



July 6, 1998

TO: BOARD OF DIRECTORS
FROM: JULIAN BURKE
CHIEF EXECUTIVE OFFICER

Julian Burke
JAB



SUBJECT: CONSENT DECREE - LOAD FACTOR DISPUTE

ISSUE:

A process for resolution of the Stage II proceeding on MTA load factor compliance has been agreed upon with the Special Master. Following preparation and filing of briefs by each party, the Special Master is scheduled to issue by July 15, 1998, concrete standards to measure compliance with the Consent Decree's Load Factor Targets. The Joint Working Group will then have until July 21, 1998, to formally determine whether or not MTA has met the initial load factor target of 1.35. In the event of a non-compliance determination, the JWG will recommend specific remedies to achieve compliance.

BACKGROUND

On June 24, 1998, the Special Master, Donald Bliss, met with the attorneys for plaintiffs and the MTA to agree upon the issues to be resolved in the formal load factor dispute, and the process and timeline for arriving at a decision.

The attorneys had been unable to agree on a joint statement of the issues in their initial procedural filing. After considerable discussion the Special Master outlined a sequential decision process, summarized as follows:

1. Establish the explicit legal criteria for determining whether or not MTA has complied with the Load Factor Target established for December 31, 1997.
2. Using the established criteria, determine MTA compliance or non-compliance.
3. In the event that MTA is determined to be non-compliant, determine what remedies are needed.

At the suggestion of MTA, the parties agreed that steps 2 and 3, above, would be carried out by the Joint Working Group. That is to say, the JWG will seek to determine whether or not MTA has complied with the December 31, 1997, Load Factor Target based upon the criteria to be set forth by the Special Master. If non-compliance is the agreed finding, the JWG will negotiate and try to agree upon the remedies to be implemented.

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If any of these steps results in lack of agreement by the JWG, the Special Master will intervene and render a decision.

The timeline for the initial parts of this decision process follows:

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| July 8 | Initial legal briefs submitted to Special Master by MTA and plaintiffs presenting respective parties' positions on what criteria should serve as the basis for determining load factor compliance -- briefs will be limited to 30 pages. |
| July 9 | Optional reply briefs submitted to Special Master -- in essence an opportunity to rebut any statements or positions espoused by the other party. |
| July 15 | Special Master will issue decision on criteria to be used for determination of compliance. |
| July 21 | JWG to render decision on MTA compliance based upon criteria established by Special Master. |

The time frame and subsequent actions will depend upon the actions of the JWG.