



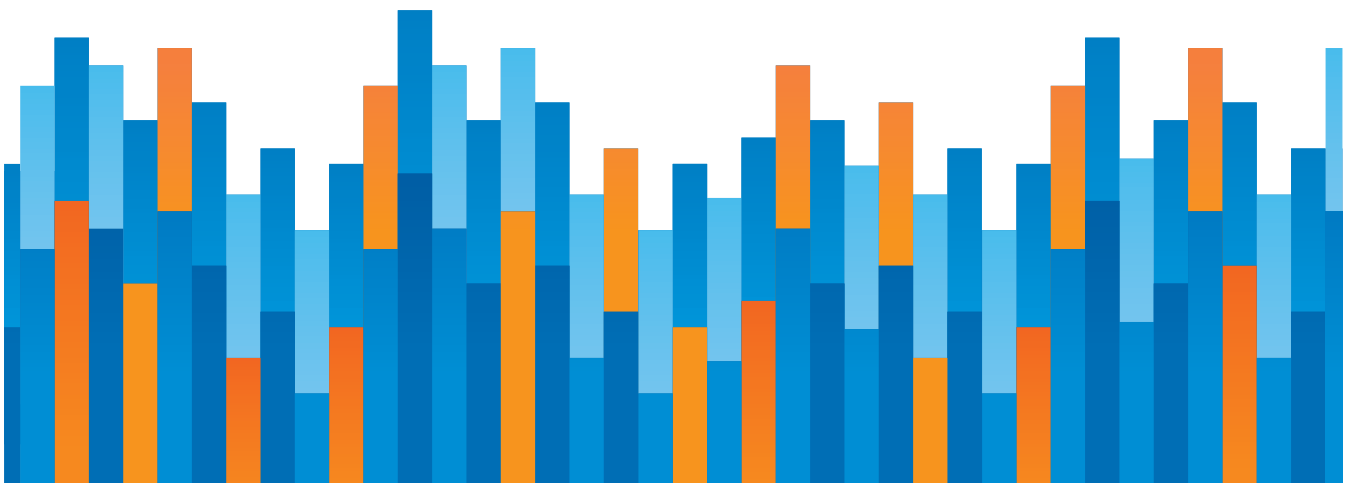
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FOUNDATION

METRO'S 28 BY 2028 PLAN: A CRITICAL REVIEW

VI. DECISION OF *LABOR/COMMUNITY* *STRATEGY CENTER VS MTA CONSENT DECREE:* OUTCOMES FAVOR CD CONTINUATION

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The following is an excerpt from the decision by Special Master Donald T. Bliss in the long-running legal battle concerning MTA's compliance with the terms of the Consent Decree (CD) *re Labor/Community Strategy Center v. MTA*, a federal Title VI (discrimination in the utilization of federal funds) lawsuit originally filed in 1994, and settled via the CD in 1996.

THE QUESTION

The question before the Special Master was the amount of bus service that MTA would have to add to come into compliance with the load factor reduction elements the agency agreed to under the CD, including how many hours of bus service to be delivered, the number of buses to be purchased, and other related matters. In his rulings, Special Master Bliss gave neither side all that it was seeking, but his decisions were generally far closer to the plaintiff's positions. This was true with respect to the main issues here, the number of hours of bus service to be added and the number of buses that Metro would have to purchase to deliver these hours.

In their presentations to Special Master Bliss, both parties argued the law of the case, but also presented extensive materials on the positive and negative equity impacts of potential decision outcomes. While his decision was made on the law, Special Master Bliss took the opportunity to explain his evaluation of the equity arguments.

REMARKS OF THE SPECIAL MASTER AND THEIR CONTEXT

The excerpt below is from a memorandum documenting proceedings before Special Master Bliss.¹ The concluding paragraph below is his own words. He is *not* quoting any other party.

MTA's new management apparently is not pleased with the way the Consent Decree entered into by its predecessors has been implemented. In his declaration, David Yale states that "the Consent Decree has had no benefits that could not have been achieved without the Decree, and it has diverted significant financial resources in process to questionable bus service expansions," Yale Decl. 19, which are "a poor investment of scarce public funding." Id. 17. Moreover, according to Mr. Yale, "the Consent Decree has, and will continue to have, detrimental impacts on the Regional Transportation System in Los Angeles County for many years to come." Id. 4. Without the Decree, Mr. Yale states that the MTA "would have had additional financial resources" for highway

¹ *Labor/Community Strategy Center et al v Los Angeles County Metropolitan Transportation Authority et al* [United States District Court – Central District of California. Case No. CV 94-5936 TJH (MCX)] ("Order"). Note 22, page 32.

construction. Id. Mr. Yale candidly acknowledges that “the MTA has carefully developed a short-range plan that balances these needs as best it can under the constraints of the Consent Decree” Id. (emphasis added). However, Mr. Yale continues, “any further unanticipated financial changes that are needed for the Decree will have to be undone as soon as the Decree expires in early FY 2007....” Id. (emphasis added).

Given these views on the alleged shortcomings of the Consent Decree presented by an MTA planning official in the record of this proceeding, it is all the more imperative that the MTA commit to a specific bus capacity expansion program that will provide lasting improvements in the quality of bus service for the transit-dependent—in accordance with the letter and spirit of the Consent Decree—beyond the expiration of this Decree. It should be noted that Mr. Yale’s views present an interesting contrast to what the MTA staff apparently wrote, at least with respect to the procurement of new buses, in a briefing for the MTA Board on the Consent Decree. The staff outlined the benefits of compliance with the Decree, including the transformation of the MTA bus fleet from “the oldest to the newest fleet of major bus companies,” and stated that “MTA’s new buses are worth every penny.” See Declaration of Thomas A. Rubin Re Consent Decree Costs at Attachment II (Oct. 14, 2003) (“Rubin Decl. Re Consent Decree Costs”) (briefing update on Consent Decree prepared by MTA staff dated September 19, 2002).

Furthermore, the BRU and its expert, Thomas Rubin, who have been sharply critical of the MTA’s implementation of the Decree, also have presented a more positive view of the benefits achieved by the Decree in improving bus service for transit-dependent riders, which is, after all, the singular purpose of the Decree. In his Declaration Re Reallocation of MTA Funds, Mr. Rubin analyzes in detail the effects of the Consent Decree, finding that in the six-year post-Consent Decree period, the MTA has gained a total of 81.6 million annual riders. Rubin Decl. Re Reallocation of Funds 23. According to Mr. Rubin, MTA ridership increased from 364 million in 1996 to 445 million in 2002, resulting in an increase in total fare revenues of \$100.5 million over the six-year period. Rubin Decl. Re Consent Decree Costs at 3. This in stark contrast to a loss of 133.6 million annual passengers over the eleven year period preceding the Consent Decree. Rubin Decl. Re Reallocation of Funds 23. Mr. Rubin also shows that, even taking into account what he views as “extremely overstated” Consent Decree expenditures per new rider, the cost per new rider—83% of whom are bus riders—is still far below other transit modes. Id. 25, 26, 28. Mr. Rubin describes other benefits of the Consent Decree: “The [Consent Decree] has made great progress in reducing overcrowding, and pass-by’s, on MTA bus routes . . . MTA service has also become more reliable and the

condition of MTA's bus fleet improved substantially as the average age has decreased. The fares to ride MTA bus and rail have been kept low for MTA's huge numbers of extremely low-income riders. The service added for CD compliance has meant shorter headways, and the reduced overcrowding has decreas[ed] running times, speeding travel for these bus riders. The Rapid Bus Program, which MTA has claimed as a [Consent Decree] cost . . . is another significant benefit for bus riders. Many new bus lines have begun service. The speed-up of bus replacement has meant cleaner air for all Los Angeles County residents.... All in all, hundreds of thousands of MTA bus and rail riders each day, and many more non-transit users, are receiving benefits in lower cost transit; a faster, higher quality, and more reliable transit experience; access to new destinations; and improved environmental quality and traffic flow—all due to the workings of the [Consent Decree].” Id. 27.

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

The context of these remarks provides additional insight into the particular gravitas Bliss attaches to them:

- At the time this *Order* was prepared, Special Master Bliss had been serving in that position for over seven years, working closely with the plaintiffs and defendants on a variety of matters.
- Before being appointed as the Special Master to administer and make decisions regarding its enforcement, Ambassador Bliss had acted as the mediator to assist in formulating the consent decree into a form acceptable to both parties at interest, their legal counsel, and the presiding judge, the Honorable Terry Hatter.
- Ambassador Bliss was a distinguished transportation attorney when he was asked to take this position, having served as Deputy General Counsel and Acting General counsel for the U.S. Department of Transportation. During his service as Special Master, he was the Chair, Transportation Practice, for O’Melveny & Meyers, LLP, in Washington, D.C.

CONCLUSIONS

1. In the only court decision of its kind, the Special Master ruled that expanding bus service is more effective than expanding rail.

2. The Special Master recommended that the objectives of the CD be continued after its legal end date due to the CD's very positive results on the bus system—which he calls “one of the cleanest and the most efficient in the world.”

3. Metro reverted to its previous service pattern as soon as the Decree expired. This resulted in a ridership decline.

4. Had Metro continued to deliver the elevated level of bus service required of the agency under the CD, transit ridership trends in Los Angeles would have almost certainly continued upward after 2007, as they had for the prior 11 years.