus stops, (3) the request for the increased presence of law enforcement, (4) door-to-door service by Access Services, Inc. (an ADA-mandated service for disabled passengers funded by the MTA), (5) dial-a-ride and senior-rider services, and (5) fare media and taxi vouchers through the Immediate Needs Program (administered primarily in the inner city through social service agencies.) *Id.* at 12.

The Plaintiffs emphasize that the Service Order established a two-prong standard, stating that the MTA's burden is to "show that it has taken reasonable cost-effective steps to mitigate any adverse effect on the transit-dependent and that there has been a net positive benefit to the transit-dependent riders system wide." BRU Comments at 31 *citing* Service Order at 44 (emphasis in the original); *see also id.* at 32 *citing* Service Order at 44 – 45 ("[t]he extensive testimony provided by transit-dependent riders makes clear that more can be done to consider potential adverse impact and implement mitigation strategies") and 18 ("MTA needs to do more than simply consider the impact; it should take appropriate action to mitigate it.")

Therefore, even if there is an overall system wide net benefit to bus riders, a finding that Plaintiffs do not accept, the MTA has an independent obligation to show that it has taken specific steps to mitigate or remedy the adverse impact on the transit-dependent of specific cuts in service on individual lines. *Id.* at 31 – 32. The Plaintiffs contend that the MTA has failed to do this and that the appropriate remedy therefore would be to restore the service hours that were cut on the 13 lines at issue, and to require a fleet expansion to meet the needs of the transit-dependent riders that were adversely affected by such cuts. *Id.* at 33.

D. Application of the Impact Analysis to the 13 Service Change Programs

The MTA applied its new Impact Analysis to the 13 service changes that were made in the June 2003, February 2004, June 2004, and June 2005 to determine if they resulted in a net benefit to the transit-dependent rider. MTA Report at 7. The MTA provided completed worksheets for each of the service change programs as an appendix to its September 30th report. *Id.* at Appendix 3. The MTA found a net increase in annual person minutes in each of the four service change programs, and a net decrease in annual revenue hours in three out of four of the service change programs. *Id.* at 7. As discussed above, the MTA concluded, based on its application of the new Impact Analysis, that the combined benefits from all four programs that were evaluated were “overwhelmingly positive for transit users.” *Id.* at 12. For this reason, the MTA did not make any specific service changes on lines where service was cut or reduced during these four program changes. MTA Response at 10.

The results from the application of the new methodology to the four service change programs are summarized below.

1. June 2003.

The MTA found a benefit in annual person minutes of 193,111,270, and a reduction in annual revenue hours of 118,000. MTA Report at 7. The MTA calculated that the 118,000 revenue hour reduction was more than offset by the implementation of HASTUS MINBUS, which increased interlining and removed interlined deadheading from revenue hours. *Id.* at 8. Further, the MTA noted that the Metro Gold Line began operation as part of this service change. *Id.* Although its revenue hours are not in bus system impacts, its benefits were included in the overall passenger minutes of impact. *Id.*

Indeed, the Metro Gold Line was the largest contributor to the “benefit” in this service change (105,882,300 minutes). *Id.* The primary “disbenefits” flowed from new Rapid Line 711 (-18,953,043 minutes) and the cancellation of Line 401 (-5,429,668 minutes.) *Id.*

2. February 2004.

The MTA found a benefit of 145,543 annual person minutes and a reduction of 29,600 annual revenue hours. *Id.* at 7. Much of the decrease in revenue hours was due to the cancellation of Lines 250 and 471. *Id.* at 9. The principal contributors to the annual person minutes benefit included the new Metro Rapid Route 710 and the introduction of limited stop service on La Brea Avenue (Route 312). *Id.* The shortening of Line 720 was the primary disbenefit, resulting in -7,571,542 annual person minutes. *Id.*

3. June 2004.

This service change resulted in 101,055,232 minutes saved and an *increase* of 99,500 revenue hours, which was attributable to service additions to reduce overcrowding. *Id.* at 7, 10. The principal benefits were obtained from added trips on the heavily patronized Line 66 (45,053,375 minutes) and new Metro Rapid Routes 751 and 705 (9,894,428 minutes.) *Id.* at 10.

4. June 2005.

The MTA found 14,738,499 annual person minutes saved and a reduction in 86,400 revenue hours during this service change. *Id.* at 7. The reductions included the discontinuation of service on two Consent Decree pilot routes (Line 305 and Line 58) and the widening of headways on several other routes to offset hours needed to operate the Orange Line (which began in October 2005.) *Id.* at 11.⁴ The primary benefit, however, from this service change comes from the inauguration of the Orange Line (Line 901) on October 29, 2005 (35,374,647.)

⁴ The MTA did not include the addition of revenue hours for the Orange Line in the evaluation but did include its expected passenger benefits (in annual person minutes.) *Id.*

Id. The primary disbenefit resulted from widened headways on Pilot Route 305 (-9,232,413.)

Id.

As discussed above at II.B., the Plaintiffs take issue with the MTA's calculation of a net increase in annual passenger minutes and with the MTA's failure to take additional specific actions to mitigate the adverse effect of service cuts on individual lines. The Plaintiffs therefore urge the restoration of 156,200 in-service hours that were cut on the 13 illustrative lines. BRU Comments at 4.

III. **ANALYSIS AND FINDINGS**

A. **Revised RPI Index**

As explained in the Service Order, there can be a tension between maximizing productivity and improving the quality of bus service, as required by the Consent Decree. The RPI index, as originally drafted, placed too great a premium on overcrowded buses, which inevitably reduced operating subsidies but which consistently exceeded the load factor targets. Service Order at 27 – 28.

As the Service Order held:

...the MTA should modify the RPI formula utilized in the Transit Service Policy so that any evaluation of the performance of a bus line is not skewed by overcrowding within that service category. A standard must be set, and a budget must support, the operation of a bus system that does not reward or tolerate overcrowding in violation of the Consent Decree's load factor provisions.

Id. at 45.

The MTA has proposed to achieve greater balance among these objectives by adding a fourth "Passenger Comfort" factor to the RPI index that calculates the percentage of observed time periods during which a route is in compliance with load factor targets.

The BRU correctly points out that I have previously rejected the percentage-of-compliance-methodology in determining whether a bus line meets the load factor target.⁵ This precedent, however, does not preclude the use of a percentage compliance measurement as a component in the revised RPI, an entirely different context. Although the Service Order suggests that one approach to modifying the initial RPI would have been “to eliminate severely overcrowded lines from the various calculations,” Service Order at 28, the MTA not unreasonably selected an alternative approach that balanced the MTA’s dual objectives of eliminating overcrowding with improving performance.

The MTA’s fourth – “Passenger Comfort” factor has equal weight to the other three components and has the effect of lowering the performance of a route that experiences higher levels of passenger overcrowding and improving the performance of routes that meet load factor standards. Both parties’ exhibits demonstrate that the application of this revised RPI has resulted in significant increases in the productivity index for a number of bus routes. The MTA shows in its Reply at Ex. 4 that of 31 FY05 lines falling below 0.6 standard, the addition of the fourth “percentage of compliance” factor moves 11 lines above 0.6, the threshold below which corrective action may be needed. In addition, in the Welborn Decl. at Ex. 2, the BRU shows that 11 of 31 FY05 lines and 13 of 33 FY06 lines move above the 0.6 threshold with the addition of the fourth factor.

The revision of the RPI therefore does make a difference. It gives less weight to overcrowded lines and it reduces the number of underperforming lines that may be subject to corrective action. Moreover, the revised RPI is only the starting point for the MTA’s analysis.

⁵ See, e.g. Order Re Plaintiffs’ Motion for Clarification dated July 24, 2002 at 7 (“...the column entitled ‘% Compliance 1.25’ in Attachment B, which purports to measure load factor compliance as the ‘calculated percentage of all minutes observed during which the average load factor data did not exceed the specified target,’ is inconsistent with the legal standard that constitutes the law of the case.”)

It highlights lines that need attention. That attention may involve marketing, modifications to the route or the service parameters or other actions that will improve productivity. Only if these efforts fail, after a reasonable period of time, will a low performing route that fails to meet the threshold be considered for elimination and only then after public input and review by the Sector Governance Council. *See* MTA Reply at 2 - 4, Exhibits 1 and 3.

Accordingly, taking together the revised RPI and the Sector review process, I find that the revised RPI is consistent with the Consent Decree and Service Order.

B. The MTA's New "Impact Analysis"

The Service Order requires the MTA to revise, amend, or supplement its Transit Service Policy to incorporate standards and a process that will ensure that semi-annual and other significant service changes take into account:

1. The effect on the transit-dependent of service cuts (waiting time, additional transfers, increased walking distance, additional fare costs, safety considerations, etc.) and any mitigation strategies that should be implemented as a result of such costs;
2. New benefits to the transit-dependent from the reallocation of bus resources;
3. Whether there is an "overall net positive benefit to the transit-dependent from the service restructuring;" and
4. Whether the service restructuring will reduce the budget for bus service or the percentage of the MTA's total budget allocated to bus service.

Service Order at 45.

The MTA's revision of Section 5.0 of the Transit Service Policy, and its Impact Analysis, takes into account many important factors such as average trip length, passenger wait

time, transfer requirements, and changes in walking distance. In addition, the five Sector Governance Councils are a reasonable and appropriate mechanism to consider and incorporate public feedback on proposed service changes.

The BRU however has raised several concerns about the effectiveness of the Impact Analysis in measuring certain adverse effects of service reductions on transit-dependent riders. The BRU points out that the “Impact Analysis” does not specifically address fare increases and personal safety concerns, which result from some service cuts. First, with regard to personal safety, I agree with the MTA that the subjective perception of personal safety, as well as the responsibility of other government entities to address safety issues, makes the factor of personal safety less amenable to consideration as part of the Impact Analysis methodology. The issue is important, however, and should be a factor that is specifically addressed by the Sector Governance Councils.

Second, fare increases are an important and quantifiable adverse impact that should be considered as part of the MTA’s net benefit/detriment analysis. The fact that fare increases may not easily translate to differences in annual passenger minutes (the MTA’s chosen methodology) does not relieve the MTA of its responsibility to consider properly the cost impact upon transit-dependent riders. After consultation with the Joint Working Group (“JWG”), the MTA should formulate a benefit/detriment analysis that considers fare increases as a component of its benefit analysis.

Third, I am concerned that the inclusion of minutes saved by the use of pre-existing alternative service masks the real effect of service reductions on the transit-dependent. The BRU provides a useful example:

To illustrate: MTA plans to cancel Line X, which carries 2,000 weekday riders and operates 40-minute headways. MTA recommends riders use

preexisting Line Y, located ¼ mile away, which operates 15-minute headways. Weekday “passenger minutes of impact” are calculated as $(2,000) \times (\frac{1}{2}(40 - 15) + \frac{1}{2}(-5)) = 20,000$. This comes out to 5,100,000 annualized positive “passenger minutes of impact.”

Welborn Decl. at ¶21 (emphasis in original).⁶

The MTA rightly argues that the Service Order mandates the consideration of the aggregate effect of a service reduction. Service Order at 45. The intent of the Service Order, however, is to balance the service reduction in one area of the bus system with positive benefits resulting from other modifications in the service change in order to determine the net effect of all the restructuring for transit-dependent riders system wide. *See id.* at 44 (“In order to measure adverse impact, it is the MTA’s burden to show there has been an overall improvement in bus service as a result of the service modifications.”)⁷ Including minutes saved from the use of alternative pre-existing service in the Impact Analysis appears artificially to bolster the annual passenger minutes by misinterpreting the requirement of the Service Order, which is to calculate the net impact of specific modifications taken in the service change. Therefore, the MTA should modify the Impact Analysis methodology to exclude minutes saved from pre-existing service *unless* there is a restructuring program or mitigation strategy implemented to improve the access of transit-dependent riders to that preexisting service.

⁶ Plaintiffs conclude from this example:

By factoring in the shorter headways on the preexisting recommended alternative bus line as a significant gain for riders whose cancelled service had poorer headways, MTA inexplicably considers that these riders benefit by having their service cancelled. MTA’s method ignores the fact that all 2,000 riders in this example already have the option of taking the more frequent service, and that they may use the service MTA plans to cancel for reasons such as route structure and access. That is, this line may be the best or only service to take them to their destination or may be the only service they can reasonably access due to age, disability, or safety considerations, and therefore its cancellation would adversely impact them. *Id.* at ¶22 (emphasis in original).

⁷ In this regard the MTA should also consider weighting the inconvenience of additional walking to the bus stop and waiting time at the bus stop more heavily in its calculations of minutes added and minutes saved. It may be that inconvenience and hardship for some riders of the additional walk/wait should count for more than the minutes saved to other riders from faster bus or rail service.

The BRU also raises the concern that the MTA considers benefits from rail service but not detriments from rail service cuts. Welborn Decl. at ¶ 24. Because the MTA aspires to provide a fully integrated system, it is appropriate to consider the benefits achieved during a specific service change from improved access to and use of rail service; however, if the MTA is going to count rail service as a positive impact, it also must consider any rail service reductions resulting in a negative rail impact. The MTA should clarify whether the Impact Analysis considers this issue, and if it does not, modify the Impact Analysis accordingly.

I do not find, however, the BRU's remaining concerns as compelling. First, the Service Order expressly held that the effective integration of bus and rail service (which sometimes means the cancellation of bus service) can satisfy the Consent Decree's goal of obtaining an overall improvement in service for the transit-dependent. Service Order at 20. Therefore, I cannot find that the benefits of the Gold Line rail service should not be considered as part of the MTA's Impact Analysis. Second, as stated above, the Service Order contemplates that the MTA evaluate the overall net benefit to the transit-dependent; the BRU's concern that cuts to smaller lines may be outweighed by additions to faster lines slightly misses the mark.. *See id.* at 44 (“...there inevitably will be some riders who are not inconvenienced by service changes.”) Lastly, the BRU's concern that there are no minimum standards that service be continued regardless of cost has already been rejected by the Service Order. *Id.* at 27, n.15 (“[n]othing in the Consent Decree, however, requires the MTA to provide service regardless of rider demand....”).

Subject to the MTA's consultation with the JWG and refinement of the Impact Analysis methodology to address the concerns set forth above, I find that the MTA's overall approach is a reasonable response to the “net benefit” requirement of the Service Order. The MTA is directed

to report on the revised Impact Analysis in its next Quarterly Report. In that report the MTA should provide specific information on the amount of revenue service hours, if any, that must be reinvested in the bus system to satisfy the revised “net benefit” requirement along with a specific plan to reinvest such service by the June 2006 service change. The MTA’s calculation of reinvested revenue service hours may also include service additions necessary to meet the Metro Rapid service parameter mandates of the Final Memorandum and Order in Re MTA’s New Service Implementation Plan dated November 30, 2005.

C. Mitigation of Adverse Impact

The “net benefit” is only one prong of the test set forth in the Service Order on basic service changes. The other prong requires that appropriate steps be taken to mitigate the adverse effect of service cuts on individual lines. The MTA Report and the revised Transit Service Policy do not adequately address this prong.

It is well established in previous orders that service *reductions* as part of a service restructuring that enables the MTA to meet load factor targets, implement a New Service Plan, fund new rail and bus initiatives, or initiate cost reductions, must be: (1) “independently justified on the basis of objective efficiency and resource allocation criteria” and (2) “not adversely impact the transit-dependent.” Memorandum Decision II and Final Order on Remedial Service Plan to Meet 1.25 and 1.20 Load Factor Target Requirements dated January 12, 2004 at 17 (“Memorandum Decision II and Final Order”). The MTA bears the burden of “demonstrating that any such bus service modifications will not adversely affect existing service or impose additional burdens” on MTA ridership. Service Order at 11 *citing* Memorandum Decision II at 13.

It is also well established that “[t]here is no specific provision in the Consent Decree that prohibits MTA from restructuring bus service to achieve efficiency and productivity

enhancements.” Memorandum Decision and Recommendations of the Special Master in re Late Night and Owl Service Modifications dated March 2, 1998 at 4. However, the elimination or reduction of bus service must not “disproportionately disadvantage the transit-dependent solely for budgetary reasons,” and must be “part of an overall program to improve bus service for transit-dependent riders.” Service Order at 7.

In the Service Order, I elaborated on this test as it should be incorporated in the Transit Service Policy in the following way:

...inevitably there will be some riders who are inconvenienced by service changes. However, if the MTA can show that it has taken reasonable cost-effective steps to mitigate any adverse effect on the transit-dependent and that there has been a net positive benefit to transit-dependent riders system wide, the service modification will not be deemed to impact the transit-dependent adversely.

Id. at 44. The Service Order expressly found “on the record of this proceeding the MTA has not met this burden.” *Id.*

Yet, in its Report and revised Transit Service Policy, the MTA does not make any real attempt to show how it has taken reasonable cost-effective steps to mitigate adverse effects, other than to cite its February 10, 2005 Report to the Special Master, which was part of the record deemed inadequate. Nor has the MTA proposed any revisions to the Transit Service Policy that will ensure adequate mitigation of service cuts in the future. Even if the Impact Analysis, as modified by this Order, continues to show an overall net benefit, the MTA *also* must demonstrate cost-effective mitigation on each route where service is reduced. The Transit Service Policy needs to spell out more specifically the steps that should be taken to mitigate the adverse effect of service reductions on the transit-dependent.

Accordingly, after consultation with the JWG, the MTA is directed to include in its next Quarterly Report a draft appendix (subject to MTA Board approval) to the Transit Service

Policy that further details what specific steps should be taken to mitigate the adverse effect on the transit-dependent of any cuts in bus service on individual lines. This may simply be a clearly stated codification of steps that the MTA records in its Service Change Evaluation Worksheets. The public, however, should have access to a checklist of mitigation factors that are reviewed when a service cut is proposed.

Finally, the Service Order requires the Transit Service Policy to consider whether a proposed service change results in a reduction in the budget for bus operations or in the percentage of the total MTA budget that is allocated to bus services. *Id.* at 45. The MTA does not address this requirement. Therefore, at least for the duration of this Consent Decree, *absent extraordinary economic circumstances*, a service change may not result in a reduction of the MTA's budget for bus service or in the percentage of the MTA's total budget that is allocated to bus service.

Because the MTA has not formulated additional mitigation strategies on the 13 lines under review, I direct the MTA to consult with the JWG and implement the following mitigation measures by the June 2006 service change:

- Line 107: Investigate the current status of the security and safety concerns especially for students resulting from the cancellation of this line, as previously articulated by the BRU, Service Order at 29 - 31, and formulate a mitigation plan to address those concerns;
- Line 720: Develop a plan for reinstating in the June 2006 service change, new service to replace service that was shortlined in the June 2003 service change;
- Line 209: Develop a plan for reinstating in the June 2006 service change some of the weekday midday service that was cancelled in June 2004;

- Line 105: Despite the recent absence of customer complaints, and given the BRU's allegation of frequent customer complaints, formulate a plan for improving service on Shuttle Line 611, especially for riders adversely affected by the shortening of Line 105.

These changes should be implemented in the June 2006 service change unless waived by the JWG.

D. Other Requirements of the Service Order

As stated above, the Service Order directed the MTA to: (a) clarify the 30-minute frequency standard and its practical application, so that there is a "full and careful evaluation of adverse impact and specific plan to mitigate;" (b) "...include an effective mechanism for evaluating and mitigating the potential adverse impact experienced by the transit-dependent who rely on transit service outside the span of service hours to get to places of employment, education and health care;" and (c) validate through customer surveys on specific lines, its statements that MTA customers perceive rail service to be a "higher" quality service than bus service, so that it is clear the elimination of specific duplicate bus service is not based solely on internal MTA priorities. *Id.* at 16, 18, 21.

It is not clear from the MTA Report and the revised Transit Service Policy that the MTA has satisfied these requirements. The MTA therefore should discuss the above three items with the JWG and report on these discussions in the next Quarterly Report.

Donald T. Bliss
SPECIAL MASTER

December 9, 2005

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.	)	FINAL ORDER ON THE MTA’S
	)	SERVICE REDUCTIONS AND
LOS ANGELES COUNTY	)	TRANSIT SERVICE POLICY
METROPOLITAN TRANSPORTATION	)	REVISIONS
AUTHORITY, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

FINAL ORDER

Having reviewed the MTA’s Review of Past Service Changes and Revisions to the Transit Service Policy of September 30, 2005 and the entire record of this proceeding, I conditionally approve the MTA’s past service modifications at issue in this proceeding and revisions to the Transit Service Policy, subject to the MTA’s compliance with the following conditions.

1. After consultation with the Joint Working Group (“JWG”), the Transportation Service Policy shall be further amended to:

(a) clarify the responsibility of the Sector Governance Councils to consider and address issues of personal safety raised by riders as a result of service changes.

(b) incorporate in the Impact Analysis a methodology that takes into account the effect of service changes on fares to transit-dependent riders in calculating the overall net benefit of semi-annual service changes.

(c) modify the Impact Analysis to exclude minutes saved from the alternative use by transit-dependent riders of pre-existing service that was available to them at the time their preferred service option was eliminated or modified *unless* there is a restructuring program or mitigation strategy implemented as part of the service change to improve the access of transit-dependent riders to that pre-existing service.

(d) if necessary, ensure appropriate consideration of both the positive and negative effects of the basic service change on access to, and use of, rail service.

2. The MTA should calculate the amount of additional revenue service hours that should be reinvested in the bus system to meet the requirements of paragraphs 1, 3 and 4 of this Order and include in the next Quarterly Report its plan to incorporate such additional revenue service hours in the basic service change in June 2006. The MTA may also include in its calculations the amount of additional revenue service hours that will be needed to meet the Metro Rapid service parameter requirements set forth in the Final Memorandum and Order In Re MTA's New Service Implementation Plan, Nov. 30, 2005.

3. After consultation with the JWG, the MTA staff shall prepare a draft appendix to the Transit Service Policy that details specifically steps that should be taken to mitigate the adverse effect on the transit-dependent of service cuts on individual lines.

4. The MTA shall consult with the JWG and, unless waived by the JWG, shall implement the following actions in the June 2006 service change:

(a) develop a mitigation plan to address security concerns raised by cancellation of Line 107;

(b) reinstitute service to replace service that was shortlined in the June 2003 service change on Line 720;

(c) reinstitute weekday midday service (which was cancelled in the June 2003 service change) on Line 209;

(d) formulate a plan to improve service on Shuttle 611.

5. In the next Quarterly Report, the MTA shall report on the JWG discussions of the three issues raised in III.D. of the Memorandum Decision.

6. In the next Quarterly Report and in each Quarterly Report thereafter, the MTA shall report on actions taken to address the issues set forth in paragraphs 1 - 4 above.

IT IS SO ORDERED.

Donald T. Bliss
SPECIAL MASTER

December 9, 2005

PROOF OF SERVICE

The foregoing document, described as Final Memorandum Decision and Order on the MTA's Review of Service Reductions and Transit Policy Revisions, has been served on December 9, 2005, via facsimile and U.S. mail, to the following parties:

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