



July 9, 1999

Metropolitan
Transportation
Authority

One Gateway Plaza
Los Angeles, CA
90012-2952

TO: GENERAL MANAGERS

FROM: ALLAN G. LIPSKY 
CHIEF OPERATING OFFICER

**SUBJECT: DISTRIBUTION OF PROP C 40% DISCRETIONARY
REVENUES**

As you know, despite the good faith efforts of negotiators representing the MTA and the Muni's we have been unable to agree on a formula for "fair sharing" Prop C 40% revenues. MTA management sincerely regrets this failure because we remain fully committed to rebuilding our relationships with all county transit operators. We believe our commitment is evident by the matching funds we programmed for the Municipal Operators in the Regional Transit Alternative Analysis, as well as the continuing involvement we are seeking in developing countywide fare collection technology and similar programs.

The Prop C 40% issue is particularly difficult because of the exposures for all of us in the current Consent Decree litigation.

For your review, I have attached a portion of the declaration Tom Rubin (a former MTA Chief Financial Officer, now a consultant to the Consent Decree plaintiffs) filed for the July 19th hearing by Judge Terry Hatter. While we dispute Mr. Rubin's analysis, it shows why our Board must be constrained in changing the way bus eligible funds are allocated.

Also attached is a memorandum CEO Julian Burke sent to Board members explaining his position on Prop C 40% revenues. We will continue our discussions with your representatives to see if we can reach agreement on this difficult issue.

Attachments

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19 CENTRAL DISTRICT OF THE STATE OF CALIFORNIA
20

21 LABOR/COMMUNITY STRATEGY
CENTER, et al.,

22 Plaintiff.

23 v.

24 LOS ANGELES COUNTY
25 METROPOLITAN TRANSPORTATION
AUTHORITY and JULIAN BURKE.

26 Defendants.
27
28

Case No. CV 94-5936 TJH (Mcx)

DECLARATION OF THOMAS A. RUBIN
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO MTA'S MOTION FOR
REVIEW

Date: July 19, 1999

Time: 11:00 a.m.

Dept: Courtroom 17

Honorable Terry J. Hatter, Jr.

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DECLARATION OF THOMAS A. RUBIN

I, Thomas A. Rubin, declare as follows:

1. I have over twenty years of governmental transit experience, including approximately four years as Controller-Treasurer (chief financial officer) of the Southern California Rapid Transit District (SCRTD), one of the two predecessor agencies of the Los Angeles County Metropolitan Transportation Authority (MTA) prior to the merger that formed MTA in 1993. I have served over 100 transit operators, metropolitan planning organizations, state departments of transportation, the Federal Transit Administration, and other governmental transportation agencies with a wide variety of audit and consulting projects. I have been engaged as an expert to the plaintiffs in *Labor/Community Strategy Center et al v. MTA et al (LCSC v MTA)* since approximately the commencement of this Federal Title VI (discrimination in the utilization of Federal financial assistance) lawsuit in September of 1994. Since the execution of the Consent Decree (CD) in this case in late 1996, I have attended the vast majority of the Joint Working Group meetings and have devoted hundreds of hours to various matters affecting virtually all aspects of MTA operations and finances. I enclose my summary resume as Exhibit 1 and reference Exhibit A to my First Supplemental Declaration of October 11, 1994, previously submitted in re this matter, a more extensive record of my transit industry, governmental finance, and Los Angeles County transportation experience.

2. I have personal knowledge of the matters set forth below, except as otherwise stated, and I would and could competently testify concerning these matters if called as a witness in this matter.

3. I submit this declaration in response to the MTA's Motion for Review of the Special Master's Memoranda Dated May 6, 1999 and May 14, 1999 and to various declarations filed in support thereof. I reference and incorporate in this Declaration my Declaration of April 26, 1999, in re remedial action for MTA's systemwide violations of the 1.35 load factor ceiling, submitted in the Stage II proceeding before Special Master Donald T. Bliss, Jr. and my Declaration of February 5, 1999 submitted in support of the Bus Riders Union Load Factor Remedial Plan in re the original proceeding before Special Master Donald T. Bliss in this matter.

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passenger-miles by county of residency and has not taken any effective steps to cause the other Metrolink member counties to significantly increase their funding percentages.

k. ¶ 44. – MTA has elected to contract for police services with the City of Los Angeles Police Department and the County of Los Angeles Sheriff’s Department disestablishing its far less expensive internal MTA Transit Police Department and has taken only minimal steps to replace expensive sworn law enforcement officers with less costly armed security guards and civilian, “soft uniform personnel where applicable.

l. ¶¶ 45.-54. – MTA has not utilized Proposition C 25% Transit-Related Highway Improvement funds for bus purchases or operations, but has used, plans to use and/or has planned to use such funds for rail construction, the Alameda Corridor freight rail project, and Construction of the Long Beach Freeway extension to the Foothill Freeway.

m. ¶¶ 55.-57. – MTA has treated Proposition C 40% allocations to itself for bus operations as if they were part of the County-wide formula allocation utilized for TDA, Proposition A 40% Discretionary, STA, and other operating funds, thereby allocating additional funding to the Municipal operators as it allocates funds to itself.

n. ¶¶ 58.-59. – MTA has agreed to reduce the City of Los Angeles’ funding requirements for cost overruns on Red Line Segments 1 and 2 by at least tens millions of dollars, began construction on Red Line Segment 3 without executed funding agreement with the City, agreed to conditions on receipt of Segment 3 funding from the City that have proven impossible to comply with (and should have been known by MTA to have been impossible when the agreement was adopted), and allowed the City to take a 5% discount on its Segment 3 payments that it did make to MTA.

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- o. ¶ 60.a. – MTA has not abandoned the Universal Fare System program.
- p. ¶ 60.b. – MTA has taken no steps to attempt to have Federal Red Line Segment 3 Eastside and Mid-City funds reprogrammed for bus purposes.
- q. ¶ 61. – MTA is still studying and considering subway construction of the Red Line Segment 3 Eastside and Mid-City, even after the passage of Proposition A (1998) and the elimination of these projects from the Southern California Association of Governments’ approved list.
- r. ¶ 62. – MTA has consistently overestimated the availability of funding and underestimated the cost of many projects, including every rail project it has ever been associated. In September, 1994, MTA was forced to admit that it had overestimated total revenue that would be available over the first twenty years of the “30-Year Plan” (adopted March, 1992) by \$36 billion.
- s. (New) MTA has done virtually nothing to create high-occupancy toll (HOT) lanes to finance the construction of busways.
- t. (New) With one exception, MTA has never issued debt to purchase buses despite issuing billions of dollars of debt for rail construction purposes. Even this sole usage of debt for bus purchases was to allow the shift of funds that would have otherwise gone for the local share of the cost of the buses to cover bus operations, thereby allowing MTA to proceed with its accelerated rail construction program.

63. As far as rejecting my Declaration and instead relying on Mr. Yale’s Revised Declaration, I will limited my comments to stating that the Special Master had both Declarations before him for his consideration and he drew his conclusions according to the credence he gave to both.

64. MTA: “The Special Master also states that the RTAA:
... concluded that as a result of suspended rail projects and expanded funding sources, the MTA is expected to have approximately \$1.4 billion in funds available between FY03 and FY04. While there are, of course, other important projects that call for the use of

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these funds, the fact remains that, on this record, the MTA has not shown why some of these funds could not be used to fund or to secure the funding of the expansion buses required by the Remedial Plan.

[May 14, 1999, Memorandum at 21.] Here, the Special Master has neglected to consider the evidence that the MTA has already reprogrammed for buses substantially all of the funds referred to by the Special Master. [Revised Yale Decl. ¶ 16.]” (Page 24, lines 11-20.)

65. In responding to this point, it must first be stated that there are many degrees of action taken by the MTA Board in regard to allocations of funding, ranging from reviewing a plan submitted by staff for future spending as an information item only to entering into binding contractual agreements. With this in mind, let us review page 30F of the MTA Regional Transit Alternatives Analysis dated November 9, 1998 (Exhibit 8). The RTAA is the financial plan submitted to the California Transportation Commission in satisfaction of the requirement that the CTC imposed on MTA to adopt and present a financial plan that showed that MTA could proceed with various projects.

66. First, a note of explanation. In the above, the Special Master refers to “approximately \$1.4 billion in funds available between FYY99 and FY04.” The top line of page 30F, “Net Available Funds” shows \$1,084.4 million available for this period. To arrive at \$1.4 billion, it is necessary to add to the \$266.1 million in “Suspended Projects” (referring to funds that had originally been allocated to the suspended Red Line Eastside and Mid-City extensions) approximately two-thirds down the page, producing a total of \$1,350.5 million, which, rounded up, produces \$1.4 billion.

67. Now let us examine the line items contained on page 30F and allocate the dollar value of each to the various categories shown below:

	(Millions)				
	<u>MTA Bus</u>	<u>Non-MTA Bus</u>	<u>Total Bus</u>	<u>Other</u>	<u>Totals</u>
3				\$558.7	\$ 558.7
4				50.0	50.0
5				34.8	34.8
6	\$ 31.0		\$ 31.0	7.8	38.8 ³²
7	42.8		42.8		42.8
8		\$31.5	31.5		31.5
9	60.9		60.9		60.9
10	206.2		206.2		206.2
11				220.0	220.0
12	<u>\$340.9</u>	<u>\$31.5</u>	<u>\$372.4</u>	<u>\$871.3</u>	1,243.7 106.8
13					<u>\$1,350.5</u>
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Relying on the data from the above RTAA page, then, rather than MTA's statement that, "MTA has already reprogrammed for buses substantially all of the funds referred to by the Special Master," it appears that MTA has reprogrammed approximately 27.5% of these funds to bus. 27.5% appears to be far short of meeting the minimum qualifications for a categorization of "substantially all." Indeed, given that MTA has reprogrammed 64.5% of these funds (a portion that appears far closer to meeting the "substantially all" test) for non-bus uses, it would appear that, even if *all* of the unallocated "Net Available" funds were to be allocated to bus, the bus portion would barely reach one-third of the total.

68. However, as I stated above, there are various levels of MTA Board action regarding funding allocations. In particular, let us examine two of the above items, the "Rapid Bus

³² My allocation of the cost of this line item: 80% for bus fareboxes and 20% for rail line ticket vending machines and related equipment.

1 Demonstration" and "Rapid Bus Phase II & III," which, together, constitute \$267.1 million³³, or over
2 70%, of the \$372.4 million that is shown above for bus. When the RTAA was presented to the MTA
3 Board in November, the Board specifically refused to formally adopt these items at that time. Instead
4 it directed staff to return to the Board with a plan to implement the three-line Demonstration Program
5 only. When this report was submitted, the Board accepted it, but held up implementation of the
6 Demonstration Program until the issue of Consent Decree implementation costs is resolved. Therefore
7 at this time, it would be highly improper to state that the MTA Board has actually accepted the "Rapi
8 Bus Phase II & III" program and it is, at best, highly questionable if it has formally adopted even th
9 "Rapid Bus Demonstration" program at this time.

10 69. One thing that the MTA Board has most definitely adopted, however, is the \$220.
11 million "Eastside/Mid-City Reserve." From my observations at the MTA Board meeting where these
12 actions were taken, it was highly obvious that there was far greater support on the Board for this rail
13 construction program than there was for the Rapid Bus program -- in fact, I believe that a strong case
14 can be made that the MTA Board elected to adopt the \$220.0 million for the "Eastside/Mid-City
15 Reserve" *instead of* adopting the \$267.1 million for implementation for the Rapid Bus program.

16 70. Therefore, at the present time, not only is it highly improper to state that the "MTA has
17 already reprogrammed for buses substantially all of the funds referred to by the Special Master," but
18 it is entirely proper to state that, to date, MTA has formally adopted a far larger portion of these funds for
19 rail construction than it has for bus capital and operations. The above statement by MTA is absolute
20 and totally false.

21 71. MTA: "The Special Master also apparently accepted the conclusion of Tom Rubin,
22 witness for the Plaintiffs, that the MTA may discontinue sharing Proposition C discretionary funds wi
23 _____

24 ³³ As I discuss in detail in footnote 32 to my April 26, 1999 Declaration, it appears that the
25 actual MTA cost for the Rapid Bus project will be far lower than what is shown in the RTAA. In brief,
26 most of the buses that will be utilized for the actual Rapid Bus service are buses that are currently in
27 service on the lines that would be converted to Rapid Bus, but MTA appears to be counting the
28 operating costs as "Rapid Bus" costs, even though these costs are already in the MTA budget. Also,
although MTA is expecting significant numbers of new riders when Rapid Bus service is initiated, there is
no offset to the operating cost for the increased fare revenues the added riders will generate.

1 the municipal bus operations "at any time it wishes." (May 14, 1999, Memorandum at 19-20; Rubi
2 Decl. ¶ 57 at 37.) Not only is this a shortsighted remedy because it would merely take bus transit away
3 from some residents of the County in order to provide additional bus service to others, but the MTA
4 cannot reduce the percentage of state, federal and local funds paid to the municipal bus operators without
5 a three-fourths vote of the principal members of the MTA. Cal. Pub. Util. Code § 99285. Six of the
6 thirteen principal members of the MTA (the Board of Directors) are city council members with
7 obligations to their constituencies and cannot be compelled to vote in favor of reducing the funding
8 the municipal bus operators. Spallone v. United States, 110 S. Ct. 625, 634-635 (1990)(city council
9 members who voted against legislation ordered by a district court were improperly subjected to coercive
10 monetary sanctions where the court failed to first proceed with contempt sanctions against the city along
11 to secure compliance with the remedial order.)" (Page 24, line 21 to page 25, line 5.)

12 72. Although I discuss this matter in detail at ¶¶ 55.-57.(a) of my Declaration of April 2,
13 1999, MTA has not elected to attempt to refute any of the contents thereof -- perhaps because it does
14 choose to fight this question on the issue of what the law states. While it is certainly correct that PUC
15 § 99285 contains extensive restrictions on lessening or elimination of formula funding distribution
16 there is one very important matter about § 99285 that MTA somehow neglects to point out in its Motion.
17 Proposition C 40% discretionary funds are mentioned nowhere therein. All of the other funding
18 elements included in MTA's formal operating subsidies formula distribution process (Federal § 530
19 TDA, TP&D, Proposition A 40% Discretionary, STA, etc.), and even some other funding sources
20 (Proposition C 5% Security), are specifically included, but Proposition C 40% Discretionary funds are
21 not.

22 73. In attempting to dispute this point, the MTA motion actually proves it for me. The above
23 cite itself admits that the formula can be changed by a three-quarters vote of the MTA Board. While
24 appears that the three-quarters vote is not necessary, because Proposition C 40% Discretionary Funds
25 are not covered by PUC § 99285, and, therefore, the three-quarters vote requirement found in PUC
26 99285(e) is not applicable to this question, MTA is admitting that it can change the distribution of the
27 funds by a vote of the MTA Board. Even if one accepts MTA's three-quarters requirement, we are still

1 left with a situation where MTA has made a contractual agreement (the CD) with another party to carry
2 out certain actions. If it is necessary for MTA to utilize Proposition C 40% Discretionary funds in the
3 manner in issue to do so, then it is obligated to take the necessary actions to fulfill its contractual
4 responsibilities³⁴.

5 74. Finally, I wish to respond to MTA's claim in the above, "Not only is this a shortsighted
6 remedy because it would merely take bus transit away from some residents of the County in order to
7 provide additional bus service to others ..." It is certainly correct that this is a zero-sum game - any such
8 funds added to MTA funding must result in an equal reduction of funding for another operator or
9 operators. However, there are two important issues that this ignores. The first is equity. While many
10 of the Municipal operators also serve highly minority riderships, MTA's ridership is far more minority
11 far poorer, and far more transit-dependent than virtually all of the riderships of the Municipal operators.
12 Second, of course, the MTA ridership is the only ridership in the County that has an enforceable CD that
13 requires MTA to improve bus service. The last issue is productivity and cost-effectiveness. With only

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15 ³⁴ There are two other interesting matters in this section. First, as MTA points out, "six of
16 the thirteen principal members of the MTA (the Board of Directors) are city council members with
17 obligations to their constituencies ..." I certainly agree that many MTA members have acted not only
18 to protect, but also to promote, the interests of the constituencies (the cities and the County) on many
19 occasions. This raises, however, an interesting issue: if it is proper for a member of a city council or
20 county board of supervisors, when acting in his/her capacity as a member of *another* government board
21 to take actions that promote the interests of his "home" governmental unit at the expense of the interests
22 of the other governmental unit and the people it serves? The number of such cases that have impacted
23 MTA and MTA riders is far too lengthy to even begin to address here.

24 The other interesting point is the *six* city council members on the MTA Board. MTA
25 enabling legislation, A.B. 152, at PUC § 130551(d) stipulates that four of the thirteen Board members
26 will be locally elected mayors or city council members representing the smaller cities in the County (except
27 but the City of Los Angeles). PUC § 130551(b) states that the Mayor of the City of Los Angeles will
28 be a member of the MTA Board and PUC § 130551 (c) states that the Board will include, "Two public
members and *one member of the City Council* of the City of Los Angeles appointed by the Mayor of the
City of Los Angeles." However, it appears that there are not one, but *two* Los Angeles City Council
members on the MTA Board. (At times in the past, there have been three and it is difficult to find a
time where there was only the maximum one City Council member on the MTA Board.)

The story is told that, in the early days of MTA, then-Los Angeles Mayor Bradley "over-
appointed" City Council members to the MTA Board and, when this matter and PUC § 130551 (c) were
brought to his attention, his response was, "So when does someone stop being a member of the public
just because he's elected to the City Council," and no further action was taken. Of course, a
disinterested analysis of this section can reach no conclusion other than "public member" and "member
of the City Council" are mutually exclusive in the context of PUC § 130551.

This is offered as still another example of how MTA and its Board members frequently
elect to disregard legal requirements that they do not wish to comply with.

1 very rare exceptions, the general rule is that the most cost-effective way to add transit riders in Los Angeles county is to increase MTA bus service. Indeed, while MTA bus ridership was increasing by a 9.2% increase FY96 to FY98, MTA actually *lowered* what it spent on its own bus transit service (Exhibit 9). The increased fare revenues from the new riders more than offset the increased costs of service, after the impact of inflation is considered.

6 75. MTA: "The Special Master found that the MTA has not made bus operations its "first priority." [May 14, 1999, Memorandum at 20.] There is no evidence in the record to support such a conclusion. Rather, the evidence indicates that the MTA has made bus operations its first priority – simply has not and cannot legally make its directly operated bus system its only priority. (Revised Bur. Decl. ¶¶ 7, 10.]" (Page 25, lines 6-7.)

11 76. Given what I have presented above, let alone what I have previously presented on this matter, and what the entire record of this case shows, I see absolutely no necessity to respond to the claim in detail. In fairness to MTA, I do believe that, since the original temporary restraining order, the preliminary injunctions, and finally, the CD was entered into, bus transit service has slowly become a far higher priority for MTA than it was prior to the original lawsuit being filed. However, based on the record in this matter, there is no question that the Special Master's statement cited above is absolutely correct.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed this first day of July, 1999, in Oakland, California.

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22 Thomas A. Rubin



July 9, 1999

Metropolitan
Transportation
Authority

One Gateway Plaza
Los Angeles, CA
90012-2952

TO: BOARD OF DIRECTORS

FROM: JULIAN BURKE 
CHIEF EXECUTIVE OFFICER

**SUBJECT: MUNICIPAL OPERATOR'S SHARE OF PROP C 40%
REVENUES**

BACKGROUND

Proposition C 40% Discretionary Fair Share Allocation

During the FY00 budgeting process we consulted continuously with representatives of the Municipal Operators to arrive at an agreement on the distribution of Prop C 40% revenues. The MTA has followed a "fair share" policy with respect to Prop C 40% revenues whereby the muni's received a matching share of Prop C 40% distributed to MTA bus operations. Beginning in FY 1997 some Prop C 40% revenues were allocated to Consent Decree costs and were not fair shared, on the theory that the Consent Decree is a regional obligation. Each year the amount of Prop C 40% allocated to the Consent Decree has increased as shown below:

<u>FY</u>	<u>Prop C 40% Consent Decree Revenues</u>
98	\$24 million
99	\$37 million
00	\$44 million

During FY00 budget process the Municipal Operators requested that all Prop C 40% revenues allocated to the MTA bus be fair shared, including Consent Decree costs. We pointed out that the Consent Decree requires the MTA to prioritize bus eligible revenues to meet the MTA's directly operated bus service requirements, and that a precedent for excluding Consent Decree costs had been set.

In an effort to meet the Muni's concerns, we offered to recommend that the MTA Board fix the maximum Consent Decree Prop C 40% share at the FY99 level of \$37 million. The Muni's would not accept this proposal. This led to the introduction of a resolution requiring staff to work with the municipal operators and return within 60 days to the Board with an analysis. The Board resolution also required that the funds be set aside until the analysis was complete.

We now understand that the Muni's plan to ask the Board to set a policy that all Prop C 40% revenues received for MTA bus operations be fair shared. Some muni general managers are also in favor of seeking new legislation in Sacramento if a satisfactory policy is not approved by the MTA Board.

Since the allocation of discretionary lines eligible revenues is a principal issue in the current Consent Decree litigation, we plan to ask the Board to delay any decision on the muni's proposal until immediate Consent Decree obligations become clearer.

Recent filings by the Consent Decree plaintiffs specifically question the propriety of giving any priority fair share distributions to the Munis.

Therefore, Board members will want to review our legal and financial presentation before deciding this issue.