



DATE: April 16, 1999

Julian Burke
CEO

TO: **BOARD OF DIRECTORS**

Metropolitan
Transportation
Authority

FROM: **JULIAN BURKE** 

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SUBJECT: **MOTION FOR CLARIFICATION AND POSSIBLE
MODIFICATION OF THE SPECIAL MASTER'S MARCH 6, 1999
MEMORANDUM DECISION AND ORDER
RE LOAD FACTOR COMPLIANCE**

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Today, the MTA filed a motion, pursuant to the Board's direction, to seek clarification and possible modification of the Special Master's memorandum decision. As you are aware, the Special Master has recommended that we purchase 532 new CNG buses by June 30, 2002, and lease or buy 277 buses this calendar year at an estimated cost in excess of \$400 million over the next five years on top of the amount necessary to implement MTA's Load Factor Remediation Plan.

Our filing with the Master (Donald Bliss) may be summarized as follows:

- His decision should be clarified in a number of respects relating to the logic that, under his view of the load factor target requirements of the decree, his conclusions involve too many additional buses and too much additional service.
- His decision should be modified to: (a) remove the requirement that we further accelerate our already accelerated bus procurement program by immediate procurement orders for an additional 532 buses; (b) remove the requirement that we expand our on-street bus service with those 532 additional buses and in the meantime immediately expand the on-street service by 277 leased buses while awaiting the delivery of 532 additional new buses.
- The arguments in support of the foregoing possible modifications, include that: (a) the Consent Decree does not contemplate that the federal court system will make the kind of complex policy decisions inherent in deciding how many, of what kind, and in what time frame buses should be purchased and put into service; (b) the previous point is supported by language in the Consent Decree that recognizes that the priorities for improving bus operations must be "consistent" with the other statutory obligations and responsibilities of this agency; (c) the Consent Decree in no event should be interpreted as placing in the hands of the federal court system the kinds of operational and policy decisions which the Special Master has "ordered" because such kinds of decisions are by law the province of the MTA's Board of Directors; (d) the requested modifications are especially compelling when the MTA's own submitted

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remediation plan is itself designed as a reasonable and financially responsible plan to reach ultimate substantial compliance with the June 30, 2000, load factor target; and (e) the increased near-term bus procurements and additional service cannot be implemented.

The foregoing is perhaps an over-simplification of this very complicated presentation to the Special Master, but I have tried to capture the essence of this legal submission. In addition, I am attaching a press release and a copy of my declaration which was filed with the motion to Bliss.

I will be in Washington, D.C. on Monday and Tuesday, and have asked Habib Balian, my Chief of Staff, to answer any of your questions. You can contact him at 213/922-7475. Copies of the brief will be forwarded as soon as they are ready for distribution.

Attachments



NEWS

APRIL 16, 1999

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MTA FILES LEGAL BRIEF SEEKING CLARIFICATION, POSSIBLE MODIFICATION OF COURT ORDER TO EXPAND AGENCY'S \$1 BILLION PROGRAM TO IMPROVE METRO BUS SERVICE

The MTA today filed a legal brief seeking clarification and possible modification of an order recently issued by a federal court Special Master who decided that MTA should commit substantial additional resources to buy and deploy hundreds of more buses on top of the more than \$1 billion MTA already is spending to improve Metro Bus service.

On March 6, 1999 Donald Bliss, the Special Master who oversees implementation of the federal court Consent Decree to improve Metro Bus service, recommended MTA go forward with all its remediation efforts -- including the purchase of 2,095 new buses through June 30, 2004 -- but take additional steps. These include buying and pressing into service 532 new additional compressed natural gas buses by June 30, 2002 and leasing or buying 277 buses this calendar year for additional service until the new buses arrive.

It will cost more than \$400 million to implement this latest ruling on top of the more than \$1 billion MTA will spend through June 30, 2004 to revamp Metro Bus service.

"It is my opinion, as manager of large enterprises for over 25 years and as the current manager of the MTA during this critical period of its existence, that the recommendations of the Special Master would require an expenditure of resources which is way out of proportion to the problem he is attempting to address," Burke said.

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1st Add/MTA Legal Filing

“The resources available to this agency to deal with the severe transportation problems in this county are much too dear to justify the reprogramming of hundreds of millions of additional dollars to provide the load factor reductions contemplated by the Consent Decree when the MTA is already implementing a remediation plan to accomplish this very objective,” Burke said.

The MTA CEO said the impact of this decision will affect all residents of Los Angeles County whether or not they ever use Metro Buses or Metro Rail.

“Everyone, including the MTA, agrees the Metro Bus system must be improved and that’s being done, but the Special Master, in turn, must recognize MTA is a multimodal transportation agency and the Consent Decree, itself, recognizes this fact,” Burke added.

Implementing Bliss’ decision could drain funds from street and highway improvements that serve 6.1 million motorists in Los Angeles County, as well as from the Metro Rail program which by next year will serve 200,000 average weekday boarding passengers in the county, and even could delay or scuttle other planned Metro Bus service improvements.

Moreover, Burke said it may not even be possible to implement the Special Master’s decision.

“There’s no way to get hundreds of more buses here in the timeframe he recommended,” Burke said, and even if we get those buses to expand our fleet, we’d be hard-pressed to find funds to operate that expansion, especially when you consider MTA already faces an unresolved operating deficit.”

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2nd Add/MTA Legal Filing

Mobility is the linchpin of the region's economy which underscores the importance of MTA's multimodal transportation programs. The agency also plays a major role in battling smog in the basin by getting solo motorists out of their cars and trucks and, consequently, preventing tons of daily pollutants from being emitted into the air. The MTA funds about half of the freeway HOV lane construction in the county as well as freeway sound walls, traffic signalization and other local street improvements, rideshare incentives, the Freeway Service Patrol and other projects. It also subsidizes 16 sub-regional bus operators in the county.

"All of these programs benefit everyone in the county including minorities, the transit dependent and the disabled," Burke said.

Among many pertinent legal and other issues, the MTA chief executive officer said the agency is questioning the methodology Bliss used to calculate the need for 532 more buses. For starters, he said the MTA could assign the same number of added bus trips to specific lines as ordered by Bliss without buying as many buses.

Bliss has given the Bus Riders Union until April 27 to respond to MTA's legal brief, and then he will respond to MTA's request later this spring.

In the meantime, MTA will continue to improve and expand Metro Bus service. This year 160 additional peak hour buses will be deployed. Since the Consent Decree was signed in October 1996, the MTA has made significant progress. It has planned a 60 percent increase in bus purchases through 2004 and increased the number of buses in service during peak hours by 12 percent and substantially increased the total hours of bus service.

DECLARATION OF JULIAN BURKE

I, Julian Burke, declare and state as follows:

1. I am the Chief Executive Officer (CEO) of the Los Angeles County Metropolitan Transportation Authority (the "MTA"), the defendant in this case. I make this declaration in support of Defendants' Request for Clarification and Modification of the Special Master's March 6, 1999 "Memorandum Decision and Order". The facts set forth herein are true of my own personal knowledge and, if called upon to testify thereto, I could and would competently do so under oath.

2. I became the CEO in September 1997. For the previous 25 years I had been with the Palmieri Company, a firm whose business was the management of enterprises which were in serious financial difficulty and whose existing management had become discredited for one reason or another. Twenty years prior thereto I had been a practicing lawyer, first in Washington, D.C. and thereafter in Los Angeles. I have been a resident of Los Angeles County for 42 years.

3. I was asked to become the CEO of the MTA, initially on an interim basis, to deal with the reality that the agency's financial situation was precarious and its credibility with its funding sources had been destroyed.

4. The primary cause of the grim financial picture related to the fact that the agency had made planning and programming commitments for development and expansion of the transportation system in the county in reliance on a projection of revenues which was aggressive and unrealistic. In any event, as a consequence of its worsening financial condition, the agency's various funding sources, including the Federal Transportation Administration (FTA), the Appropriations Committees of the United States Congress, the California Transportation Commission (CTC), and the California State Legislature, all had become become markedly unsupportive of the MTA.

5. By the end of December of 1997, I had presented to the MTA Board of Directors a revised budget for the fiscal year ending June 30, 1998, as well as a "Restructuring Plan" which contemplated the suspension of three rail construction projects and otherwise projected an operating loss for the future period ending in June 2004 in excess of \$140 million. The Board adopted the revised budget as well as the Restructuring Plan before the end of January 1998. The Restructuring Plan was thereafter presented to the FTA, as well as to the United States Department of Transportation and the General Accounting Office (GAO), and as a result the Restructuring Plan was approved.

6. In connection with the Restructuring Plan, the Board also directed me to commence an alternatives analysis process for the suspended rail corridors, with a particular focus on the transit dependent population which, at least in the near term, would not have the benefit of those suspended rail projects. That alternatives analysis

produced a report (the "RTAA") which has led to further corridor level studies for the purpose of selecting locally preferred alternative projects to the suspended rail projects. The Board has also directed an updating of the 1995 Long Range Transportation Plan. Those latter planning and programming processes are continuing and should be completed by the end of this calendar year.

7. In the meantime, I came to the conclusion that the principle , immediate goals of this agency were to: a) continue the important process of regaining credibility , not only with our funding partners, but also with the residents of Los Angeles County; b) comply with the Consent Decree; c) otherwise improve the reliability of our directly operated bus operations; d) complete the construction of the remaining unsuspended rail projects (to wit, the Red Line subway through Hollywood and into North Hollywood); e) turn the agency's attention to its core responsibilities and obligations and thereby eliminate expenditures that were not directly required by our core functions; and f) continue a process of improving the control systems toward a better financial result, given the reality of the insufficient available funding for all of the activities being performed by the agency.

8. With respect to the goal of improving our bus operations, in the fall of 1998 we presented and obtained Board approval for an Accelerated Bus Procurement Plan which was designed to bring our bus fleet to a more reliable state sooner than the plan which existed at the time. Since October of 1996 when the Consent Decree was entered into, through March 31, 1999, the MTA has received delivery of 415 new buses and has

outstanding procurements with bus manufacturers for an additional new 764 buses of which 327 will be delivered through June 30, 2000. The accelerated bus procurement plan contemplates the receipt of further new 977 buses through June 30, 2004. In addition, in order to further increase the reliability of our bus fleet, we are proceeding with the conversion of alcohol fueled buses, which have proved to be unreliable, to clean diesel. That conversion process is currently in the implementation state and should be completed no later than September 2000, although we are also implementing an acceleration of that conversion plan looking toward the possibility that the implementation will be completed by the end of this calendar year.

9. MTA's statutory mandate is to plan, construct and operate a "multi-modal," fully integrated transit system. The MTA is responsible, among other things, for a) the planning and programming of highway and arterial street improvements, bus, and fixed guideway improvements; b) operating a regional transit system; and c) construction of extensions to the existing regional fixed transit systems. In carrying out its mandate, the MTA further is statutorily required to take into consideration numerous goals, including the reduction of fossil fuel usage, the reduction of air pollution, and increasing the person-moving capacity of the highway system (through such methods as car-pooling, improved traffic operations, exclusive busways and fringe parking facilities). In its planning, the MTA also is required to consider the impact of its activities on all segments of the public and to maintain a balanced and fair distribution of its resources to each of these constituencies. These varied concerns are independent of whatever further obligations are imposed on the MTA as a recipient of federal, state and local funding.

10. The MTA is fully committed to the goals underlying the Consent Decree and has consistently worked to abide by its terms. In so doing, however, the Consent Decree clearly recognizes that the agency has other "responsibilities and obligations". The Consent Decree makes it clear that the goal of improved bus service as provided therein was intended to be "consistent" with these other statutory duties and responsibilities. Any interpretation of the load factor target in the Consent Decree that forces the MTA essentially to ignore segments of the transit-using public other than the bus riders or to otherwise violate the terms of its statutorily dictated mandate would, by my understanding, be contrary to the intent and content of the Consent Decree.

11. In the two and a half years since the parties entered into the Consent Decree, this agency has held a consistent view of what the Consent Decree required in order to comply with its load factor targets, at least until the Master's interpretive decisions of July and August 1998. While we did not in large part agree with each of those decisions in December 1998, we nevertheless filed our Load Factor Remediation Plan which we are implementing since its adoption by our Board, and are doing so without regard to the Master or the Court ordering such implementation.

12. In connection with meeting broad statutory obligations of this agency in November of 1998 the MTA programmed 47% of its resources for the period through 2004 to bus operations and capital, which I believe reflects a significantly higher commitment to the County's bus services than previously prevailed.

13. After committing to our Load Factor Remediation Plan, the MTA is still faced with an ongoing projected shortfall in operating funds in an amount in excess of \$100 million for the period ending 2004. In running this agency, this factor puts a daily pressure on its management to control costs in every feasible way. Moreover, a substantial part of the money that is projected in expected revenues for this agency to meet its capital and operating costs are just that – projections. Those projections, in turn, put substantial reliance on the agency's ability to have the state and federal governments funding of the MTA's projects reasonably consistent with these projections. Those projections are obviously not a science, and MTA requires constant fine tuning of programs to be consistent with money that actually becomes available in the projected periods.

14. In any event, after having committed to the submitted remediation plan, the agency's current reality is that there is no further flexibility for additional operations dollar burdens to meet the added bus service requirements contemplated by Paragraphs 6 and 7 of Section V of the Master's "Order". In some theoretical sense, one might want to examine what other funds might be available for additions to the operating burden of our directly operating bus system which is the subject matter of this proceeding.

Substantially all of those theoretically available dollars are currently programmed to : a) the operations of our existing light rail Blue Line to Long Beach, our existing light rail Green Line from Norwalk to El Segundo, and our existing Red Line subway (including the extensions thereof which will open between now and 2004); b) funds programmed to

the operations of the 16 municipal bus operations in this county; and c) the operating funds devoted in this period to 2004 to paratransit services. None of those funds can be reprogrammed into our directly operated bus system for legal reasons, some of which are contractual and others being statutory, and all of those restrictions flow out of either federal law or state law.

15. In this same connection, the Master should be aware that the implementation of our remediation plan itself involved an increased funding for load factor remediation with funds that otherwise were contemplated for a Rapid Bus Implementation Program. As a consequence, if the rapid bus demonstration program proves to be as attractive as we believe it likely will be, we currently do not have any operating funds which would be necessary to implement that program. Those available funds have been devoted to our load factor remediation program.

16. It is my opinion, as a manager of large enterprises for over 25 years and as the current manager of the MTA during this critical period of its existence, that the recommendations of the Special Master would require an expenditure of resources which is way out of proportion to the problem he is attempting to address. The resources available to this agency to deal with the severe transportation problems in this county are much too dear to justify the reprogramming of hundreds of millions of additional dollars to provide the load factor reductions contemplated by the Consent Decree when the MTA is already implementing a remediation plan to accomplish this very objective.

I make this declaration under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed the 16th day of April, 1999 at Los Angeles, California.



JULIAN BURKE