

1 CONSTANCE L. RICE
2 ROBERT GARCIA
3 BILL LANN LEE
4 MOLLY MUNGER
5 NAACP LEGAL DEFENSE AND
6 EDUCATIONAL FUND, INC.
7 315 West Ninth Street, Suite 208
8 Los Angeles, CA 90015
9 (213) 624-2405

10 ELAINE R. JONES
11 THEODORE M. SHAW
12 NAACP LEGAL DEFENSE AND
13 EDUCATIONAL FUND, INC.
14 99 Hudson Street, 16th Floor
15 New York, NY 10013
16 (212) 219-1900

17 E. RICHARD LARSON
18 MARK D. ROSENBAUM
19 ACLU FOUNDATION OF
20 SOUTHERN CALIFORNIA
21 1616 Beverly Boulevard
22 Los Angeles, CA 90026
23 (213) 977-9500

24 Attorneys for Plaintiffs

PAUL L. HOFFMAN
GARY L. BOSTWICK
100 Wilshire Boulevard, Suite 1000
Santa Monica, CA 90401
(310) 260-9585

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LABOR/COMMUNITY STRATEGY CENTER, et
al.,

Plaintiffs,

vs.

LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY and JOSEPH
DREW,
etc.

Defendants.

CASE NO. CV 94-5936 TJH (Mcx)

PLAINTIFFS' REVISED STATEMENT OF
CONTENTIONS OF FACT AND LAW

///
///
///
///
///

PART ONE

SUMMARY OF THE FACTS

I. INTRODUCTION

1. The District Court previously reviewed the factual record in preliminary injunction and summary judgment proceedings.

2. On September 21, 1994, the District Court held that, on the abbreviated preliminary injunction record, plaintiffs had presented "more than sufficient evidence" to support their disparate impact claims for preliminary relief and had "raised serious questions going to the merits" on the claims of intentional discrimination:

Plaintiffs have presented the Court with more than sufficient evidence to meet their burden of preliminarily showing that MTA's actions have adversely impacted minorities; that MTA's actions were not justified by business necessity; and that the MTA has rejected less discriminatory alternatives.

. . . Through their evidence, plaintiffs raise serious questions going to the merits of their disparate impact claims under Title VI, as well as their intentional discrimination claim under Title VI, the Fourteenth Amendment, and 42 U.S.C. §§ 1981 and 1983. A serious question is one that is so substantial and difficult as to warrant more deliberate investigation and, thus, creates a fair basis for litigation.

Findings of Fact and Conclusions of Law 4-5 (Sept. 21, 1994) (citation omitted).

3. The Court rejected MTA's defenses on the preliminary injunction record. The factual record compiled by plaintiffs through discovery since then, consisting largely of admissions contained in MTA documents and depositions of MTA officials, is considerably more detailed and comprehensive. Both the disparate impact and intentional discrimination concerns are considerably stronger in light of the full record.

4. The MTA reiterated its defenses in the form of a summary judgment motion submitted last fall after the close of discovery. In response, plaintiffs submitted a Statement of Genuine Issues of Material Fact, with a set of supporting MTA documents and excerpts from MTA official depositions as

exhibits. The District Court denied the MTA's summary judgment motion on December 22, 1995.

II. BACKGROUND

A. Parties

1. Plaintiffs

5. Plaintiff Labor/Community Strategy Center is an advocacy and membership organization whose purposes and activities include obtaining equity in the operation of the public transportation system in Los Angeles County without respect to race, color, national origin, disability, gender or income. Poor African-American, Latino and Asian ("minority") members of the Center as well as the activities of the Center are and will be adversely affected by the actions challenged in this lawsuit. *Amended Pretrial Conference Order at 1 (Jan. 4, 1996).*

6. Plaintiff Bus Riders Union is an advocacy and membership organization of bus passengers that also seeks to obtain equity in public transportation services in Los Angeles County. Poor minority members of the Union as well as the activities of the Union will be adversely affected by the challenged actions. *Id. at 1.*

7. Plaintiff Southern Christian Leadership Conference of Greater Los Angeles County is a civil rights organization with a long history of advocating for the equal provision of transportation services to all races, as exemplified by its central role in the sit-ins that desegregated public transportation throughout the South in the Civil Rights movement. SCLC promotes and advocates the equal provision of governmental services for African American and other minority residents of Los Angeles County. Poor minority members of the SCLC as well as the activities of the SCLC will be adversely affected by the challenged actions. *Id.*

8. Plaintiff Korean Immigrant Workers Advocates is a non-profit, community service organization that provides assistance and services to Korean immigrant workers. KIWA advocates against defendants' discriminatory transit system and for equitable treatment of poor minority and other inner city users of Los Angeles mass transit. Poor minority members of KIWA as well as the activities of KIWA will be adversely affected by the challenged actions. *Id. at 1-2.*

9. Plaintiff Maria Guardado is a sixty-year-old Latina resident of Los Angeles County whose sole source of income is Social Security benefits. She owns no car and relies upon MTA bus transportation as her sole means of transportation. She currently buys a monthly bus pass. If MTA

1 fully implements the July 1994 fare restructuring, she will have to cut back or eliminate her trips to
2 meetings and social events, and visits to friends and relatives. Friends and relatives who use the MTA
3 bus also will be unable to visit her. Plaintiff Guardado will be adversely affected by the challenged
4 actions. *Id. at 2.*

5 10. Plaintiff Ricardo Zelada is a Latino resident of Los Angeles County. He currently takes
6 home \$500 per month in income. His is the sole income supporting his family of four and he cannot
7 afford to own, insure or maintain a car. He rides the MTA bus seven days a week and relies on the bus
8 to go to the market, to church and to visit his elderly and ailing mother. He currently purchases a
9 monthly bus pass. If MTA fully implements its July 1994 fare restructuring, he will not be able to
10 afford to visit his sick mother, go to social events, attend church regularly, or travel with his wife,
11 plaintiff Noemi Zelada, as discussed below. If he loses his bus pass, he will be forced to shop for food
12 and clothing at local stores where items are much more expensive. Plaintiff Ricardo Zelada will be
13 adversely affected by the challenged actions. *Id.*

14 11. Plaintiff Noemi Zelada is a Latina resident of Los Angeles. She is a student who rides
15 the bus to school, to the market and to church. She currently buys a student pass for \$25 per month.
16 Although she can continue to buy the monthly pass as a student, she will be deprived of the safety and
17 comfort of travelling with her husband, plaintiff Ricardo Zelada, on many trips if the fare restructuring
18 is fully implemented because he can no longer buy a pass and they cannot afford for him to take as
19 many bus trips as he could with a pass. Plaintiff Noemi Zelada will be adversely affected by the
20 challenged actions. *Id. at 2-3.*

21 12. Plaintiff Pearl Daniels is an African American resident of Los Angeles County. She
22 earns approximately \$18,000 each year as a hotel switchboard operator. She relies on MTA bus service
23 as her sole means of transportation. Plaintiff Daniels cannot afford to own or maintain a car and has not
24 owned a car for over nine years. Plaintiff Daniels currently buys a monthly bus pass and rides the bus
25 seven days a week to go to work, shop for food, visit friends and attend union meetings. If the July
26 1994 fare restructuring is fully implemented, she will have to limit the number of bus rides she takes.
27 She needs MTA bus service to buy food and will have difficulty shopping for groceries as there are no
28 supermarkets nearby. She will become more isolated as she will be unable to visit her sister and friends.
Plaintiff Daniels will be adversely affected by the challenged actions. *Id.*

2. Defendants

13. Defendant Los Angeles County Metropolitan Transportation Authority is a joint county and municipal body created by the California State Legislature to administer and plan transportation services for Los Angeles County. Pursuant to state law, MTA is governed by a 13 voting member board that includes the five Los Angeles County supervisors, the mayor of Los Angeles, three City of Los Angeles appointees and four representatives from outlying cities. *Id.*

14. MTA is the result of a 1993 merger between the former Southern California Rapid Transit District ("RTD") and the former Los Angeles County Transportation Commission ("LACTC"). The MTA provides public transportation directly through its own operations and indirectly by funding other local governmental transit operators in Los Angeles County. *Id.*

15. The MTA's budget in FY 1995-96 was \$3.1 billion. It receives federal and state funds and local sales tax receipts. *MTA, 1995-96 Budget, M301108 at M301119; Amended Pretrial Conference Order at 3 (Jan. 4, 1996).*

16. Defendant Joseph Drew, MTA's current chief executive officer, is sued in his official capacity. Defendant Drew was substituted for the MTA's previous chief executive officer Franklin White when MTA fired Mr. White in December 1995.

17. On May 6, 1996, the Board of Education of the Los Angeles Unified School District ("LAUSD") passed a resolution to support the efforts by the plaintiffs to secure an efficient, safe, low cost, environmentally sound and equitable public transit bus service for its students, their families and other low income, inner city bus riders. The LAUSD is responsible for the public education of 650,000 K-12 students in the Los Angeles area. The LAUSD's ethnic makeup is 87% minority and 13% white. The LAUSD issues thousands of bus passes to students who depend upon MTA buses to get to school, part-time jobs, internships, public libraries, and recreational activities as their principal or only means of transportation. Additionally, a significant number of parents depend upon MTA buses to go to and from work, escort younger children to school, attend school meetings, take their children to the doctor, and participate in family outings. *LAUSD Resolution (May 6, 1996); LAUSD Amicus Brief (May 17, 1996).*

The District Court denied the LAUSD's motion to file an amicus brief in June 1996.

B. Procedural History Of The Case

1. Prior Proceedings

18. The plaintiffs filed the complaint in this civil rights class action on August 31, 1994, seeking preliminary and permanent injunctive relief against defendants Los Angeles County Metropolitan Transportation Authority ("MTA") and Franklin E. White, MTA's then-chief executive officer. The complaint alleged that MTA violated the Fourteenth Amendment, 42 U.S.C. §§ 1981 and 1983, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, by intentionally discriminating against racial and ethnic minority groups and perpetuating a pattern of racially discriminatory delivery of transportation services. The complaint also alleged that, as a recipient of federal funds, the MTA violated the implementing Title VI regulations, codified by the United States Department of Transportation ("DOT") at 49 C.F.R. Part 21, by maintaining transportation policies that disproportionately impact racial and ethnic minorities without a justifying business necessity and without regard to less discriminatory alternatives. *Complaint (Aug. 31, 1994)*. Plaintiffs filed the First Amended Complaint with leave of Court on March 26, 1996.

19. After a hearing on September 1, 1994, the Court entered a temporary restraining order that restrained defendants from raising cash bus fares from \$1.10 to \$1.35 and eliminating bus passes that provide unlimited bus use for \$42 per month. *Temporary Restraining Order (Sept. 1, 1994)*.

20. After a second hearing, the Court entered a preliminary injunction enjoining the defendants from raising fares and eliminating monthly bus passes. *Findings of Fact and Conclusions of Law re: Preliminary Injunction (Sept. 21, 1994)*. The Court found that the proposed fare restructuring would "cause minority bus riders substantial losses of income and mobility that, for a significant number, will result in the loss of employment and housing, and the inability to reach medical care, food sources, educational opportunities, and other basic needs of life." *Id. at 1-2*. The Court held that the balance of hardships tips decidedly in plaintiffs' favor because any harm to the defendants from enjoining the fare changes pales in comparison to the harm to plaintiffs if the fare changes were implemented and that plaintiffs have raised serious questions regarding both their disparate impact and intentional discrimination claims. *Id. at 4-5*.

21. The Court contrasted MTA's decision to restructure bus fares to the detriment of the minority poor while contemporaneously proceeding with rail projects that serve a disproportionate share

of white riders. The Court found that:

On July 1, 1993, MTA's Operations Committee was given an internally produced report which concluded that the inequitable service provided to inner city areas, which are overwhelmingly minority and poor, stemmed from "the absence of adequate public funds." The report identified a significant need for transit service improvements and noted that inner city residents are extremely dependent on public transit, have very intense transit use, and suffer from significantly more limited access to transportation alternatives. The report documented that "service delivery problems have more severe impact in the [i]nner [c]ity than in most other areas of the County." The report concluded that MTA maximizes the benefits of the highly cost-effective inner city bus lines, in part, by routinely permitting overcrowding levels of 140% of capacity.

At an MTA Board meeting in August, 1993, plaintiff Labor/Community Strategy Center formally requested that the MTA impose a moratorium on all rail projects, which allegedly serve a non-minority ridership, in light of the Board's plan to raise bus fares and cut service. MTA Board member Villaraigosa urged his fellow MTA Board members to avoid the need to harm bus service later by refusing to approve a \$59 million discretionary fund allocation to plan the Pasadena rail project. The MTA Board, ignoring Mr. Villaraigosa and the plaintiff, voted to allocate the \$59 million to that project. Plaintiffs claim that the \$59 million should have been spent on bus services to avert the bus fare increases and pass elimination.

White received a staff memorandum, dated January 21, 1994, which concluded that the proposed fare increases and pass elimination would disproportionately effect minority and poor transit users. The memorandum acknowledged that "[f]or the most part, cash and most

1 pass categories are comprised of people of color with lower household
2 incomes" and that "the ethnic mix of non-senior disabled pass holders
3 is equivalent to that of our general ridership." The report went on to
4 state that general ridership of the buses is 80 percent minority and
5 "profoundly poor" and is the population that would be most adversely
6 affected by a fare hike and pass cut.

7 On July 13, 1994, the MTA Board voted to increase the one
8 way cash bus fare by 23% from \$1.10 to \$1.35, to eliminate the bus
9 pass that provided unlimited bus use for \$42.00 a month, and to retain
10 90¢ single-ride tokens.

11 On July 20, 1994, the MTA Board voted to spend another \$123
12 million on the rail project designed to serve Pasadena.

13 *Id. at 2-3 (brackets by the Court, paragraph numbers omitted).*

14 22. The defendants filed a notice of appeal on September 30, 1994, which was withdrawn
15 and ultimately dismissed on December 6, 1994.

16 23. On January 25, 1995, the Court entered a stipulated order which modified the
17 preliminary injunction by allowing the cash fare to be raised from \$1.10 to \$1.35 and by allowing the
18 price of the monthly pass to be raised from \$42 to \$49. As modified, the preliminary injunction remains
19 in effect pending trial.

20 24. On March 7, 1995, the Court certified this action as a class action on behalf of "[a]ll
21 poor minority and other riders of MTA buses who are denied equal opportunity to receive transportation
22 services because of the MTA's operation of a discriminatory mass transportation system," a class
23 consisting of approximately 350,000 individuals.

24 25. The Court denied MTA's motion for summary judgment on December 22, 1995.

25 **2. MTA's Failure To Comply With The TRO**

26 26. Although MTA ordinarily sells its regular monthly passes up through the first ten days
27 of each month, MTA did not do so in September 1994, *MTA Admission No. 1 (admitted)*,¹ even though

28 1. On May 15, 1996, defendants served Defendants' Response to Plaintiffs' Third Request to Admit.
Specific admissions in that document are cited herein as "MTA Admission No. ____."

MTA was under the Court's Order to do so.

27. On September 2, after pass sales had already begun pursuant to the temporary restraining order, MTA Deputy Chief Executive Officer LaVerne Kimball gave instructions not to sell passes. MTA ceased sales of the September bus pass the next day, September 3, and the MTA did not resume pass sales until September 9. There were no administrative reasons for MTA to fail to comply with the Court's order. *Dep. of Thomas Longsdon at 109, 118 (July 28, 1995)*.

28. Mr. Kimball testified at his deposition that he was waiting for the outcome of an appeal in this case, although there was no stay in effect. *Dep. of Kim Kimball 12, 14-24, (Oct. 13, 1995) (Vol. 1); Dep. of Kim Kimball 81-153 (Jan. 9, 1996) (Vol. 2)*. A party must obey a temporary restraining order even if an appeal is pending. *See, e.g., Walker v. City of Birmingham, 388 U.S. 307, 315 (1967)*.

29. In sum, MTA sold regular monthly passes for September 1994 only on September 2, 9, and 10. *MTA Admission No. 2 (admitted)*. Under the terms of the Court's TRO, MTA should have sold the passes on September 2-10.

30. Although MTA presently sells passes, it has taken administrative steps not to encourage pass sales as much as the sale of 90 cent tokens. MTA has launched an advertising campaign to increase public awareness of the availability of tokens, but has taken no comparable efforts to make known the availability of passes. The MTA offers retail outlets the same 65 cent commission on a nine dollar roll of tokens as a 49 dollar monthly pass. The MTA requires that pass sales outlets sell a minimum of 100 passes per month, but imposes no minimum token sales level. MTA has not included passes in its pilot programs to sell tokens at McDonald's restaurants and local banks. *Dep. of Thomas Longsdon at 36-37, 61-64, 73 (July 28, 1995)*.

C. Background On MTA

1. MTA Funds And Operates Transit Services

31. MTA's Mission Statement, adopted by the MTA in February 1994, states:

The mission of the Los Angeles County Metropolitan Transportation Authority is to design, construct, procure, operate and maintain a safe, reliable, affordable and efficient transportation system that increases mobility, relieves congestion and improves air quality, and meets the needs of all Los Angeles County residents.

Amended Pretrial Conference Order at 5 (Jan. 4, 1996).

1 32. MTA provides for transit services in Los Angeles County in two ways: the MTA
2 directly operates its own transit system, and it also allocates funding to Metrolink and to numerous
3 municipal bus operators in Los Angeles County.

4 33. The largest single transit operator in Los Angeles County, MTA operates an extensive
5 bus system throughout Los Angeles County.

6 34. MTA currently operates three rail operations, the Blue, Red and Green Lines. The Blue
7 Line is a 22-mile light-rail line with 22 stations that connects Long Beach to downtown Los Angeles.
8 The Red Line is a partially completed heavy-rail subway that runs approximately 3.2 miles from
9 downtown Los Angeles west to MacArthur Park. The Green Line, which opened in August 1995, is a
10 light-rail line that runs on the median of the Century Freeway (I-105) between Redondo Beach and
11 Norwalk.

12 35. MTA distributes federal, state, and local funds to the Southern California Regional Rail
13 Authority ("SCRRA"), also known as Metrolink, and to numerous municipal bus operators in Los
14 Angeles County.

15 36. MTA bus system is composed of 128 regularly scheduled parent bus routes and 55
16 regularly scheduled branch routes. Although the service area includes all of Los Angeles County, MTA
17 bus operations are largely confined to the southern portion of Los Angeles County. Additionally, a
18 limited amount of service is provided across the Ventura, San Bernadino and Orange County lines by a
19 small number of MTA bus routes. *MTA, A. Leahy, Status Report on MTA Bus System (July 2, 1993),*
20 *M514360 at M514368-69 (with report entitled "Status Report on MTA Bus System, Phase I - June*
21 *1993" (July 1993), M514364.*

22 **2. Eighty Percent Or More Of MTA's Bus Riders Are Minority**

23 37. According to a 1994 MTA report, "A typical MTA rider is a person of color (Latino or
24 African-American), in her twenties, with a household income under \$15,000 and no car available to use
25 in lieu of public transit." Eighty percent of MTA passengers are minority. MTA riders are Latino and
26 African American in percentages that significantly exceed their representation in the overall county
27 population. Latinos comprise 47 percent and African Americans comprise 23 percent of all MTA riders.
28 Whites are only 19 percent of all MTA riders, although they comprise over 40 percent of the county

1 population. *MTA, Comparing the Demographic Composition of MTA Riders With the Population of Los*
2 *Angeles County (Jan. 20, 1994), 008406 at 008407-09.*

3 38. In 1995 the MTA reported that its bus ridership was 81 percent minority and 19 percent
4 white. While 11 percent of County population lived in households without cars, 51 percent of bus riders
5 did. *MTA, Metro Bus System Workshop (Sept. 14, 1995), M803782 at M803790.*

6 39. Demographic information of MTA bus riders from 1991-93 showed that 82 percent
7 were non-white and 18 percent white. The sample of 1.17 million riders was 47.0 percent Latino, 22.7
8 percent black, 18.3 percent white, 8.1 percent Asian, 1.5 percent Native American and 2.4 percent other.
9 *MTA, Demographic Info of MTA Bus Riders: 1991-1993, Ethnicity (April 15, 1994), 007677.* MTA
10 statistics show that 50 percent of bus riders have no access to an automobile. Eighty percent of the bus
11 riders without access to a car were non-white. *MTA, Demographic Info of MTA Bus Riders: 1991-1993*
12 *Number of Cars (April 15, 1994), 007679; MTA Demographic Info of MTA Bus Riders: 1991-1993,*
13 *Ethnicity by Number of Cars (April 15, 1994), 007681.*

14 40. Minority ridership is probably higher than MTA indicates because of MTA's
15 undercounting of minorities. *Brian Taylor, Martin Wachs, et al., Variations in Fare Payment and*
16 *Public Subsidy by Race and Ethnicity: An Examination of The LAMTA, at 8-10 (Nov. 5, 1995)*

17 41. According to MTA Board member and Los Angeles Mayor Richard Riordan:
18
19 Currently 50 percent of the MTA's riders rely on the top twenty of
20 MTA's 185 bus lines. Each day 50,000 riders crowd the Wilshire Blvd.
21 Line, much greater than the number of persons who ride the Metro Blue
22 Line from Long Beach to Los Angeles. MTA resources are not
23 targeted to providing the majority of transit riders with a system which
24 is safe, clean, comfortable and reliable.

25 *Letter from Los Angeles Mayor Richard Riordan to MTA Chairman Larry Zarian (Sept. 11, 1995),*
26 *M803752.*

27 **3. MTA's Bus System Principally Serves**
28 **Low-Income, Transit-Dependent Residents**

42. Los Angeles County is an urban area of approximately 4,000 square miles, consisting of
88 cities and a number of unincorporated areas, with a total population of almost nine million. Because

1 of its large size and low density development, the mobility needs of its residents are greater than other
2 metropolitan areas. The automobile strongly influences life in Los Angeles, with the County's freeways
3 symbolizing the far-ranging mobility of the area's population. *Report of the Independent Commission*
4 *on the Los Angeles Police Department at 21-22 (1992); Testimony of Martin Wachs and Brian Taylor.*

5 43. Only 11 percent of Los Angeles County's population is dependent on mass transit
6 because their poverty precludes access to an automobile. *MTA, Comparing the Demographic*
7 *Composition of MTA Riders with the Population of Los Angeles County (Jan. 20, 1994), 008406 at*
8 *008409.* Most of this population is minority.

9 44. Fully 51 percent of MTA riders are transit dependent, without access to a car. *MTA,*
10 *Metro Bus Customers: Demographics (Sept. 14, 1995), M803790.*

11 45. "MTA riders are profoundly poor and dependent on some form of public transportation
12 for their mobility needs." Approximately 60 percent have annual household incomes of \$15,000 or less,
13 while only 21 percent of all county residents do so. Over 80 percent of MTA riders have annual
14 household incomes under \$30,000. In contrast, less than 50 percent of all county residents have
15 household incomes under \$30,000. Only 10 percent of MTA riders earn household incomes between
16 \$30,000 and \$50,000, while a quarter of the county population does. *MTA, Comparing the*
17 *Demographic Composition of MTA Riders with the Population of Los Angeles County (Jan. 20, 1994),*
18 *0008406 at 0008407-09.*

19 46. Riders who use monthly passes or pay cash, the groups most affected by the July 1994,
20 fare restructuring, are disproportionately poor. "For the most part, cash and most pass categories are
21 comprised of people of color with lower household incomes." Fully 59 percent of cash riders and 55
22 percent of regular monthly pass riders have annual household incomes of less than \$15,000. Express
23 pass riders have higher incomes and are disproportionately white. Senior and disabled pass riderships
24 were disproportionately white. *MTA Fare Restructuring Across Demographic Categories (Jan. 21,*
25 *1994), 008401 at 008402-04; MTA, Statistical Charts (undated), M1012004 at M1012005; Dep. of*
26 *Brian Hyman at 37-39 (June 29, 1995); Dep. of Dana Woodbury at 494-500 (Aug. 18, 1995) (Vol. 4), .*

27 47. Although the great bulk of MTA riders are minority, transit-dependent, low-income
28 passengers, it was not until September 1995 -- a year after the Court's temporary restraining order -- that
a motion was presented to the MTA Board that "the Board adopt in concept that the transit dependent

have the highest priority for MTA services and resources." *Letter from Los Angeles Mayor Richard Riordan to MTA Chairman Larry Zarian (Sept. 11, 1995), and attached Motion, M803752 at M803756.*

4. MTA's Bus System Provides Comparatively Low Subsidy Services On Overcrowded Buses

48. Prior to the July 1994, fare restructuring, the MTA bus operations had the lowest operating subsidy per passenger-mile of the 20 largest operators in the United States, 38 percent under the average of the other large urban bus operators. The MTA, on the other hand, had the fourth highest fare box recovery ratio of the largest urban bus operators, 24 percent over the average of the other largest urban operators. *MTA, A Look At The MTA (Jan. 1994), 800042A at 800046A; MTA, Marvin Holen, Bus and Rail Fares (July 11, 1994), M329396 at M329407.*

49. MTA is one of the most highly utilized transit systems in the nation. The latest Section 15 data from the Federal Transit Administration indicates that, in 1993, the MTA and the New York City Transit Authority were virtually tied as the most utilized among the 21 largest operators in the nation, at 55 boardings per hour. This was 40 percent higher than the average of the largest motor bus operators, and 52 percent higher than the average of local operators. *MTA, A. Leahy, Metro Bus Operations Performance for the Third Quarter of Fiscal year 1995 (July 24, 1995), M805545.*

50. MTA has the greatest transit usage, measured by passenger-miles, of the 20 largest urban bus operators. In fiscal year 1991, MTA's predecessor RTD provided 1,617,000,000 passenger-miles of service. *MTA, Additional Comparative Performance Data for 20 Largest Operators and Local Operators (Sept. 15, 1993), M302891 at M302893-900; MTA, A Look At The MTA (Jan. 1994), 800042A at 800053A.*

51. MTA produces more transit utilization per bus than any other large urban bus operator, 70 percent over the average of its peers. *MTA, A Look At The MTA (Jan. 1994), 800042A at 800046A; MTA, Marvin Holen, Bus and Rail Fares (July 11, 1994), M329396 at M329409.*

52. Of the 20 largest urban transit operators, MTA had the third lowest cost per passenger-mile. MTA's cost per passenger-mile of \$0.35 was 29 percent under the \$0.51 average cost of the other 19 operators. *MTA, A Look At The MTA (Jan. 1994), 800042A at 800051A; MTA, Marvin Holen, Bus and Rail Fares (July 11, 1994), M329396 at M329409.*

53. While MTA's fare per passenger mile in 1993 was 79 percent of the average of the

1 largest transit operations in the United States, MTA's cost per passenger mile was only 65 percent of the
2 average of its peers. MTA's subsidy per passenger mile was 40 percent lower than the average of its
3 peers. Its 32.9 percent farebox recovery ratio was 22 percent *higher* than the average of its peers.

4 *Amended Expert Report and Response to Report of Robert L. Peskin by Thomas A. Rubin (Jan. 1, 1996),*
5 *E100061.*

6 54. According to former RTD Chief Financial Officer Thomas Rubin, "If the test in setting
7 fares is comparisons to costs and fares of peers, it appears that MTA fares in 1993 were high and,
8 further, that a fare decrease appears to be far more justifiable than a fare increase." *Id at E100061.*

9 55. As MTA concedes, the high cost-effectiveness of its bus operations means very poor
10 service for its bus riders:

11 The main reason why the District rates high in cost-effectiveness and
12 productivity measures is its extremely high average passenger load
13 (annual passenger-miles/annual revenue vehicle miles), 43 percent over
14 the average of its peers. . . . This high average passenger loading is
15 even more impressive when one considers that the District is very high
16 nationally in hours per bus -- in other words, the District carries more
17 riders mid-day, evenings, and weekends than other operations do at
18 peak. These results indicate that:

- 19 · The District's high cost-effectiveness and productively
20 means low comfort and quality of service score -- for
21 example, the District has far more standees than any of
22 its peers.
- 23 · Los Angeles has the largest unmet bus transit demand
24 in the United States.

25 * * *

- 26 · Unfortunately, another way of looking at the District's
27 cost-effectiveness is that we spent less to move a
28 passenger one mile than everyone else. This has major
impact on the quality of the service that the District

provides to its riders.

MTA, A Look At The MTA (Jan. 1994) (ellipsis and asterisks added), 800042A at 800053A.

56. In the transit industry, a bus route that carries 10,000 riders on average weekday is a very highly utilized route. In 1992, the MTA operated 22 routes that carried over 20,000 riders on an average weekday. MTA Line 20 (Wilshire Boulevard) carried a daily average of approximately 58,000 riders, and MTA Line 204 (Vermont Avenue) carried an average of 55,000 passengers. When MTA's busiest routes are compared with the busiest lines on 14 of the other largest bus transit operators, the RTD's 22nd busiest line carried more passengers than the busiest line of the sixth largest of its peers.

MTA, A Look At The MTA (Jan. 1994), 800042A at 800061A-62A.

5. MTA Bus Operations Receive A Disproportionately Low Share Of MTA Resources

57. Focusing on MTA alone, MTA buses carry 94 percent of MTA passengers, but MTA bus operations receive less than a third of total MTA capital and operating expenditures. In 1992, 29.1 percent of MTA's total \$2.6 billion budget was devoted to bus (\$752 million out of \$2.583 billion). Fully 70.9 percent of MTA's 1992 budget was devoted to MTA rail programs, which serve six percent of MTA ridership. *MTA, Los Angeles County Transit Total Expenditures By Mode (undated), 800159; Testimony of Thomas Rubin.*

58. Focusing on MTA, Metrolink, and other municipal operators, in 1992 all of the rail lines (the Blue, Red and Metrolink lines) combined carried less than four percent of Los Angeles county transit riders, fewer than 25,000 passengers: the Blue Line carried 2.4 percent of the County's annual ridership, the Red Line carried 0.8 percent, and Metrolink commuter rail carried 0.4 percent. MTA buses carried 80.8 percent and other municipal operators carried 15.6 percent of passengers. Only 3.6 percent of all County transit passengers were rail riders; 96.9 percent were bus passengers. Rail lines, however, received 71 percent of MTA capital and operating resources. *MTA, Los Angeles County Transit Total Expenditure By Mode (undated), 800159; MTA, Los Angeles County Transit Ridership by Mode/Operator (undated), 800160; Testimony of Thomas Rubin.*

59. MTA's 20-Year Plan, adopted in 1995, allocates 59.6 percent non-Metrolink subsidies to rail, and 41.4 percent to bus over the entire period of the Plan. For these subsidies, MTA anticipates that rail lines will carry 18.5 percent of passenger fares in the final year of the Plan, and 14.5 percent

over the entire period. In contrast, MTA anticipates bus lines will carry 81.5 percent of the passengers fares in the final year of the Plan and 85.6 percent over the entire period. *Amended Expert Report and Response to "A Report by Jeffrey M. Zupan" by Thomas A. Rubin (Jan. 1, 1996), E1000379.*

**6. MTA Reduced Bus Service
In The Face Of Increasing Need**

60. In 1980, Los Angeles County voters passed Proposition A, a one-half cent sales tax dedicated to transit. At the beginning of the 1983 fiscal year, after several years of annual fare increases (1980, 55 cents; 1981, 65 cents; 1982, 85 cents), MTA's predecessors RTD and LACTC lowered the cash fare to 50 cents over the next three years by allocating 20 percent of Proposition A tax receipts to fare subsidies, as required by Proposition A itself. Over these three years, bus ridership rose over 40 percent, from 354 million annual riders to 497 million annual riders, although bus service increased only 1.5 percent. *MTA, A Look At The MTA (Jan 1994), 800042A at 800077A-78A.*

61. The MTA has decreased bus service dramatically in recent years. The MTA reduced the peak bus fleet from 2,200 in 1985 to 1,750 buses in 1992. From a peak in 1988 of 93,000,000 revenue service miles, MTA reduced revenue services miles to 81,800,000 revenue service miles in 1993. MTA's South Central area experienced a 16 percent decrease in boardings between 1991 and 1994. *MTA, Trends: Ridership and Service Level (Sept. 14, 1995), M803786; MTA, A Look At The MTA (Jan. 1994), 800042A at 800079A-80A; MTA, Status Report on Ridership and Service Level Trends in the Second Supervisorial District (Aug. 31, 1994), M331392 at M331393.*

62. MTA's Operations Planning Department reported that for FY 1987-88 through FY 1992-93, systemwide patronage declined by 8 percent in the period, "due largely to a fare increase implemented in FY 1989 and accompanying service reductions." *MTA, Status Report on MTA Bus System (July 2, 1993) with attached report entitled "Status Report on MTA Bus System, Phase I - June 1993 (July, 1993), M514364), M514360 at M514374-75.*

63. While the number of bus passengers and the bus service provided by MTA decreased, the population of Los Angeles County has increased. From 1985 to 1992, the County population increased 13 percent from 7,953,000 to 8,989,000. In that period, per capita utilization of RTD buses fell 28 percent, largely as a result of the fare increases and the declining local bus service. *MTA, A Look At The MTA (Jan. 1994), 800042A at 800081A-85A.*

64. Beginning in fiscal year 1986, the Proposition A funds used to subsidize the 50 cent bus fare were reallocated to rail construction. RTD increased the fare to 85 cents in fiscal year 1986, and to \$1.10 in fiscal year 1989. Ridership decreased. The drop in bus boardings coincided with the shift of funds to rail. By fiscal year 1993, the annual bus boardings had dropped to 375 million annual riders.

MTA, A Look At The MTA (Jan. 1994), 80042A at 800077A-78A.

III. MTA'S SPENDING AND SERVICES HAVE AN ADVERSE DISPARATE IMPACT UPON THE MTA'S MINORITY BUS RIDERSHIP

65. MTA's actions have adversely impacted minorities in the following ways:

- Discrimination against MTA minority bus riders compared to the MTA's vast overspending on its rail projects in general;
- Discrimination against MTA minority bus riders compared to the disproportionately white ridership served by the MTA Red Line and by the MTA Blue Line;
- Discrimination against MTA minority bus riders compared to white ridership on the MTA's well-funded Metrolink commuter rail service;
- Discrimination against MTA minority bus riders *within* the MTA's own bus operations; and
- Discrimination against MTA minority bus riders compared to the disproportionately white ridership served by the MTA-funded suburban bus operators.

A. MTA Bus Riders Are Adversely Affected By The Provision Of Disparate Public Subsidies

66. The total subsidy, aggregating operating and capital subsidies, of the different modes of transportation funded or operated by the MTA in 1992 was:

| | <u>Mode</u> | <u>Total Subsidy per Passenger</u> |
|---|-------------|------------------------------------|
| 1 | Metrolink | \$21.02 |
| 2 | Blue Line | 11.34 |
| 3 | Red Line | 2.92 |
| 4 | Bus | 1.17 |

5 The capital subsidies were commuter rail, \$17.19, Blue Line \$8.27, Red Line \$2.63 and bus \$0.25. The
6 operating subsidies were commuter rail \$3.83, Blue Line \$3.07, Red Line \$0.29 and bus \$0.92. *MTA, A*
7 *Look At The MTA (Jan. 1994), 800042A at 800072A-73A.*

8 67. Accounting for differing average trip lengths of the modes, the total subsidies per
9 passenger-mile by mode in 1992 were:

| | <u>Mode</u> | <u>Total Subsidy Per Passenger-mile</u> |
|----|-------------|---|
| 11 | Blue Line | \$1.25 |
| 12 | Red Line | 0.83 |
| 13 | Metrolink | 0.70 |
| 14 | Bus | 0.31 |

15 The capital subsidies were Blue Line \$0.91, Red Line \$0.75, Metrolink \$0.57 and \$0.07 bus. The
16 operating subsidies were Blue Line \$0.34, Red Line \$0.08, commuter rail \$0.13 and bus \$0.24. The
17 same total subsidy provided 100 average bus passenger trips of 3.8 miles, six average commuter rail
18 trips of 27.8 miles, 10 average Blue Line trips of 9.4 miles, or 40 average Red Line trips of 3.5 miles.
19 *MTA, A Look At The MTA (Jan. 1994), 800042A at 800073A-74A.*

20 68. Taxpayer subsidies are necessary for public transit operators to cover all costs in excess
21 of revenues. Because almost all transit service operates at a loss, large, ongoing subsidies are required.
22 "Nationally, taxpayers subsidize approximately two-thirds (65.3 percent) of total public transit costs. In
23 other words, for each dollar collected in fares, advertising, and other income, transit systems require
24 approximately two dollars in local, state and federal subsidies to operate." *Brian Taylor, Martin Wachs,*
25 *et al., Variations in Fare Payment and Public Subsidy by Race and Ethnicity: An Examination of the*
26 *LAMTA, at 2-3, 18, (Nov. 5, 1995), E100567 at E100569-70, E100585.*

27 69. "Nationwide, close to 90 percent of transit *capital* costs (expenses associated with the
28 purchase of such items as vehicles, equipment, and real estate) are subsidized; and over half (58 percent)

of transit *operating* costs (ongoing expenses such as employee salaries and fuel) are subsidized." *Id.* at 3.

70. Including capital costs is especially important in intermodal analyses because they can vary by orders of magnitude between rail and bus service. The cost of rails, catenary, tunnels, yards, etc. are far higher for trains operating in partially or fully exclusive rights of way than for buses that share established street systems with automobiles. Red Line construction costs, for example, are in excess of \$250 million per mile, and new rail cars are typically \$1 million each. Buses, on the other hand, cost between \$250,000 and \$300,000 each. *Id.*

71. Comparisons between the operating costs of bus and rail ignore the fact that operating costs constitute the majority of the total bus costs while only a small part of total costs of rail. All *operating* costs in Los Angeles County are 79 percent of total bus costs, 10 percent of total Red Line costs, 27 percent of total Long Beach Blue Line costs, and 18 percent of total Metrolink costs. Leaving out the most significant part of rail costs -- capital costs -- provides an inaccurate picture of the cost effectiveness of rail operations. *Amended Expert Report and Response to Report of Robert L. Peskin by Thomas A. Rubin (Jan. 1, 1996), E100061.*

72. In July 1993, the MTA offered the following explanations of the "subsidy per passenger mile" statistical measure, noting that "the heavy utilization of MTA bus service coupled with relatively high passenger fares has resulted in a very low net cost for each passenger mile."

This value is a function of line level fully loaded operating cost less passenger revenue divided by the total number of passenger miles generated. This is a measure of the cost efficiency of service.

It should be noted that the MTA ranks at or near the top compared to the twenty largest transit operators in the nation relative to this efficiency measure. While the MTA has relatively higher operating costs, the heavy utilization of MTA bus service coupled with the relatively higher passenger fares has resulted in a very low net cost for each passenger mile.

MTA, A. Leahy, Status Report on MTA Bus System (July 2, 1993), M514360 at 514378, and attached report entitled "Status Report on MTA Bus System, Phase I - Status of the Present bus System,"

M514363.

73. Modal subsidy disparities understate the differences between bus-rail subsidies in Los Angeles because rail lines are generally located only in the busiest corridors. The MTA's most "cost-effective" bus line, measured by subsidy per passenger, is MTA Line 204 (Vermont Avenue) with a subsidy of 34 cents. (There were six other bus lines with per-passenger subsidies of less than 50 cents).

The Metrolink commuter rail subsidy of \$21.02 is 62 times that of Line 204 subsidy, Blue Line's \$11.34 subsidy is 33 times that of the Line 204 subsidy, and the Red Line's \$2.92 subsidy is almost nine times the Line 204 subsidy. *MTA, A Look At The MTA (Jan. 1994), 800042A at 800099A-100A.*

74. MTA is not the only provider of bus transit in Los Angeles County. MTA's predecessor, the RTD, reported to its Board in July 1992 that an analysis of bus operators in Los Angeles County showed that the RTD "generates the highest amount of revenue among all operators surveyed" and that RTD's "net taxpayer cost based on service provided to the public is among the lowest in the area." *RTD, Alan Pegg, Receive and File Statistical Reports Showing District Performance in Comparison to Los Angeles Basin Municipal Operators (July 16, 1992), 001953 at 001959.*

75. MTA's predecessor RTD in 1992 had the second lowest subsidy per passenger-mile (\$0.21) of the nine Los Angeles public transit operators providing primarily local bus service. The average subsidy per passenger of the eight other bus operators was \$0.31. MTA's subsidy was a third lower than the average. *MTA, Additional Comparative Performance Data for 20 Largest Operators and Local Operators (Sept. 15, 1993), M302891 at M302904; MTA, A Look At The MTA (Jan. 1994), 800042A at 800055A, 800057A-58A.*

B. MTA Bus Riders Are Adversely Affected By Disparate Fares

76. The MTA's base cash fare of \$1.10 in 1992 was already the highest fare of all Los Angeles Municipal transit operators. The other base fares ranged from Foothill Transit's 85¢ fare, to Gardena's 20¢ fare, to Commerce's free fare. The average base fare of the non-MTA bus operators was 50¢. *MTA, Additional Comparative Performance Data for 20 Largest Operators and Local Operators (Sept. 15, 1993), M302891 at M302902.*

77. In the course of labor negotiations in 1991, RTD stated that:

The majority of our riders are minority and have low income in

relation to the rest of the population.

The \$1.10 base fare is considered burdensome. Many of our riders cannot take advantage of the discounted base fares offered (either 90¢ tickets or monthly passes).

MTA, Gary Spivack, Presentation of Gary S. Spivack, SCRTD Labor Negotiations (July 1, 1991), M328080 at M328086, contained in cumulative document titled July 1, 1991 - Material Submitted to Panel As Part of Lockyear, M328072.

78. MTA's Operations Department noted that MTA had "relatively high passenger fares" in July 1993, a year before the MTA Board voted to restructure fares. *MTA, A. Leahy, Status Report on MTA Bus System (July 2, 1993), M514360 at 514378, and attached report titled Status Report on MTA Bus System, Phase I - Status of the Present Bus System, M514363.*

79. The MTA forecast that the July 1994, fare restructuring would increase operations revenue by \$51.4 million, and would decrease bus ridership by 6.9 percent or by 1.14 million daily boardings. The restructuring would increase the MTA's annual fare revenue per passenger by 35 percent. *MTA, Memo to Distribution from Thomas Rubin re: Impacts of Proposed Fare Structure, at 3 (June 17, 1994), 950004 at 950006.* The net result would be to lower the subsidy that MTA bus passengers receive below preexisting levels, further widening the disparity in subsidy levels between MTA bus riders and the riders of Metrolink, of the Long Beach Blue Line, of the Red Line, and of the non-MTA bus operators.

80. MTA found that the July 1994, fare restructuring would "have the unfortunate impact of increasing fares the most for riders [who] use transit the most, have the lowest income, and the least external subsidies." Those most severely affected would be 75-80,000 riders, representing over a quarter of all MTA passengers, who use monthly passes. This group would see an increase of 63 percent from \$42 to an average of \$68.50 if riding patterns did not change. The next most impacted group would be cash riders, with an increase of approximately 20 percent. *MTA, Memo to Distribution from Thomas Rubin re: Impacts of Proposed Fare Structure, at 1 (June 1994), 950004.* Both categories are heavily minority and transit-dependent.

81. "[A] typical MTA rider family, with a household income under \$15,000, with two members [who] buy and use monthly passes . . . could easily see their transit costs increase by over

1 \$500 per year -- or by over 4 percent of household take home pay." *MTA, Memo to Distribution from*
2 *Thomas Rubin re: Impacts of Proposed Fare Structure, at 2 (June 17, 1994) (brackets and ellipsis*
3 *added), 950004 at 950005; Testimony of Thomas Rubin and Brian Taylor.*

4 82. The July 1994 fare restructuring would have a very severe impact on poor, minority
5 MTA riders, according to the bus riders themselves. *See Decs. of Jose Marroquin (Sept. 7, 1994),*
6 *801280; Juan Zamora (Sept. 7, 1994), 801324; Blanca Vasquez (Sept. 6, 1994), 801231; Marcia Taylor*
7 *(Sept. 7, 1994), 801308; and Jacquelyn Dixon (Sept. 8, 1994), 801234.*

8 83. The fares MTA rail riders pay do not come close to operating costs, even though the
9 operating costs of a rail line are generally less than capital costs. In 1994, MTA's chief financial officer
10 Terry Matsumoto stated that rail fare revenues were \$5.8 million while operating costs were \$70
11 million, or 12 times more. *Minutes of MTA Special Board Meeting (June 22, 1994), M902048 at*
12 *M902049-50.*

13 **C. MTA Bus Riders Are Adversely**
14 **Affected By Disparate Levels**

15 **Of Overcrowding On Buses**

16 84. The Court has found that MTA's 1993 Inner City Transit Needs Assessment Study
17 concluded that MTA routinely permitted overcrowding levels on buses of 140 percent of capacity.
18 *Findings of Fact and Conclusions of Law re: Preliminary Injunction, at 2 (Sept. 21, 1994).*

19 85. Since 1984, the passenger capacity standard has allowed overcrowding at 145 percent
20 of capacity for a 43-seat bus. This standard permits "schedul[ing] service to extremely high loads." In
21 1990, an RTD report found that in FY 1989-90, "RTD service [was] scheduled very close to the
22 capacity standards" and that "overcrowding [did] occur on a significant number of trips." RTD staff
23 reported that over 50 bus lines operated above the loading standard during the peak hour, approximately
24 1/3 of all trips had excessive loads during the A.M. rush hour, and excessive loads occurred on over 22
25 percent of the trips operated. According to the report, "[b]ecause RTD service is scheduled close to
26 capacity, the service can be characterized as being fragile in the sense that even minor inequalities in the
27 interval between buses will cause excessive crowding and a significant decrease in the quality of service
28 as perceived by our riders." Thus, even if average loads on a service are within capacity standards,
"most riders using that service during the time period examined actually experience very crowded
conditions." *RTD, A. Pegg, Executive Summary - Status Report on District Bus Service Delivery for FY*

1 1990 (September 27, 1990), M514235 at M514236-37, and attached technical paper entitled "Status
2 Report on District Bus Service Delivery for 1990" (Sept. 1990), M514240.

3 86. The 1990 RTD report on bus service delivery recommended that a total of 160 buses be
4 added to the system to reduce the overcrowding from 145 to 135 percent of seated capacity, and to
5 improve on-time performance to 85 percent. *Id.* M514235 at M514238.

6 87. According to RTD's General Manager in 1990, "while RTD is doing all it can to move
7 as many riders as it can at the lowest cost, Los Angeles is probably the most underserved transit market
8 in the County." RTD reported that in 1988, RTD had the greatest passenger miles per active vehicle for
9 the 20 largest urban bus operators, twice the miles of the average of the other 19. RTD buses also had
10 the highest average passenger load of the group, almost 50 percent greater than the average of the other
11 19. RTD's operating cost per passenger mile, however, was the lowest of the group, 29 cents per
12 passenger mile compared to an average of 46 cents for the other 19 bus operators. *RTD News, Federal*
13 *Report shows RTD Bus System Is Number One in Key Operational Areas (undated) (includes charts),*
14 *002070 at 002070-72, 002074-77.*

15 88. In 1990, RTD's Board President stated that: "Whenever we add new buses to our fleet,
16 people fill them immediately. The public obviously needs them all, and more. But our subsidies
17 plunged after 1985, which was the year our ridership peaked at almost 500 million." The level of RTD's
18 unlinked passenger trips paralleled the subsidy level, with a peak of 497.2 million trips coinciding with
19 a subsidy of \$323.7 million (constant FY 1980 dollars) falling to a FY 1990 level of 401.1 million trips
20 and a subsidy of \$251.7 million. *RTD News, Federal Report Shows RTD Bus System is Number One in*
21 *Key Operational Areas (Sept. 25, 1990), 002070 at 002072, 002078.*

22 89. A joint RTD-LACTC study reported that in 1991, RTD had 50 overcrowded bus lines
23 in both the morning and evening peak periods. A majority of the overcrowded lines were on local
24 buses. Using RTD overcrowding standards, 120 additional trips alone were needed to relieve morning
25 peak period overcrowding. *RTD, Alan Pegg, Bus Overcrowding Study (March 5, 1991), at attached*
26 *Bus Overcrowding Study, Technical Report (March 4, 1991), 002015 at 002020, 002024.*

27 90. In March 1991, RTD issued a report that "acknowledged that overcrowding is a serious
28 problem confronting Los Angeles County transit operators and that up to 125 additional peak buses may
be needed to meet present SCRTD loading standards," recommending that 15 buses be funded for a four

1 month period to reduce overloads and that additional funds be sought. Two months later, RTD staff
2 provided the RTD Board with another report that found current RTD loads are the highest in the nation,
3 61 percent of weekday RTD lines are overcrowded, 43 percent of RTD peak hour trips are
4 overcrowded, and "[c]urrent RTD loading standards are among the highest in the nation." The May
5 1990 report recommended reducing RTD load standards to address overcrowding, and providing added
6 capacity to promote greater use of transit. *A. Pegg, SCRTD Passenger Overcrowding Study - Findings*
7 *and Recommendations to Reduce Overcrowding (May 3, 1991), M514292, M514292-93, at M514295,*
8 *and attached report entitled "Passenger Overcrowding Study, Findings and Recommendations to*
9 *Reduce Overcrowding" (April 1991), M514296.*

10 91. RTD's comments on a proposal to reduce the 145 percent load standard to 140 percent
11 in the 1991 Congestion Management Program included the following statements: "The proposed 140%
12 load standard for frequent local service (headways of less than 11 minutes) is much too high to attract
13 discretionary passengers. The 140% local standard will engender overcrowded buses and passenger
14 pass-ups. It will not provide encouragement to use transit. A better approach would avoid load
15 standards that guarantee passenger discomfort, forcing people onto other shared riding modes." *RTD, A.*
16 *Pegg, Congestion Management Program for Los Angeles County Final Draft (undated), 013192 at*
17 *013197.*

18 92. RTD's top officials reported to the RTD Board in November 1992 that:

19 There is a huge unmet demand for basic transit services in Los
20 Angeles. Many of these needs can be met very simply and easily by
21 adding service to the many heavily utilized bus lines that we now
22 operate. Policy board members may wish to contrast this strategy for
23 expansion of transit against the heavily capital intensive and high
24 operating cost guideway modes of transit, which generally have
25 subsidies per passenger of thirty, fifty, or one hundred times more than
26 do expansions of bus lines.

27 If the objective is to improve the quality of transit service in
28 Los Angeles County, there are also two options. One is to promote the
expensive fixed guideway alternative. This will wind up providing

1 extremely expensive service to a very small number of passengers
2 (even at the end of the Commission's proposed 30-Year Plan, well
3 under 20% of all transit trips will be on rail modes). Another
4 alternative is to spend a small amount of additional money on each
5 existing bus passenger. If all we did was to reduce overcrowding, we
6 will have accomplished a great improvement in quality by allowing
7 more of our riders to find a place to sit during their daily travels. But
8 we can do much more, and at very little expense, in providing more
9 frequent, more reliable service, cleaner buses, better security, more off
10 peak, evening, and weekend service, and other improvements. And, if
11 we can accomplish this increase in service quality, not only will [we]
12 be giving our existing passengers the type of service that they deserve,
13 we will also attract many new riders to bus lines.

14 *RTD, Alan Pegg, Heavy Usage Bus Lines (Nov. 2, 1992), 001871 at 001872-73.*

15 93. In 1993, RTD staff reported to the Board that:
16 Overcrowding on RTD/MTA buses continues to be a significant
17 problem. Sixty-three of the system's 126 bus lines are overcrowded
18 during peak hours. The average bus load is higher on the RTD/MTA
19 system than any of the 20 largest bus systems in the nation. Even
20 though ridership has declined slightly during the past two years, the
21 reduction in service levels has resulted in a continuation of
22 overcrowded buses. Overcrowded buses result in a general decline in
23 service quality.

24 *RTD, A. Pegg, FY93 Status of District Bus Service, Draft (March 17, 1993), M514335 at M514335-36,*
25 *and attached report entitled "FY93 Status of District Bus Service" (March 17, 1993), M514334.*

26 94. MTA's Operations Planning Department explained in 1993 that the Board's approval of
27 \$4.5 million to fund an additional 40 peak buses during FY 1993-94 was designed partially to bring
28 crowding within MTA's 145 percent capacity loading standard. The Department noted that an
additional \$6.0 million and 50 additional peak buses would be needed to bring remaining MTA routes

1 into compliance with the 145 percent standard.

2 The MTA Board recently took action to address overcrowding
3 by allocating \$4.5 million to fund an additional 40 peak buses during
4 FY 1994. This action will provide an effective response to adverse
5 conditions on the 25 most crowded MTA bus routes. These lines are
6 presently serving over 175 million annual boardings and are operating
7 in excess of 145% of a fully seated load during the peak hours. There
8 are 35 other MTA bus routes, which have lower loading standards
9 because of their less frequent service, that are operating with actual
10 passenger loads in excess of their standards but less than the 145%
11 level. In order to bring these remaining MTA routes into compliance
12 with current load standards, 50 additional peak buses are needed at an
13 annual estimated cost of \$6.0 million.

14 *MTA, A. Leahy, Status Report on MTA Bus System (July 2, 1993) M514360 at 514377, and attached*
15 *report entitled "Status Report on MTA Bus System, Phase I - Status of the Present Bus System" (July*
16 *1993), M514364.*

17 95. In March 1994, the MTA eliminated 40 percent of the additional buses. In June 1994,
18 the MTA eliminated the remaining additional buses. *MTA, Status Report on the MTA 40-Peak Bus*
19 *Service-Expansion Program (June 14, 1994), M331402 at M331403-04.*

20 96. MTA's 145 percent loading standard anticipates 19 standees on a 43 seat bus. Reducing
21 the number of standees to nine requires ten percent more buses (176 buses) at a cost of \$18 million
22 annually. Reducing the number of standees to zero requires 18 percent more buses (190 buses) at a cost
23 of \$32 million annually. *MTA, Metro Bus System Workshop (Sept. 14, 1995), M803782 at M803809.*

24 97. Studies conducted by the MTA staff in recent years have shown that "passenger
25 overcrowding during peak-demand periods is a persistent problem on many MTA bus lines. Even with
26 the decline in system-wide ridership, a detailed analysis conducted last year revealed that over 60 MTA
27 bus lines had average maximum loads in excess of the established boarding standards." *MTA, Status*
28 *Report on the MTA 40-Peak Bus Service-Expansion Program (June 14, 1994), M331402 at M331403.*

These 60 lines are 48 percent of the MTA's 127 bus lines.

1 98. Since July 1994, the MTA Board has taken no action to reduce overcrowding. The
2 level of overcrowding is essentially unchanged since 1994. *Dep. of Dana Woodbury at 437-39 (Aug.*
3 *18, 1995) (Vol. 4).*

4 99. MTA agreed to lend 60 new Compressed Natural Gas (CNG) buses to Atlanta for use
5 during the 1996 Olympics. This means that MTA will continue to use existing diesel buses that would
6 normally have been replaced with the arrival of the CNG buses for approximately six to eight months.
7 *Minutes of MTA Board Meeting (Sept. 27, 1995), M902412 at M902430; MTA A. Leahy, Provision of*
8 *MTA Coaches to the 1996 Olympics in Atlanta (Aug. 29, 1995), M803435 at M803435-36.*

9 100. MTA buses are crowded, dirty and dangerous. Inner city bus riders frequently stand at
10 benchless, unsheltered depots. *Testimony of Martin Wachs and Martine Hernandez.*

11 101. In contrast, MTA and Metrolink trains, and non-MTA municipal operator buses are
12 uncrowded, comfortable, clean, and safe. *See infra.* Metrolink passengers report high satisfaction with
13 Metrolink MTA service. *Id.*

D. MTA Bus Riders Are Adversely Affected By The Provision Of Disparate Levels Of Police Security

102. In fiscal year 1993, MTA spent the following annualized amounts on personal security per passenger, by transit mode:

| <u>Mode</u> | <u>Personal Security Cost/Passenger</u> |
|---------------|---|
| Commuter rail | \$1.29 |
| Blue Line | 1.29 |
| Red Line | 0.57 |
| Bus | 0.03 |

MTA bus passengers, 94 percent of all MTA riders, were allocated \$13.5 million in security. Blue Line riders, 0.8 percent of MTA riders, received \$15.2 million in security; Red line riders, 2.4 percent of MTA riders, received \$3.4 million; and Metrolink commuter rail riders, 0.4 percent of riders, received \$1.6 million in security. *MTA, A Look At The MTA (Jan. 1994), 800042A at 800094A-95A.*

103. The \$1.29 cost of personal security provided on the Long Beach Blue Line or on Metrolink, per passenger, was 43 times more than the cost of security provided each bus rider, and two-and-a-half times the Blue Line fare revenue. In fact, the cost of security on the Blue Line was ten times the average per-passenger security costs of the next eight self-service fare collection rail systems in North America, although the level of crime on all nine rail lines was similar. *MTA, A Look At The MTA (Jan. 1994), 800042A at 800094A.*

104. In 1993, 58 percent of the 453 officers assigned to rail or bus operations were assigned to rail operations (263 officers) while only 42 percent were assigned to bus operations (190). Of the 263 officers assigned to rail, 114 were being assigned to the Long Beach Blue Line, 75 to the Green Line, 45 to the Red Line, and 29 to Metrolink. *MTA, Security Cost Comparison (May 25, 1993), D112070-71.*

105. In July 1995, the United Transportation Union wrote to the MTA Board protesting that in the 1995-96 budget, 63 percent (191 of 300) of the sworn officers available for assignment to rail or bus operations were being assigned to the Long Beach Blue Line (100), Red Line (35), or Green Line (56), leaving only 37 percent (109) for assignment to MTA bus security. (Seventy-one officers were assigned to administrative, plain clothes and various task force duties.) The Union protested the "callous . . . disregard" and "utter disregard" for "the security of the more than one million persons who

ride the buses each day." *Earl Clark, General Chairman, United Transportation Union, General Committee of Adjustment, to Larry Zarian, MTA Board Chair (July 7, 1995)*. The MTA did not heed the protest.

106. Overall, as summarized by MTA's former Chief Financial Officer and current Controller, the amount of money which MTA spends for security "on rail is greater than it is on bus. . . . It is significantly more on rail than it is on bus." *Dep. Of Terry Matsumoto at 222 (Sept. 19, 1995) (Vol. 2)*.

107. RTD reported in 1991 that the cost per passenger for security on the Long Beach Blue Line was almost ten times the average of the light rail transit operators and that light rail systems nationally generally do not have security problems to warrant such costs. RTD proposed using less expensive RTD Transit Police to provide security on the Long Beach Blue Line and using the savings for bus security. According to RTD, the savings of \$5.6 million would provide for 55-60 additional transit police officers for bus security, the purchase of 22 buses, or the operation of 38 buses for one year to produce over 6.5 million additional transit passengers. *RTD, Alan Pegg, Blue Line Security (Oct. 22, 1991), 002168 at 002176-77, 002178, 002182-83*.

108. The vast amount of money spent on Blue Line security contributes to the high operating costs as well as to the disproportionate subsidy per passenger:

The Blue Line has by far the highest operating costs of any light rail line in the nation, in large part because of the extremely high security costs (ten times the average security cost per passenger of the other eight self-service fare collection urban rail systems in North America).

As a result, the Blue line subsidy per passenger is off the scale.

Memo from Tom Rubin to Richard Stanger re: Metrolink Costs, at 7 (April 24, 1993), 011067 at 011073.

109. According to the RTD in 1991:

Given that there is a limited amount of money to be spent on transit overall, and only a limited portion of these funds can be allocated to security, should not we do all we can to spend these funds as cost-effectively as possible? How long can we continue to spend 49

1 times as much for the security of a rail passenger as for a bus passenger,
2 when they travel through the exact same area --in fact, over two-thirds
3 of the Blue Line riders use buses to go and/or from the Blue Line.

4 It is also difficult to explain to bus passengers why more
5 money is being spent to protect 30,000 passengers a day on the Blue
6 Line as is being spent to protect 1,300,000 passengers a day on the bus
7 system.

8 *RTD, Alan Pegg, Blue Line Security (Oct. 22, 1991), 002168 at 002185.*

9 110. In 1991, RTD compiled a book of documents containing information about security on
10 RTD buses and the Blue Line in connection with a request by RTD to the LACTC to have security on
11 the Long Beach Blue Line provided by the regular RTD Transit Police as opposed to a contract with the
12 Sheriff's Department. *RTD, LASO vs. SCRTD Police/Blue Line Book (1991), D112235-642.*

13 111. According to the RTD, security strategies differ on the Long Beach Blue Line and
14 buses. The primary strategy employed on the Blue Line was to maintain a presence that deters potential
15 crime. The transit police on buses did not try to maintain such a presence; they employed the primary
16 strategy of only responding to reported crime. *SCRTD Security Cost Analysis Bus Versus Light Rail*
17 *(undated), at D112422.*

18 112. LACTC resolved the controversy in 1991 by extending the sheriff's contract for two
19 years from July 1992 to June, 1994, but increasing the size of the transit police. *Id. at D112399,*
20 *D112335-36, D112521-26.*

21 113. At a RTD Security Task Force Advisory Committee meeting on November 23, 1992,
22 the issue was raised that "[t]here is currently a wide-spread lack of confidence among bus operators as
23 to the ability of SCRTD police to protect them or their riders." The concern was expressed that:

24 Transit Police are spread too thinly to adequately police the SCRTD's
25 2200 square mile territory. Police response times are generally too
26 slow, SCRTD Police are often viewed by operators as unprofessional
27 and outside police agencies as insensitive.

28 *RTD, Joseph Theodore and Associates, Meeting of the Security Task Force Advisory Committee (Nov.*
25, 1992), D121078 at D121079.

114. In 1993, a consultant reported to LACTC that: "[P]olice visibility is minimal on buses due to the large service area that the buses travel and the minimum commitment of local law enforcement to bus crime. Few agencies, other than MTA Police and contract sheriffs, ever board conveyances for crime prevention purposes." "The report of law enforcement on buses is required to abate the *perception* of County residents that buses are not safe and are a haven for criminals and criminal activities." In contrast, MTA-funded security personnel maintained "high visibility" on the Blue Line and on Metrolink. *LACTC, Joseph Theodore & Associates, Transit Security and Policing in Los Angeles County (Feb. 1993) (original emphasis), D112122 at D112133-34, D112136, D112139.*

115. LACTC's security consultant made ten recommendations. Recommendation number one was to "[i]ncrease the number of police personnel assigned to bus transit police duties in Los Angeles County." *Joseph Theodore and Associates, Executive Summary of Findings and Recommendation of the Transit Security Study Conducted by JTA, Inc. (Jan. 19, 1993), D121088 at D121095.*

116. An MTA analysis of its fiscal year 1993-94 security budget showed that MTA was spending \$0.05 for security per boarding on buses, \$1.27 per boarding on the Blue Line, and \$1.09 on the Red Line. The analysis also showed that the cost of transit police as a percentage of operating cost was three percent on buses, 28 percent on the Blue Line and 18 percent on the Red Line. *MTA, Budget Office, Fiscal Year 1993-94 Security Budget (Dec. 2, 1993), M1040005.*

117. During fiscal year 1992-93, MTA stated that 199 Transit Police were deployed for bus security, 34 Transit Police were deployed for Red Line security, and 199 Sheriff's Deputies were deployed for Blue Line security. There were also five police dispatchers. *MTA, Budget Office, Fiscal Year 1993-94 Security Budget (Dec. 2, 1993), M1040005 at M1040005-06.* Thus, more than 50 percent of sworn security personnel were deployed on rail operations. At the time, only four percent of MTA boardings were on rail. *See id. at M1040005.*

118. In 1991, a consultant from the LACTC's Rail Construction Corporation projected that by the end of the decade, "bus and rail transit-related security costs will approach \$90 million annually, and that nearly two-thirds of this total will be spent for rail transit systems construction and operations security." Approximately \$55 million of security costs was projected for rail transit operations fiscal year 1999-2000, \$30 million for bus operations, and \$2 million for rail construction. The consultant

1 found that, following LACTC's existing policies, "[b]y the end of the decade, roughly 500 sworn and
2 civilian personnel will be required for rail transit police service, including 350 sworn police officers."
3 The consultant quoted the LACTC's executive director's statement that "'we hope to overinvest in
4 security'" as "summariz[ing] the Commission's view of the need for providing adequate rail system
5 security." *LACTC, Aegir Systems, Inc., Coordination of Security Efforts for Public Transit Patrons,*
6 *Vehicles, Properties, and Equipment in Los Angeles County (Dec. 6, 1991), M1030209, M1030211,*
7 *M1030215, M1030234 and M1030241.*

8 119. In 1992, LACTC's Rail Construction Corporation recommended that the original
9 \$900,000 allocated for the Sheriff's Department to provide security coordination on Metrolink be
10 augmented by \$854,000 to enhance security. According to the LACTC: "This additional staffing will
11 provide a visible uniform presence at stations and on trains with a much improved ability to respond to
12 calls for service, assistance and emergencies. This level of staffing will also allow for enforcement of
13 the quality of life violations which is so necessary for a clean and ordered system and will result in the
14 deterrence of crime. *LACTC, Enhanced Security for Metrolink in Los Angeles County (Oct. 6, 1992),*
15 *M0040280-81.*

16 120. An MTA survey of transit security of the 20 largest transit operators, ordered by the
17 MTA Board of Directors in 1994, found that seven transit operators had contractual arrangements with
18 local police departments for services or the hiring of off-duty police officers, including MTA's contract
19 with the Los Angeles County Sheriff's for security on the Blue Line. MTA's cost per patrol unit was
20 slightly over three times the average cost per patrol unit of the other contracts and 73 percent higher
21 than the second highest price paid. *MTA, Tom Rubin, Transit Security Survey (March 10, 1994),*
22 *M1040007, M1040008 at M10400012-13.*

23 121. The MTA's Transit Police Department stated that in fiscal year 1995-96, the
24 Department would deploy 100 sworn officers on the Blue Line and 35 officers on the Red Line. The
25 Department also stated that it would deploy 109 sworn officers on the bus system for uniformed patrol
26 service along with special supporting task force operations. *MTA, MTA Transit Police Department*
27 *(undated), D121114 at D121123-24.*

28 122. For fiscal year 1995-96, the MTA Board took one million dollars which previously had
been set aside for MTA bus security and allocated the funds to several municipal bus operators for their

1 security projects. The Board did so over MTA staff objections that the 1995-96 MTA security budget
2 would be reduced and MTA budget deficit increased. *Call for Projects Ad Hoc Committee, Committee*
3 *Recommendation (Feb. 2, 1995), M323554; Memo from Judith Wilson to call for Projects Committee,*
4 *Transportation Improvement Program Call for Projects Staff Recommendations, at 74-75 (May 16,*
5 *1995), M322807 at M322880-82.*

6 **E. Minority MTA Bus Riders Are Adversely**
7 **Affected By The Provision Of Disparate Subsidies**
8 **And Service Compared To White MTA Bus Riders**

9 123. In 1992, RTD's Planning Department found that the distribution of ethnicities was
10 different on local and express RTD bus lines serving downtown for fiscal years 1990, 1991, and 1992.
11 Minority riders accounted for 87 percent of local line ridership, and whites were 13 percent. On the
12 other hand, minority riders were only 64 percent of downtown express line riders, and white riders were
13 38 percent of express line riders. While almost two-thirds (63 percent) of downtown RTD local bus line
14 riders had household incomes of less than \$15,000, only 29 percent of express line riders had such low
15 income levels. Overall, the RTD Planning Department found that almost three quarters of all downtown
16 riders who reported annual household incomes of less than \$30,000 were patrons of local bus lines. The
17 median household income for all downtown RTD local line riders was below \$15,000, while the median
18 income for express line riders was between \$15,000 and \$30,000. *RTD Scheduling and Operations*
19 *Planning Department, M. Schildkraut, FY90-92 Origin & Destination (O/D) Passenger Surveys:*
20 *Demographic Characteristics of Downtown RTD Bus Riders (Feb. 11, 1992), D103505 at 103506-10.*

21 124. Plaintiffs' experts, Professors Brian Taylor and Martin Wachs from the UCLA Institute
22 of Transportation Studies, analyzed the same MTA data for the entire bus system as the 1992 Planning
23 Department study. They analyzed the line-by-line racial/ethnic ridership on the MTA's bus lines from
24 1991-93 in order to ascertain if minority or white MTA bus riders received different levels of subsidies.
25 They also analyzed the fares and subsidies of the 25 most-minority bus lines, which had a weighted
26 average of 92 percent minority riders and 6 percent white riders, and the fares and subsidies of the 25
27 least-minority bus lines, which had a weighted average of 59 percent minority riders and 39 percent
28 white ridership.

125. These analyses show that the total subsidy per boarding for minority MTA bus riders
was 17 percent lower than for white MTA bus riders.

| <u>Race</u> | <u>Total Subsidy per MTA Passenger</u> |
|-------------|--|
| White | \$1.91 |
| Minority | 1.63 |

Even more dramatic, the total subsidy per boarding for riders of the 25 least-minority MTA bus lines was \$1.61 while the subsidy for riders of the 25 most-minority MTA bus lines was \$1.13. The boarding subsidy for the most-minority MTA bus lines was 43 percent lower. *Brian Taylor, Martin Wachs, et al., Variations in Fare Payment and Public Subsidy by Race and Ethnicity: An Examination of the LAMTA, at 19-20 (Nov. 5, 1995), E100567 at E100586-87.*

126. MTA survey data tend to understate actual differences between subsidy levels received by minority and white MTA passengers. The survey instructions were offered only in English and Spanish, undocumented residents are unlikely to have participated in numbers proportional to actual ridership, and the MTA surveys likely undercount passengers making shorter trips who are disproportionately minority. *Id. at 8-10, E100567 at E100575-77.*

127. Professors Taylor and Wachs conclude that:

[M]inority riders (1) pay higher average fares than white riders and (2) receive lower average subsidies than white riders. These differences are largely due to the fact that (1) white riders travel longer distances, on average, than minority riders and (2) white riders use expensive express and rail services in higher proportions than minorities. These systematic racial/ethnic differences in ridership combined with a fare structure that (except for express buses) does not vary by distance or mode to differentially favor white MTA riders, as a group, over minority MTA riders, as a group. Further, while available data do not allow for an analysis of racial/ethnic variations in fare and subsidies by peak and off-peak service by peak direction and backhauls, preliminary evidence suggests that such an analysis would only compound the racial/ethnic differences reported here.

Thus, while non-whites use public transit in far greater proportions than whites, this analysis has shown that whites pay lower

1 average fares and receive higher average subsidies than minority transit
2 users. These variations in fare payment and public subsidy by race and
3 ethnicity derive, in part, from a series of MTA policy decisions to (1)
4 expand relatively expensive rail and commuter services serving a
5 disproportionately white clientele and (2) adopt a generally flat fare
6 structure that causes riders making relatively short trips on local buses
7 (who are disproportionately minority) to cross-subsidize riders making
8 longer trips on express and rail lines (who are disproportionately
9 white). As a result of these policy choices, minority riders, on average,
10 pay substantially more for MTA services and receive lower average
11 taxpayer subsidies than white riders.

12 *Id.* at 22-24, E100567 at E100589-91.

13 128. The July 1994 fare restructuring increased the fare and subsidy disparities between
14 minority MTA bus riders and their white counterparts.

15 **IV. MTA HAS HISTORICALLY PROVIDED ITS MINORITY
16 BUS RIDERS INADEQUATE AND COSTLY SERVICE**

17 **A. The McCone Commission In 1965 Found That Bus
18 Service In South Central Los Angeles Was**

19 **Inadequate And Prohibitively Expensive**

20 129. The report of the Governor's Commission on the Los Angeles riots, *Violence in the City*
21 -- *An End or a Beginning* (Dec. 2, 1965), 950484, chaired by John A. McCone, comprehensively
22 reviewed the role played by MTA's predecessors in operating Los Angeles County's inadequate
23 transportation system that "handicap[ped minority residents] in seeking and holding jobs, attending
24 schools, shopping, and in fulfilling other needs," contributing to the isolation that led to the 1964 Watts
25 riots. *McCone Commission Report* (Dec. 2, 1965), 950484 at 950559.

26 130. The Commission expressly found that the bus system was both "inadequate" and
27 prohibitively expensive."

28 Our investigation has brought into clear focus the fact that the
inadequate and costly public transportation currently existing
throughout the Los Angeles area seriously restricts the residents of the

1 disadvantaged areas such as south central Los Angeles. This lack of
2 adequate transportation handicaps them in seeking and holding jobs,
3 attending schools, shopping, and fulfilling other needs. It has had a
4 major influence in creating a sense of isolation, with its resultant
5 frustrations, among the residents of south central Los Angeles,
6 particularly the Watts area. Moreover, the lack of adequate east-west
7 or north-south service through Los Angeles hampers not only the
8 residents of the area under consideration here but also of all the city.

9 Historically, the Los Angeles area was served by private
10 transportation systems, many of which were sold to the Metropolitan
11 Transit Authority, a public entity, in 1958. The Southern California
12 Rapid Transit District (RTD), which was created by the legislature,
13 succeeded the Metropolitan Transit Authority in November 1964. The
14 RTD, although a public agency, is neither tax supported nor subsidized.
15 . . . Traditionally, bus systems in the Los Angeles area have met
16 increasing costs in operations by increasing fares and cutting back
17 service. The consequence of these actions has been a transportation
18 system which is prohibitively expensive and inadequate in service.

19 *McCone Commission Report (Dec. 2, 1965), 950484 at 950559-60; MTA Admission No. 4 (admitted*
20 *that "the indented paragraphs cited" appear in the McCone Commission Report, and that "the*
21 *document speaks for itself").*

22 131. The Commission concluded that "economical public bus transportation is essential to
23 our community," and is "particularly essential to the poor and disadvantaged who are unable to own and
24 operate private automobiles. (Only 14 percent of the families in Watts are car owners as against 50
25 percent elsewhere within Los Angeles County)." *McCone Commission Report (Dec. 2, 1965), 950484*
26 *at 950560-61; MTA Admission No. 5 (admitted that "the language quoted" is contained in the McCone*
27 *Commission Report, and that "the document speaks for itself").*

28 132. The McCone Commission reported that "the Mexican-American community, which
here is almost equal in size to the Negro community, suffers from similar and in some cases more severe

handicaps than the Negro community." *McCone Commission Report (Dec. 2, 1965), 950484 at 950486-87; MTA Admission No. 6 (same as above).*

133. A California State Study reported in 1969 that most of East Los Angeles was served by Eastern Cities Transit, and that "the same lack of direct access and the double-fare barrier . . . for the Watts area prevail in the East Los Angeles neighborhood." Most of RTD's routes in East Los Angeles were suburban routes ("most of these routes are on expressways and provide no local service").

134. The California State Study also reported that "a substantial part of the metropolitan area is beyond 90 minutes by transit from East Los Angeles" and that "virtually the entire southern half of the Los Angeles metropolitan area is beyond transit reach from East Los Angeles, except by inadequate three- or four-vehicle service." *State of California, Transportation-Employment Project Evaluation of Present Bus Operations and Summary of Transit Needs (1969), M604050 at M604091-92; MTA Admission No. 15 (admitted that the document "contains the language quoted" and that "the document speaks for itself").*

135. The California State Study reported that in South Central: "No transfers are honored between Blue and White Bus and SCRTD, making it necessary for passengers in the Blue & White Bus territory to pay two full fares to reach downtown Los Angeles. This situation is a matter of acute irritation in Watts and neighboring communities which rely primarily upon Blue and White Bus service." The study also reported that: "Even 90 minute travel time by bus is insufficient to enable Watts residents to reach Santa Monica, Hollywood, Glendale, Pasadena, Whittier, Torrance and other communities that are 7 to 18 miles distant." *State of California, Transportation-Employment Project Evaluation of Present bus Operations and Summary of Transit Needs (1969), M604050 at M604090-91; MTA Admissions No. 12 & 13 (same as above).*

136. The 1969 California State Study of South Central and East Los Angeles transit needs concluded:

Community needs for new transit service or service improvement remain substantial in most of these areas: for work, for shopping, for senior citizens, for students. But the home-to-work travel need is paramount: the transit traveller, in an hour, has access to only a third of the job opportunities accessible to the motorist, and in a half

1 hour (from South Central Los Angeles) less than a tenth of those
2 accessible by auto.

3 *Id. M604050 at M604136; MTA Admission No. 16 (admitted that the document "contains the indented*
4 *passages cited" and that "the document speaks for itself").*

5 **B. MTA Failed To Remedy The "Prohibitively Expensive"**

6 **Fares Criticized by the McCone Commission**

7 137. The MTA and its predecessor RTD substantially failed to reduce bus fares. The bus
8 fare the McCone Commission deemed "too costly" and "prohibitively expensive" in 1965 was a 25 cent
9 fare in effect from 1961 to 1970. The 25 cent fare in 1965 approximately equals \$1.14 in constant 1994
10 dollars. Since 1980, the bus fare in current dollars has been lower than \$1.10 in constant 1994 dollars
11 only in 1982-85, when the MTA was required to lower the fare, and tens of millions of additional riders
boarded MTA buses. *MTA, LA Transit Fares (undated), M1012009.*

12 138. The bus fare increase in 1994 from \$1.10 to \$1.35 pushed the fare above the 1965 level
13 criticized by the McCone Commission as "prohibitively expensive."

14 **C. MTA Failed To Comply With The McCone Commission's**

15 **Recommendations To Begin To Provide Adequate Bus Service**

16 139. The McCone Commission criticized the fact that the South Central area was served by
17 four separate bus entities.

18 In general, the coverage and frequency of bus service in the Watts area
19 is comparable to service throughout the Los Angeles area. In the
20 judgment of the Commission, however, it is both inadequate and too
21 costly. As related to the Watts area, the problem stems from the
22 following facts.

23 (1) Four separate bus entities and one subsidiary operate
24 within the Watts area (Southern California Rapid Transit District,
25 Atkinson Transportation Company and its associated company, South
26 Los Angeles Transportation Company, Torrance Municipal, and
27 Gardena Municipal). . . . A resident of Watts may have to ride on
28 several separate bus systems to reach certain destinations in the
immediate area. These transportation systems are uncoordinated, do

1 not provide for free transfers between systems (except in the instance of
2 parent and subsidiary), and have been forced to cut back service and
3 increase fares over the years because of increased capital and operating
4 expenses.

5 (2) RTD is authorized by law to provide long-line services
6 connecting contiguous urban areas, and thus it provides the principal
7 transportation in and out of the Watts area. This system does not have
8 free transfer privileges between most separate urban areas, nor to local
9 services within most contiguous urban areas, many of which maintain
10 their own bus services. This means that transportation from one section
11 of the metropolitan area such as Watts to almost any other area requires
12 an additional fare or fares and transfers.

13 *McCone Commission Report (Dec. 2, 1965), 950484 at 950560; MTA Admission No. 10 (admitted that*
14 *"the indented passages" "are contained in the document," and that "the document speaks for itself").*

15 140. The Commission recommended that the RTD acquire the small companies "which now
16 complicate and increase the cost of transportation in the Los Angeles area," establish transfer privileges
17 "in order to minimize transportation costs," and establish "an adequate east-west crosstown service as
18 well as increasing the north-south service to permit efficient transportation to and from the area."

19 *McCone Commission Report (Dec. 2, 1965), 950484 at 950561-62; MTA Admission No. 11 (admitted*
20 *that "the language quoted" "is contained in the document" cited, and that "the document speaks for*
21 *itself").*

22 141. Notwithstanding these recommendations about bus operations, the RTD was
23 recalcitrant in changing the bus system. *Testimony of Lucius Collier.*

24 142. A letter dated March 2, 1966, sent to the County Board of Supervisors from Welfare
25 Planning Committee, South Central Area, urged the implementation of the McCone Commission
26 recommendations. The results of a survey conducted by the Welfare Planning Committee showed that
27 transportation was woefully inadequate in the Watts area, and the lack of transportation had a direct
28 impact on social services. The survey found that it took two hours and a ride on two buses to travel the
13 miles between 114th street and Wilmington Avenue to County General Hospital. *Letter from Roy*

1 *Thompson to Los Angeles County Board of Supervisors (March 2, 1966), H000294.* On May 26, 1966,
2 Elizabeth Ransom of Inglewood sent the Board a letter complaining of the two hour travel time on three
3 different buses to take a trip from Inglewood to Santa Monica. *Letter from Elizabeth Ransom to*
4 *Kenneth Hahn (May 25, 1966), H000314.*

5 143. The RTD nevertheless refused to implement a more efficient bus system in South Los
6 Angeles, relying on a provision in the Los Angeles Metropolitan Transportation Authority Act of 1957
7 which allegedly restricted the creation of a bus line that "overlapped or interfered" with an existing
8 public or private bus line. *Letter from Cone Bass to Kenneth Hahn (March 15, 1966), H000286. See*
9 *also letter from Kenneth Hahn to Cone Bass (March 10, 1966), H000315.* This statutory "obstacle"
10 was overcome, however, when the RTD annexed lines in suburban areas such as the Pasadena City
11 Lines, Pomona Municipal Lines, San Pedro Lines, Inglewood City Lines, and Eastern City Lines, which
12 also overlapped or interfered with existing public or private lines. The RTD's reliance on the statutory
13 restriction was merely a pretext for the RTD's decision not to implement the McCone Commission
14 recommendations. *Testimony of Lucius Collier; Report on the Acquisition of the Pasadena City Lines*
15 *and Inglewood City Lines (Nov. 25, 1968), H000372-388. See also memo from John Curtis to Cone*
16 *Bass (April 12, 1966), H000280.*

17 144. The 1957 Act was also used by RTD as justification for its refusal to establish a viable
18 grid pattern in South Los Angeles of the east-west and north-south transportation services recommended
19 by the McCone Commission because the Act purportedly prohibited a transportation agency from
20 acquiring any private bus company whose operating costs were greater than profits. *The Los Angeles*
21 *Metropolitan Transit Authority Act of 1957, Assembly Bill No. 1104, CA Statute Chap. 547, 1957; letter*
22 *from Ralph P. Merritt to Kenneth Hahn (Jan. 21, 1959) (purchase of private bus companies between*
23 *Inglewood and Lynwood would divert profits from other private bus companies), H001892; letter from*
24 *Kenneth Hahn to Cone T. Bass (March 10, 1966) (regarding implementation of McCone*
25 *recommendation to improve transportation with the purchase of South Los Angeles Bus Company in*
26 *Willowbrook area), H000315. See also RTD Memo to Cone T. Bass (April 12, 1966), H000280;*

27 145. The RTD agreed to provide ad hoc bus service to South Los Angeles only when the
28 federal government funded 100 percent of the operation costs. *Memo from John Curtis to Cone Bass*
(April 12, 1966), H000280. One such line extended bus service on Century Boulevard from central

1 Watts to the airport. *See generally Letter from Cone T. Bass to Kenneth Hahn (Aug. 14, 1966) ("[T]he*
2 *decision to institute a service on Century Boulevard was not ours, since we knew that it will not even*
3 *come close to paying the cost of operation. The State Transportation Agency made the decision as to*
4 *the institution of service on Century Boulevard*
5 *. . . .")*, H000141; *Kenneth Hahn, memo regarding telephone conversation with Cone T. Bass (Aug. 3,*
6 *1966) (Bass claims RTD cannot make changes on Century Line)*, H000139; *Kenneth Hahn Press*
7 *Release, Hahn's Ride from Central Watts to LAX Took 42 Minutes (Aug. 3, 1966)*, H000138; *Kenneth*
8 *Hahn Press Release, Speed Up Century Boulevard Bus Line (Sept. 16, 1966)*, H000143; *Robert*
9 *Bradford Letter to Housing and Urban Development Department re: CA Proposal for a Federal*
10 *Research Grant to Study the Relationship Between Transportation and Job Opportunities (April 1,*
11 *1966)*, H000276.

12 146. The RTD refused to make the federally-funded lines part of a long term comprehensive
13 plan to provide adequate east-west and north-south service in South Central. *Cf. SCRTD Press Release,*
14 *Proposed Bus Line Connecting South Central to Beverly Hills, West L.A. and Pacific Palisades (July 6,*
15 *1966)*, H000309. The RTD provided non-stop service in non-minority areas which did not pay for its
16 operating costs. The RTD express bus service from Rolling Hills through Redondo Beach to Los
17 Angeles, called the Marineland Flyer, travelled virtually empty and failed to pay its operating costs.
18 *Letter from Jack Gilstrap to Kenneth Hahn re Marineland Flyer (Aug. 31, 1973) (Gilstrap justifies*
19 *Marineland express service by comparing revenue deficit to revenue deficits of two bus lines in South*
20 *Central)*, H000047; *letters from Kenneth Hahn to Gilstrap re Request for Information of Empty*
21 *Marineland Flyers (July 9, 1973 & Aug. 17, 1973)*, H0000558 and H000046. The RTD refused to
22 provide adequate bus service to the predominantly minority area south of Manchester Boulevard despite
23 pleas for such service from the community and community leaders. *Testimony of Lucius Collier. See*
24 *also Dale Barrett (RTD General Manager), Response to 100 Signature Petition re Poor Bus Service in*
25 *South Central (June 28, 1968)*, H000406; H000408-11.

26 147. The RTD also relied on the 1957 Act, which allegedly prohibited the establishment of a
27 service conflicting with an existing line, initially to avoid purchasing the local Blue and White Line.
28 *RTD Recommendations regarding Blue and White Bus Company (Aug. 9, 1971)*, H000440; *Kenneth*
Hahn Press Release, RTD Cannot Purchase Blue & White Line Because of Statutory Prohibition (Aug.

1 5, 1971), H000438. The RTD eventually relented and purchased the Blue and White Line in 1971 in
2 the face of intense political pressure, and only after the Line teetered on the brink of bankruptcy and
3 operated haphazard service without insurance. *Testimony of Lucius Collier; L. A. Times (Sept. 2, 1970),*
4 *H000425; Telefax by Gilstrap, RTD General Manager (Nov. 10, 1970), H000420 and (June 30, 1971),*
5 *H000443; Community In-Action Organization, 2000 Signature Petition to Extend Service on Normandie*
6 *(Aug. 7, 1972), H000453; Kenneth Hahn Press Release, Blue & White deterioration (Aug. 9, 1971),*
7 *H000439.*

8 148. The annexation of the Blue and White Line did little to improve the public
9 transportation service for the people of South Los Angeles. Even as more RTD buses rolled out into the
10 streets and were part of the larger network accepting transfers and purportedly providing a more
11 cohesive web of transportation, the RTD refused to link predominantly minority neighborhoods with
12 predominantly non-minority neighborhoods. *Testimony of Lucius Collier; Letter from Kenneth Hahn to*
13 *Gilstrap re: Lack of Service along Prairie Avenue from Florence to Manchester to the Daniel Freeman*
14 *Hospital (Aug. 8, 1974), H000869; Letter from Jack Stubbs to Hahn's Deputy re: Infrequent Service to*
15 *El Segundo on Vermont (Aug. 1, 1973), H000580.*

16 149. In 1995, the City of Los Angeles Department of City Planning conducted a study of
17 transportation needs in South Central Los Angeles. The study reported that South Central "residents are
18 more limited in searching for jobs" and "at a competitive disadvantage relative to more affluent areas
19 due to lower incidence of car ownership." The study also noted that "[a]s shoppers, they have to forego
20 the opportunities open to car owners." Social indicators showed a higher dependency by South Central
21 Los Angeles residents on public transit than suburban residents in other parts of the City and that even
22 single car households have transportation problems while public transportation service is minimal.

23 It appears that access to shopping ranks second to access to
24 employment in the priority of unfilled transportation needs. Shopping
25 for the South Central area residents who do not own cars is difficult
26 because of the lack of adequate shopping facilities in many parts of the
27 District. Although there are shopping facilities within and outside the
28 District that can be reached by bus, trips to these centers frequently
require transfers with lengthy travel times. Even where bus services

are available, shopping for groceries by bus is unsatisfactory and impractical because of the physical problems involved in carrying bags and parcels.

City of Los Angeles, Department of City Planning, Background Report, South Central Los Angeles District, City Plan Case 23679 (Aug. 1975), M604672 at M604675, M604678-79.

150. The City of Compton reported that from the mid-1960s to 1975, Compton was served by RTD, South Los Angeles Transportation Company and the Gardena Municipal Bus Lines. Two major criticisms of the service were that most service ran in the corridor between Compton and downtown Los Angeles with very little east-west routing and that every transfer between the different bus service required an additional full-fare payment so travel to points excluding downtown Los Angeles was costly. *City of Compton, Transit Development Plan (June 1978), M605060 at M605078.*

151. The City of Compton reported in 1975 that its transit dependent residents were not using RTD service to its fullest potential in 1975 "since there is a mismatch between trip destinations offered by the SCRTD and those desired by residents," half of whose destinations were within the city where RTD service was inadequate. *Id. M605060 at M605105, M605108-09.*

152. In the 1980s, predominantly white and affluent communities were successful in requesting that the RTD end direct bus service between South Central and other predominantly minority communities, and beach-front communities to the west. For example, the RTD decided to grant the request of the Palos Verdes Peninsula cities that buses from the inner city not climb the Palos Verdes hill. RTD service to Manhattan Beach was shortlined heading west at the request of the City of Manhattan Beach so that inner city residents could not travel to the beach community. *Testimony of Lucius Collier.*

153. Even with implementation of a grid system throughout Los Angeles County in 1975, the RTD's grid system in South Los Angeles still failed to provide adequate service. The RTD refused to extend a line to Rosecrans and El Segundo, thus eliminating one direct east-west route to areas outside of the inner city. *Robert Williams (RTD Manager, Customer Relations) Letter in Response to Petition Regarding Elimination of Three Grid Lines Connecting South Central to Employment Centers (Aug. 26, 1975), H001125.* The grid system also failed to provide continuous service along La Brea through Baldwin Hills to provide an artery to connect the inner city to the beach cities. *Letter by Road*

1 *Commissioner (June 30, 1975), H001134; RTD Service Adjustments in South Central (April 21, 1976),*
2 *H001175-76; Letter by Road Commissioner (June 20, 1977) (lack of service through LaBrea because of*
3 *financial deficit), H001222; Testimony of Lucius Collier.*

4 154. Within a year after implementation of the grid system, some lines that were direct
5 routes from Inglewood to the aircraft employment centers were eliminated. While the RTD eliminated
6 lines and pared down service on its grid system in minority areas, changes to the grid routes in non-
7 minority areas were minimal. The RTD admitted these changes were not based on monetary savings or
8 improvement in service. Changes in the grid lines for buses serving minority communities continued as
9 grid lines were replaced with less direct routes requiring two or even three transfers where no transfers
10 were required with the prior configuration of lines. *Testimony of Lucius Collier.*

11 155. The RTD delivered significantly better bus service to white suburban communities than
12 to minority communities, providing more reliable bus runs and more direct express routes. There also
13 were glaring disparities in the allocation of newer buses and more maintenance funds to the outlying
14 areas than that allocated to the inner city. *Testimony of Lucius Collier; Kenneth Hahn Letter to Thomas*
15 *Neusom (Dec. 6, 1979) (regarding overcrowding on Crenshaw and Florence lines while buses on*
16 *Wilshire and Santa Monica run every two minutes with fewer people; requests explanation for disparate*
17 *service), H001261.*

18 156. The RTD and MTA acceded to desires of some white passengers to ride buses without
19 the "inconvenience" of riding with minority passengers. For instance, a specialized LADOT DASH bus
20 service travels between downtown Los Angeles and the University of Southern California despite the
21 existence of a regularly scheduled RTD bus on the same route. *Testimony of Lucius Collier.*

**D. The Findings Of MTA's 1993 Inner City Transit
Needs Assessment Study And Other MTA Studies**

Echo The McCone Commission's Findings

157. In 1992, RTD stated that:

With the recent tragic events in Los Angeles and the extremely severe impact on the people living in the South Central portion of Los Angeles, it has become apparent that many of the urban pressures giving rise to the Watts riots of 1965 are still present today. The McCone Commission analyzed the events of 1965 and clearly identified the need for public transportation as a key element for the population to get jobs, training facilities, and to just acquire the basic requirements for living.

RTD, Project Proposal to Create Transit Enterprise Corridors for the Reimbursement of Businesses and Housing in South Central Los Angeles (April 4, 1992), C0001442 (noting that in response to the McCone Commission report, RTD had established a single new bus line "across Century Boulevard linking the South Central communities across the basin as a fundamental link for a large labor pool to areawide job markets.")

158. Twenty-eight years after the McCone Commission Report, the MTA commissioned an Inner City Transit Needs Assessment Study. Like the McCone Commission Report, the Needs Assessment Study was spurred by inner city civil unrest. *Inner City Transit Needs Assessment Study (July 1, 1993), D121625 at D121629*. "In the wake of the civil disturbance that struck Los Angeles County in 1992, many community representatives voiced concerns that the basic mobility accessibility needs of the Inner City were not adequately being met." *Id. See also Dep. of Karen Heit at 25 (July 27, 1995)*.

159. The Court earlier found: "The report identified a significant need for transit service improvements and noted that inner city residents are extremely dependent on public transit, have very intense transit use, and suffer from significantly more limited access to transportation alternatives. The report documented that 'service delivery problems have more severe impact in the [i]nner [c]ity than in most other areas of the County'." *Findings of Fact and Conclusions of Law re: Preliminary Injunction, at 2 (Sept. 21, 1994), 801637*.

160. The Needs Assessment study area was bounded on the north by the Interstate-10 Santa Monica Freeway, on the east by the Interstate-110 Harbor Freeway, on the west by the Interstate-405 San Diego Freeway and on the south by the Interstate-105 Imperial Freeway. The 578,000 population is 89 percent black or Latino; there are fully 125,000 average weekday MTA bus boardings. Surveys revealed that "[o]ver 60 percent of the MTA Inner City riders surveyed were in the lowest category of income measured (\$15,000 or less in annual household income)," that "[l]ess than 5 percent . . . had household incomes in excess of \$50,000 per year," and that "[a]pproximately 48 percent of those surveyed indicated that no auto was available in their household." Inner City riders, in short, are typical of the "profoundly poor" riders in the MTA system as a whole. *Inner City Transit Needs Assessment Study (July 1, 1993), D121625 at D121630, D121644-45, D121650, D121671, D121721, D121738, D121772; MTA, Comparing the Demographic Composition of MTA Riders with the Population of Los Angeles County (Jan. 20, 1994), 008406 at 008407-09.*

161. The Inner City Transit Needs Assessment Study found that: "Investments in future transportation options are being made primarily outside the [inner city] study area, although investments are being made along the periphery. No major transportation investments are being made within the [inner city] study area." The Assessment recommended as an option that MTA "[a]ccelerate development of the Crenshaw/Prairie Corridor, utilizing federal funds, to provide rail service in the Inner City." *Inner City Transit Needs Assessment Study (July 1, 1993), D121625 at D121631, D121669.* Nevertheless, the MTA Board has never approved the Crenshaw/Prairie project.

162. The Inner City Assessment found that: "[T]ransit services available to the wider metropolitan area which are not available in the Inner City" include "commuter rail, rail transit, exclusive transit/HOV lanes on freeways, and shared-ride taxis." The Assessment found that "[t]here are currently no economic development strategies being planned in the Inner City that are associated with transit programs," noting that the MTA was considering a single inner city joint development project at Vermont Avenue and Manchester Avenue. *Inner City Transit Needs Assessment Study (July 1, 1993), D121625 at D121631-32.*

163. Inner city riders received a lesser level of service than MTA provided countywide. They accounted for 12 percent of all bus boardings, but received only 9.5 percent of county bus subsidies and 10.3 percent of systemwide bus service. The shortfall in bus subsidies for inner city riders

1 was 21 percent and the shortfall in bus service was 14 percent. *Inner City Transit Needs Assessment*
2 *Study (July 1, 1993), D121625 at D121654-55.*

3 164. Inner city residents paid more for transit services than the typical MTA rider. The
4 farebox recovery ratio in the inner city was 16 percent higher than the County recovery ratio (.44
5 compared to .38). In the USC and Los Angeles Coliseum area of the Inner City the recovery ratio was
6 50 cents, or over 30 percent higher than the County average. Although the Inner City area had a greater
7 percentage of discount (elderly, disabled and student) riders and more transfers than the County average,
8 the inner city riders paid higher fares because "a higher percentage of users cannot afford to prepay a
9 full-fare monthly pass (\$42.00)." The Assessment, echoing the McCone Commission report, noted that
10 another reason for the higher cash boardings was that an adjacent municipal bus operator, Culver City,
11 did not accept passes and imposed a separate cash fare. *Inner City Transit Needs Assessment Study*
12 *(July 1, 1993), D121625 at D121651, D121654.*

13 165. The inner city area has the second highest farebox recovery ratio, a measure of
14 operating cost, in the system, behind Hollywood, another poor, principally minority area. Hollywood's
15 farebox ratio was one third higher than the MTA system average. The Inner City's farebox ratio was 15
16 percent higher than the MTA average. Correlatively, Hollywood and the Inner City were ranked first
17 and second *lowest* of MTA's bus divisions in terms of subsidy per boarding. The subsidy per boarding
18 in the Inner City was 79 percent of the average county subsidy while Hollywood's was 56 percent.
19 *Inner City Transit Needs Assessment Study (July 1, 1993), D121625 at D121774, D121777.*

20 166. Like the McCone Commission, the Inner City Assessment identified, as an "unmet
21 mobility need," the need for "[m]ore direct and faster transit service from the [inner city] study areas
22 into downtown Los Angeles and other employment centers as well as better access to countywide
23 transportation options."

24 One of the frequent complaints heard from the public during
25 the public meetings concerned the directness of transit travel between
26 the Inner City and downtown Los Angeles and other employment
27 centers as well as to countywide transportation options. People
28 commented that other areas have freeway express lines into downtown
Los Angeles, while the study area does not. These comments reflect

1 the public's concern about how long transit travel takes as well as its
2 directness.

3 Transit service as well as the roadway network in the Inner
4 City is laid out in a grid system. This grid system has the advantage of
5 allowing transit riders to travel anywhere within the system and the
6 disadvantage of forcing about half of the riders to transfer to complete
7 their trip. A grid system is essential, however, because without it many
8 trips would not be possible. Buses traveling Inner City streets move
9 only slightly slower than MTA Operations county-wide average for
10 local service. With no express service, little limited stop service to
11 expedite longer trips, and about half the trips requiring a transfer,
12 transit travel in the Inner City area moves slowly.

13 *Inner City Transit Needs Assessment Study (July 1, 1993), D121625 at D121664.*

14 167. According to MTA, the MTA bus system generally uses the grid concept of one bus
15 line on one street, which can make transfers burdensome if bus frequency is poor. The grid system is
16 based on a street network of parallel streets. The grid system was phased in from 1975 to 1983.

17 According to the Operations Planning Department:

18 Strong points in favor of the grid concept include relative ease of
19 understanding since service duplication is minimized. From a
20 consumer's stand point, the major drawback is transfer activity which is
21 generally built into the route structure.

22 Transfers can be onerous if the service frequency of the lines involved is poor. *MTA, A. Leahy, Status*
23 *Report on MTA Bus System (July 2, 1993), M514360 at M514369, and report entitled "Status Report on*
24 *MTA Bus System, Phase I - June 1993" (July 1993), M514364.*

25 168. The downtown central business district is served by a radial system. *MTA, A. Leahy,*
26 *Status Report on MTA Bus System (July 2, 1993), M514360 at M514369, and report entitled "Status*
27 *Report on MTA Bus System, Phase I - June 1993" (July 1993), M514364.*

28 169. Most MTA bus lines go downtown.

170. The Court earlier found that the Inner City Assessment "concluded that MTA

1 maximizes the benefits of the highly cost-effective inner city bus lines, in part, by routinely permitting
2 overcrowding levels of 140% of capacity." *Findings of Fact and Conclusions of Law re: Preliminary*
3 *Injunction*, at 2 (Sept. 21, 1994). The Inner City Assessment identified relief for overcrowding as an
4 "unmet mobility need in the inner city." *Inner City Transit Needs Assessment Study (July 1, 1993)*,
5 *D121625 at D121662*.

6 171. The Assessment identified as another unmet need of the inner city the need for "greater
7 security, cleanliness and comfort on the bus and at bus stops." *Inner City Transit Needs Assessment*
8 *Study (July 1, 1993)*, *D121625 at D121664*. "The need for "[g]reater security has been expressed as
9 one of the most critical transit needs in the Inner City by virtually every group interviewed." *Id.* The
10 Assessment explained that: "[B]us riders indicated an attitude almost of resignation about transit crime.
11 It's as if a fact of life in the Inner City, and those who spoke have simply learned to live with it and
12 learned how to protect themselves." Riders also responded that "[r]ail systems are safer because they
13 have more security and police at every station" and pointed out the lack of "security equity between
14 buses and the rail systems." *Id. at D121681, D121698, D121831*.

15 172. An update of the **Inner City Transit Needs Assessment study** was prepared by
16 **MTA expert Bradlee F. Williams in 1995. The subsidy per boarding in the inner city**
17 **remains the second lowest in the County. Williams reported that the subsidy in the inner**
18 **city changed from \$0.79 in 1993 to \$0.96 in 1995, and in the County as a whole from \$1.00**
19 **in 1993 to \$1.29 in 1995. The change in the County as a whole (29.0 percent) was greater**
20 **than in the inner city (21.5 percent). On the other hand, the farebox recovery ratio in the**
21 **inner city remained the second highest in the County. Williams reported that the ratio**
22 **decreased in the inner city from 40.9 percent in 1993 to 35.7 percent in 1995, and in the**
23 **County as a whole from 35.8 percent to 29.6 percent. The change in the County as a**
24 **whole (17.3 percent) was greater than in the inner city (12.7 percent). *Bradlee Williams***
25 ***Report at 6 (1995), E000795 at E000801.***

26 173. The update to the Inner City Transit Needs Assessment study showed that
27 overcrowding remains higher in the inner city (8 percent in 1993 and 6 percent in 1995)
28 than in the County as a whole (7.4 percent in 1993 and 5.0 percent in 1995). The change
in overcrowding in the County as a whole (32.4 percent) was greater than in the inner city

(25.0 percent). *Bradlee Williams Report at 6 (1995), E000795 at E000801.*

174. In 1988, the Southern California Association of Governments (SCAG) coordinated a study of transportation in the Airport Southwest Study Area, an area bounded by the Santa Monica Freeway (I-10) on the north, Harbor Freeway (I-110) on the east, Imperial Highway on the south and LaCienega/San Diego Freeway (I-405) on the west. According to the study "[t]he analysis shows that the study area is a transit dependency community with 210,601 bus trips made per day by SCRTD with an weekday ridership of over 200,000." The population of the area was 86 percent black and Latino and had a median income of \$13,236 in 1984. The area's share of public transit usage in 1984 was 15 percent while that for Los Angeles County as a whole was 9 percent. Approximately 20 percent of RTD's morning peak travel period buses served the area. Twenty-one of the 26 RTD bus lines serving the study area exceeded the system average for passengers per hour and passengers per mile on a average weekday. Over half of the bus lines had a percent of the line cost recovered by revenue greater than the RTD system average. The Study stated that the high levels of usage "supports the basis for implementing future public transportation improvements for the area." *SCAG, Airport Southwest Area Transportation Study, Executive Summary (Dec. 1988), C002588 at C002595-98, C002604.*

175. The Airport Southwest Study "identifi[ed]" the following public transit "problem[s]:"

... It is unsafe to wait for and ride buses during night time hours.

... More paratransit service is needed to serve the elderly and handicapped population.

Id. at C002594.

176. The MTA prepared a draft Southern Corridor Sector Study in December, 1993, for the southern portion of Los Angeles County, an area roughly bordered by Washington and Adams Boulevard and the Pomona 60 freeway to the north, Artesia Boulevard to the south and the Pacific Ocean on the west. The 188 square mile study area had a population of approximately 1.9 million persons in 1990, 82 percent minority. *MTA,*

Draft Southern Corridor Sector Study (December, 1993), M331409 at M331410.

177. The Southern Corridor Sector Study documented that "a great deal of section passenger activity occurs in the east/west direction." According to a survey of operators: "[T]he east/west non-CBD [downtown] lines were perceived as experiencing the highest level of overcrowding on a daily basis. These lines are operated less frequently by comparison to other services operated in the area." *MTA, Draft Southern Corridor Sector Study (December, 1993), M331409 at M331555.*

178. The draft Southern Corridor Sector Study reported several recommendations as a result of 30 community public meetings to determine "unmet transit needs." Two of the recommendations with respect to fares were to "[r]educe fares for seniors and children" and to "[p]rovide discounted daily passes." With respect to security, the two recommendations were to "[p]rovide more security on buses" and to "[p]rovide more security at bus stops." Public comments stressed the need for undercover plain clothes Transit Police on buses and the fact that more security is provided on trains than on buses. The recommendations with respect to bus operations included "[r]educe overcrowding" and "[p]rovide more frequent service on east/west lines." *MTA, Draft Southern Corridor Sector Study (December, 1993), M331409 at M331566-67.*

E. MTA Has Failed To Implement The Recommendations Of The Inner City Transit Needs Assessment Study

1. MTA Has Not Lowered Bus Fares In The Inner City

179. The \$1.10 basic MTA bus fare in 1993 when the Inner City Assessment was prepared is slightly less than the 1965 \$1.14 fare (in constant 1994 dollars) criticized by the McCone Commission as "prohibitively expensive." *McCone Commission Report at 65 (Dec. 2, 1965) 950484 at 950559.* The present \$1.35 fare is substantially higher. *L.A. Transit Fares (undated), M1012009.*

180. The Inner City Assessment found that: "The Inner City . . . needs more affordable transit service." The Assessment recommended that in the near term the MTA, "[c]onsider, in the context of the ongoing fare restructuring study, providing greater flexibility in pricing through time-of-day or distance-based fares" on local buses, and

1 proposing fare restrictions for non-peak local trips. *Inner City Transit Needs Assessment Study*
2 (July 1, 1993), D121625 at D121690-91. MTA has adopted neither.

3 181. The original draft of the Inner City Assessment recommended as a financial
4 option that the MTA: "reallocate resources currently earmarked for rail development and
5 use them to increase funding for the operations in the Inner City." *Inner City Assessment,*
6 *Preliminary Draft Report (May 1993), M301418 at M301547.* The Draft Assessment explained
7 that the recession had resulted in a shortfall in operating funds, and that the Proposition C
8 discretionary funds which had gone to bus operations had been diverted by the MTA to other
9 areas such as "[r]ail operations," "[d]ebt service on [rail construction] bonds already
10 issued," and "building cash reserves." *Id. at M301545-46.*

11 182. The recommended financial option to reallocate resources currently
12 earmarked for rail development was crossed out by the MTA staff project director, who with
13 a handwritten note in the margin added that she did not think it was the consultant's "place
14 to say these things." *Inner City Preliminary Draft Report (May 1993), M301418 at M301547.*
15 The final Inner City Assessment omitted the reallocation recommendation, but left
16 substantially intact the finding that the MTA was planning to commit Proposition C sales tax
17 funds that could be used for bus operations for other uses including rail operations, debt
18 service on construction bonds, and building cash reserves. *Inner City Transit Needs*
19 *Assessment Study (July 1, 1993), D121625 at D121667-68.*

20 183. Prior to the opening of the Long Beach Blue Line, MTA's predecessor RTD
21 commissioned a survey of the corridor of the Blue Line on fare issues. *Rider/Non-Rider*
22 *Attitudes Toward Fare/Payment Media/Distribution Outlets (Feb. 1, 1990) (the "Fare Attitude*
23 *Report"), D105486, M332006.* The Fare Attitude Report stated that: "The purpose of this
24 research was to gather information to assist the management of the Southern California
25 Rapid Transit District in developing and planning future fare structures, payment media and
26 distribution outlets for the operation of the Metro Blue Line." *Id. at D105488, M332007.* The
27 Blue Line Corridor bus riders were 95 percent non-white.

28 184. The Fare Attitude Report found that riders believed that the fare was "too
expensive" for the value received:

1 Generally the prevailing attitude within the corridor is
2 that current fares are too expensive. Three in five surveyed
3 share this point-of-view, with one in five regarding fares as
4 "much too expensive."

5 Riders and non-riders share similar impressions about
6 current fares. However, non-riders' fare perceptions result
7 from a disparate view of the current basic cash fare. Non-
8 riders' average *expected* fare is 90 cents, as compared to the
9 current \$1.10 price.

10 *Id. at D105490 (original emphasis).*

11 185. As summarized by the Fare Attitude Report:

12 In summary, these findings suggest that the general image of
13 RTD is fairly good until one utilizes the service. As non-riders
14 or infrequent riders expand their experience with RTD service
15 through ridership, their image of RTD deteriorates.

16 *Id. at D105491.* Based on similar findings: "Consideration of future fare hikes should
17 incorporate improvements in the area of frequency of service, and level of employee and/or
18 operator customer service." *Id. at D105491.* In conclusion, "we recommend any future
19 consideration of fare increases incorporate service improvements which translate into
20 perceived valued service." *Id. at D105492.*

21 2. MTA Has Not Reduced Overcrowding
Or Improved Inner City Bus Service

22 186. With respect to the finding of the Inner City Assessment that there was a need
23 for more direct and faster transit services from the inner city to downtown Los Angeles and
24 other employment centers, the Inner City Assessment recommended establishing more
25 express and limited stop lines and seeking funds to develop diagonal routes to increase east-
26 west service and to provide direct access to high-demand destinations. MTA instituted no
27 new inner city express lines and no express or limited stop lines connecting the inner city area
28 to downtown. Nor does it plan to do so. *Inner City Transit Needs Assessment Study (July 1,*

1993), D121625 at D121683-86; Dep. of Karen Heit at 65 (July 27, 1995).

187. The MTA started additional limited stop service on two existing lines a year and a half later in January 1995. The two lines run on Crenshaw Boulevard between Manhattan Beach and Hollywood, and on Manchester Avenue between Sepulveda Boulevard and Firestone Boulevard. The Inner City Assessment identified neither line as exceeding MTA overcrowding standards. MTA also started a single diagonal-route limited line in July 1995 running from Imperial Highway and Wilmington Avenue to West Hollywood. All three new lines operate only at peak hours on workdays, three hours in the morning and three hours in the evening. The cost of operating those three line and a planned flexible destination shuttle in the Crenshaw area is 1.25 million dollars annually for two years. *Inner City Transit Needs Assessment Study (July 1, 1993), D121625 at D121683-84; Update on Progress of Implementing the 1993 Inner City Transit Needs Assessment Study (Feb. 24, 1995), D107552 at 107553-54, 107557-58; Dep. of Dale Royal at 20, 28-31 (Oct. 6, 1995).*

188. In order to provide relief from overcrowding, the Inner City Assessment recommended near term actions which included "provid[ing] additional service to relieve the overcrowding that is due to the demand exceeding supply on Inner City bus routes" and initiating a pilot program and long term recommendations to seek funds to increase the size of the bus fleet and to increase off-peak service in the Inner City. *Inner City Transit Needs Assessment Study (July 1, 1993), D121625 at D121683-86.*

189. The overcrowding relief recommended by the Inner City Assessment was based on restoring "quality-improving strategies," such as using "gap buses" in the event of breakdown or delay of a regularly scheduled bus, actions which the MTA had employed when it had adequate funds. *Id. at D121684-85.* "These ideas are not new. Virtually all of them have been used in the past or are still in limited use by the MTA Operations. Many of them were used in the recent Vermont Avenue demonstration project. Due to budget deficiencies, MTA Operations has been forced to retreat from their reliance on these quality-improving strategies in order to maximize revenue service hours." *Id.*

190. The Vermont Avenue demonstration project, which the Inner City Assessment cited as a model, had been a three-month experiment from January through March, 1993,

1 involving the application of "quality-improving strategies" to Line 204, the Vermont Avenue
2 Line. The service and the rider attitudes were routinely compared with those on a parallel
3 inner city line, Line 207 on Western Avenue. *Id. at D121645, D121684-85.*

4 191. As background, the *Los Angeles Times* in the fall of 1992 had identified Line
5 204 as the most crime-stricken line in the bus system, with five percent of the riders, but eight
6 percent of all reported crimes. The Line 204 Vermont Avenue demonstration was initiated
7 not by MTA but by County Supervisor and MTA Board member Burke, who allocated Los
8 Angeles County Proposition A Local Return funds to MTA for the demonstration. *MTA, A*
9 *Look At The MTA (Jan. 1994), 800042A at 800093A.*

10 192. MTA Line 204 on Vermont Avenue is one of the most congested bus lines in the
11 County. The Inner City Assessment reported that at peak hours, the Vermont Avenue line
12 exceeded MTA loading standards by 16 percent. *Inner City Transit Needs Assessment Study*
13 *(July 1, 1993), D121625 at D121684.* As noted above, as a result of chronic overcrowding, the
14 subsidy per boarding on line 204 is only 34 cents, while the countywide bus subsidy in 1992
15 was \$1.17. *MTA, A Look At The MTA (Jan., 1994), 800042A at 800099A-100A.*

16 193. The results of the Vermont Avenue pilot demonstration project were examined
17 and reported by MTA. The principal "quality-improving strategies" used on Line 204 were,
18 first, the deployment of uniformed transit police officers on Line 204, weekdays and
19 weekends, to significantly enhance line security, and, second, the deployment of four
20 additional buses during the morning peak, base, and weekends, and six additional buses
21 during the evening peak to reduce passenger overloads. The impact of these strategies was
22 assessed by comparing quality of service on the parallel Line 207 on Western Avenue. The
23 "major findings" were that ridership on Line 204 at Vermont Avenue increased from five to
24 15 percent, the additional buses had a "very positive effect" during weekday peak periods,
25 and the proportion of Line 204 passengers feeling very safe increased sizably, while at the
26 same time Line 207 riders felt much less safe. The Line 204 evaluation concluded that "the
27 Pilot Program achieved its main objectives namely making the Vermont Avenue Line safer
28 and less crowded for passengers and Operators." Although the evaluation recommended that
MTA find the funds to continue operating additional buses on Line 204 and to implement the

1 program on other lines, the pilot program ended in April 1993. *Line 204 Enhanced Service*
2 *and Security Pilot Program: Impact on Passenger Overcrowding and Perceptions of Service*
3 *Quality and Personal Safety, An Evaluation (May 1993), D104518 at D104521, D104522-24,*
4 *D104575 and D104580-81; Inner City Transit Needs Assessment Study (July 1, 1993), D121625*
5 *at D121698.*

6 194. The MTA Board -- in response to the Inner City Assessment in general, and to
7 the Vermont Avenue demonstration project and its evaluation in particular -- did not
8 authorize the \$5.8 million needed on an annual basis to provide overcrowding relief and
9 increased security merely on the Vermont Line. And, although the Inner City Assessment
10 identified five other MTA bus lines in addition to the Vermont Line which exceeded MTA
11 loading standards (Line 38 on West Jefferson, Line 81 on Figueroa, Line 105 along Vernon,
12 Line 117 on Century, and Line 206 along Normandie), the MTA Board did not even authorize
13 \$5.8 million for overcrowding relief to cover *all* of these inner city bus lines in general.
14 Instead, the MTA Board allocated and budgeted a total of only \$1.25 million per year for each
15 of two years, FY 1994-95 and FY 1995-96, purportedly to improve the myriad service
16 deficiencies recommended to be remedied in the Inner City Assessment. *Line 204 Enhanced*
17 *Service and Security Pilot Program: Impact on Passenger Overcrowding and Perceptions of*
18 *Service Quality and Personal Safety, An Evaluation (May, 1993), D104518 at D104521; Update*
19 *and Progress of Implementing the 1993 Inner City Transit Needs Assessment Study (Feb. 24,*
20 *1995), D107552 at D107555; Inner City Transit Needs Assessment Study (July 1, 1993),*
21 *D121625 at D121683-84.*

22 195. The limited overcrowding relief which MTA provided was further diluted
23 because the MTA staff recommended to the MTA Operations Committee that the
24 overcrowding relief be spread over ten lines which MTA Operations had identified as "inner
25 city" lines. Lines 33 (Venice), 37 (Adams), 68 (Washington), 81 (Figueroa), 105 (Vernon), 108
26 (Slauson), 204/354 (Vermont), 206 (Normandie), 207/357 (Western), and 560 (Van Nuys
27 Boulevard - Westwood - LAX); and that the limited monies also be used to avoid further
28 reduction of service on other inner city lines. *Inner City Transit Needs Assessment Study*
Recommendations (July 1, 1993), D121625; Update on Progress of Implementing the 1993 Inner

1 *City Transit Needs Assessment (Dec. 5, 1994), 008382 at 008384; Dep. of Karen Heit at 56-57*
2 *(July 27, 1995).*

3 196. According to MTA scheduling staff, the portions of the \$1.25 million annual
4 inner city overcrowding relief intended as additional funds, in fact, were and are being spent
5 countywide. As to the funds intended to avoid further service cuts on overcrowded lines in
6 the inner city, these funds too were spent countywide as well. As a result of systemwide
7 reductions of service, there was a net reduction in inner city bus service in 1994-95. *Dep. of*
8 *Frank Schroeder at 16-19, 21-22, 31, 36 (Oct. 10, 1995).*

9 197. With respect to the short-term recommendation by the Inner City Assessment
10 that MTA itself initiate pilot programs on one or two inner city bus lines, MTA had done
11 nothing to implement the recommendation more than two years later. In order to allow buses
12 to travel faster, the Inner City Assessment had recommended in the short-term the use of
13 designated bus lanes and of signal preemption devices. Two years later, no bus lanes had
14 been funded or constructed in the inner city and no signal preemption devices installed. *Inner*
15 *City Transit Needs Assessment Study (July 1, 1993), D121625 at D121685; Dep. of Dale Royal at*
16 *27, 34-35, 38 (Oct. 6, 1995); Dep. of Karen Heit at 59, 82-83 (July 27, 1995).*

17 198. With respect to the long term recommendation of the Inner City Assessment to
18 seek funds for more buses for the inner city, MTA two years later had done nothing other
19 than to state in its Long Range Plan that it would increase the bus fleet by 300 additional
20 buses for Los Angeles County over the next ten years. No such buses have yet been allocated
21 to the inner city area. Rather than add buses, the MTA has decreased its bus service in the
22 inner city area in the last two years, as noted above. *Dep. of Dale Royal at 18 (Oct. 6, 1995);*
23 *Dep. of Frank Schroeder at 31 (Oct. 10, 1995).*

24 199. In fiscal year 1993-94, MTA budgeted a total of 6,972,000 in revenue service
25 hours. Fully 6,875,000 of these hours were for bus (98.6 percent), 81,000 were for Blue Line
26 (1.2 percent) and 16,000 were for Red Line (0.2 percent). For fiscal year 1994-95, MTA staff
27 recommended a 5 percent drop to 6,594,585 revenue service hours, to 6,500,000 hours for bus,
28 to 75,280 for Blue Line, and an increase to 19,305 for Red Line. *MTA, Revenue Service Hours*
(undated), M1020890.

1 200. MTA's fiscal year 1994-95 service reduction plan was estimated to save \$21
2 million by reducing revenue service hours 5.5 percent to 6,590,000. The planned service
3 reductions would result in a loss of 2.9 million annual bus passenger boardings. In May 1994,
4 MTA staff anticipated that service the service reduction plan would cause "a 6.8 percent
5 ridership deflection." *MTA, A. Leahy, FY94-95 Service Reduction Plan (May 26, 1994),*
6 *M1020926 at M1020926-28.*

7 201. After the 1992 civil unrest in Los Angeles, RTD proposed a transit corridor
8 development program along 8-10 bus corridors for bus and area improvements, noting that
9 there were 12 South Central bus lines with greater than 13% average standees during the
10 peak hour and ridership in excess of 12,000 daily boardings that were candidates for such
11 investments. *Project Proposal To Create Transit Enterprise Corridors For The Reinvestment of*
12 *Businesses and Housing In Soouth Central Los Angeles Prepared by SCRTD (undated),*
13 *C001442 at C001444-47.*

14 202. The bus transit enterprise corridor program was never implemented.
15 *Testimony of Tom Rubin.*

16 3. MTA Has Not Improved Security On Inner City Buses

17 203. In 1993, the MTA Transit Police applied for federal funds for a community-
18 based policing program in South Central Los Angeles between Exposition Boulevard on the
19 north, the Blue Line on the east, Rosecrans Avenue on the south and Hawthorne-LaBrea
20 Avenue on the west. The Transit Police stated:

21 The residents of the target area, many of whom are transit
22 dependent, use the MTA transit system for their work commute,
23 school and shopping transportation, and all of their other
24 transportation, needs on a daily basis. The transit system is a
25 vital lifeline for the people of South Central Los Angeles and it
26 must be made safe for the people of these neighborhoods. The
27 full range of social, community and economic reconstruction of
28 South Central Los Angeles is dependent upon a safe and
adequate public transit system.

1 *Letter from Sharon Papa, Chief of MTA Police to U.S. Department of Justice Office of Justice*
2 *Programs (Nov. 30, 1993) M700719 at M700724.*

3 204. The Inner City Assessment recommended that MTA police officers be assigned
4 to buses in the inner city, and that funds be sought for more officers to be assigned to riding
5 buses on a regular basis. Although the MTA obtained a grant for \$1.1 million for police
6 officers to ride buses, the funds have been used to assign 12 transit police to ride buses and to
7 patrol bus stops on bicycle, on foot, and in police cars in areas that extend outside of the inner
8 city. In contrast, the MTA Line 204 Vermont Avenue demonstration project involved officers
9 riding every third bus on a single inner city bus line. *Inner City Transit Needs Assessment*
10 *Study (July 1, 1993), D121625 at D121696-97, Update on Progress of Implementing the 1993*
11 *Inner City Transit Needs Assessment Study (Dec. 5, 1994), 008382 at 008396; Dep. of Karen Heit*
12 *at 100-01 (July 27, 1995); MTA, A Look At The MTA (Jan. 1994), 800042A at 800093A.*

13 205. The MTA Line 204 demonstration project increased security costs per
14 passenger to 12 cents, which was four times the countywide bus system's 3 cents per
15 passenger, but less than a tenth of the \$1.29 Blue Line or Metrolink personal security cost per
16 passenger. *MTA, A Look At The MTA (Jan. 1994), 800042A at 800093A-94A.*

17 206. The total cost of providing RTD transit police security for 90 days for line 204
18 was 1.86 million dollars, requiring the deployment of officers on 447 eight hour shifts. *RTD,*
19 *SCRTD Transit Police Expenses for Line 204 (undated), 002257.*

20 **V. IN THE LAST DECADE, MTA SHIFTED RESOURCES**
21 **FROM THE BUS SYSTEM TO DEVELOPMENT OF**
22 **METROLINK AND MTA-OPERATED RAIL LINES, TO**
23 **THE DETRIMENT OF POOR MINORITY BUS RIDERS**

24 **A. MTA Developed Rail Lines That Are Inefficient And Not**
25 **Cost-Effective, Diverting Financial Resources From Bus Operations**

26 207. In 1985, the LACTC began shifting funding for RTD bus operations to rail
27 construction, leading to a net decrease in transit use in Los Angeles County. *MTA, Tom*
28 *Rubin, Comments on "For the Record: A Practical Mobility To All Los Angeles County" (June*
10, 1994), 011736 at 011742-43. Since the end of FY85, when the rail construction program
kicked into high gear, RTD/MTA transit ridership per capita fell from 58.1 in FY85 to 39.4 in
FY95 -- a reduction of almost one-third (32.2%) over a ten year period. *Amended Expert*

1 *Report and Response to "A Report by Jeffrey M. Zupan" by Thomas A. Rubin (Jan. 1, 1996),*
2 *E1000379.*

3 **208.** The light-rail Long Beach Blue Line was funded entirely by 1980 Proposition A
4 $\frac{1}{2}\%$ local sales tax funds. *LACTC, N. Peterson, Proposition A Rail Corridors (Sept. 6, 1991)*
5 *(Information Item), M0360082 at M0360086.* The heavy-rail Metro Red Line, according to the
6 LACTC, is being built with federal and state funds, private benefits assessments, and
7 Proposition A funds. *Id.* The light-rail Green Line was supposed to be funded both by
8 Proposition A funds and by 1990 Proposition C $\frac{1}{2}\%$ local sales tax funds. *Id.*

9 **209.** On June 18, 1993, MTA finance official and former RTD Comptroller Tom
10 Rubin, wrote then-CEO Franklin White a memorandum opposing adoption of a proposed FY
11 1994 MTA budget with ten-year operation and capital recommendations which "if adopted,
12 would lead to virtually certain financial disaster within a few years."

13 The only rational action that can be taken at this point is an
14 absolute "bare bones" budget that does not allow any further
15 initiatives to be begun without a *guaranteed* source of funding or
16 offsetting cost savings for the *entire* long-term financial plan.
17 This specifically includes that the Pasadena Line must be
18 immediately put on hold at least until a large number of
19 "solutions" come through. All studies pertaining to potential
20 future rail lines and extensions, none of which can be built
21 within ten years even under the most optimistic outcomes,
22 should be immediately halted. *All* major capital decisions
23 should be put on hold until the 30-Year Plan is completely
24 redone from scratch, with the work being performed by a new
25 set of professionals who are not identified with the existing failed
26 document and are not dedicated to perpetuating this fairy tale,
27 and who are not afraid to tell the CEO, the policy board, and the
28 public the truth.

MTA, Rubin, Review of FY94 Budget (June 18, 1993), 003004 at 003004-05 (original emphasis).

1 **210. Building and operating all 14 rail lines proposed by the 1992 30-Year Plan**
2 **would have cost roughly 11.4 billion dollars. According to RTD, 2,346 buses, along with**
3 **construction of bus yards and purchase of replacement buses, could have been purchased and**
4 **operated for the same amount of money. *Letter from Tom Rubin to RTD Director Raggio***
5 ***(Sept. 27, 1991), 003351 at 003355.***

6 **211. MTA's 1995 20-Year Long Range Plan sets aside \$417 million for planning rail**
7 **projects, *i.e.*, contracting environmental studies, staff support, overhead, and Board-directed**
8 **studies for rail construction.**

9 **If the proposed 417 million dollars were instead to be allocated**
10 **to bus transit operations, 468 million bus passengers could be**
11 **carried. These bus passengers are 92 percent of the number of**
12 **passengers MTA estimates would be carried if all 14 rail lines**
13 **proposed in the Long Range plan were built and operated for**
14 **the period of the Plan.**

15 ***Rubin, Rail Planning Costs (undated), 007060 at 007060-62.***

16 **212. In its comments on the MTA's 20-Year Plan, SCAG questioned the need for a**
17 **number of MTA long range planning studies. "[T]here are opportunities for the LACMTA**
18 **staff to work more closely with SCAG to address these issues in the long range planning with**
19 **which SCAG is charged. This could save the LACMTA planning funds and avoid a possible**
20 **duplication of effort." *Letter from Mark Pisano, SCAG Executive Director, to Franklin White,***
21 ***MTA CEO (March 17, 1995), M323133 at M323137.***

22 **213. Federal authorities recognize historic shortcomings of rail planning. The**
23 **Federal Transportation Administration's financial capacity policy specifically notes that:**
24 **"Serious problems can result when financial planning is not adequately performed. Cases**
25 **include the many 'New Start' cities which have been forced to reduce service levels in order to**
26 **afford putting new lines into service, and, as has been the case far too often, rail lines**
27 **originally intended to save operating funds but which increased the cost." Quoted in *RTD,***
28 ***Ralph L. Stanley, Impact of Federal Transit Administration "Urban Mass Transportation***
Financial Capacity Policy" in Current Debate on \$117 Million of SCRTD Funding (UMTA

1 [FTA] Circular 7008.1, March 30, 1987), 950123.

2 214. RTD's analysis of systems in the United States with light rail and bus
3 operations revealed that the weighted average cost per passenger mile was not significantly
4 different between light rail and bus costs by city. The analysis concluded that "the corridor
5 served by light rail is a far heavier transit use corridor than the average bus corridor in the
6 same cities. . . . If light rail is barely equal on operating costs to bus, where light rail is given
7 the major advantage of the most crowded routes, the only conclusion that can be reached is that
8 bus has a significant overall cost advantage over light rail in the vast majority of
9 circumstances where the issue is construction of a new light rail line." RTD, *T. Rubin, Light
10 Rail vs. Bus Cost Per Passenger Mile (April 8, 1991), 010072 at 010073-75.*

11 215. The MTA explicitly refused to consider cost-saving possibilities regarding rail
12 operations and construction when it did cost studies on bus operations. *Dep. of Terry
13 Matusmoto at 200-03 (Sept. 19, 1995) (Vol. 2), and exhibits cited.* The MTA subsequently
14 commissioned a cost study of the rail program by Arthur Andersen in 1995. *Id. at 200-03, and
15 exhibits cited.* The 1995 Arthur Andersen Report condemned the lack of cost controls, cost
16 effectiveness, and cost efficiency at the MTA. *See generally MTA, Arthur Andersen Final
17 Report of Recommendations (April 24, 1995), D121959, and supporting documents.* One year
18 later, Arthur Andersen conducted a follow-up study to see whether MTA was implementing
19 the critical management recommendations contained in its 1995 report. MTA is not.
20 "[O]verall progress made-to-date is behind schedule and reason for concern." *Arthur
21 Andersen, Implementation Performance Review at 5 (March 1996).* [T]he members of the
22 Board are still relatively inexperienced in construction and transportation issues [T]he
23 Board still demonstrates divisive and politically charged behavior." *Id. at 16.* The MTA
24 Board makes decisions about the cost of rail based on politics rather than facts:

25 "The Board's tendency to micro-manage and 'fix the
26 blame' continues to overshadow its willingness and conviction to
27 receive the true and complete cost picture. The result is an
28 atmosphere at the MTA where 'fear reigns' and the staff is
afraid to suggest that there may be a problem unless absolutely

certain.

“This behavior conflicts with the Board’s need for the staff to present concise information on budget impacts in a timely, forthright manner. Therefore, Board members must be willing to listen to the actual budget impacts and the alternatives presented by the staff without publicly ‘shooting the messenger’ as suggested in Franklin White’s departing speech. However, the staff must also do its part. It has done a poor job in the past of consistently reporting overruns as documented by the Inspector General’s (IG) report on the Blue Line Extension.”

Id. at 12-13. MTA fails to play an effective oversight role over its rail construction consultants. “*The Inspector General’s report on the Pasadena Blue Line does a very effective job of documenting the MTA’s lack of oversight.*” *Id. at 11 (original emphasis).* See also *Dep. of Richard Alatorre at 42-43 (Oct. 17, 1995) (The MTA spends too much on Metrolink rather than on bus riders who “pay the freight”); Dep. of Michael Antonovich at 9-10, 48-50, 60-62, 74-77 (Oct. 16, 1995) (subway and heavy rail projects are not cost effective and not cost efficient, and they take money away from transit projects that are).*

216. The budget for the not-yet-under-construction Pasadena Line, a light rail line, illustrates the runaway cost of MTA’s rail projects: “The current budget for the Pasadena Line project is \$67 million to \$71 million per mile. This is without precedent in the industry and does not appear to be warranted by the complexity of the project.” *Peer Review Report for the Los Angeles County Metropolitan Transportation Authority: Pasadena Blue Line (April 25, 1995), M323035 at M323047.* The Pasadena Line is nevertheless one of the “baseline” projects that was taken for granted and not even evaluated in the MTA’s 20-Year Plan. *Id. at 25-42, and exhibits cited.*

217. A 1990 report by Pickrell for the U.S. Department of Transportation Urban Mass transportation Administration (UMTA) estimates that:

- (i) the recently installed heavy rail systems in Atlanta, Baltimore, Miami, and Washington have ridership shortfalls averaging 35 percent of their respective

forecasts;

- (ii) the new light rail facilities in Buffalo, Pittsburgh, Portland, and Sacramento show average ridership shortfalls of 65 percent;
- (iii) the weighted average cost per passenger round trip on the heavy rail/subway systems is about \$16.61;
- (iv) the weighted average cost per passenger round trip on the light rail systems is about \$15.92; and
- (v) three of these eight transit districts *lost net system patronage* after rail facilities were added.

Reponse to "A Report by Jeffrey M. Zupan" by James E. Moore (undated), E100000 (original emphasis).

B. MTA Spent Nearly \$1 Billion To Construct The Long Beach Blue Line

218. As originally proposed, the Long Beach Blue Line ran from Long Beach to downtown Los Angeles along the route of old Southern Pacific rail tracks without any stops in the heavily minority areas that the Long Beach Blue Line traverses. Intermediate stops were added only after public protests. Even then, the stops on the Blue Line are few and far between compared to the many stops on the local bus lines that the MTA eliminated after the opening of the Blue Line. *Testimony of Thomas Rubin, Lucius Collier, and Martin Wachs.*

219. The Coalition for Rapid transit objected to the proposal for the Blue Line because it "does little or nothing for the two travel publics . . . that is not already available to them via SCRTD buses."

For example, the Freeway Flyer from Long Beach to downtown Los Angeles makes the trip in about 50 minutes in rush hour traffic. The slow-moving streetcar vehicle offered by LACTC will also take 50 minutes, but cost an additional \$600 million of our tax money!

This line makes absolutely no sense from the standpoint of Long Beach unless it is faster, cheaper and more convenient

than a bus ride.

* * *

There is no escaping these essential facts: 1) The northern part of the old PE Willowbrook Line, which is the basis of the LACTC proposal, is an industrial wasteland with a low population density. Most of the people who did live here have moved west to the area around Vermont Avenue. 2) The major activity center and densest population between LA and Long Beach is at and near Exposition Park, which is a great recreation, sport and cultural center. The Community Redevelopment Agency, the University of Southern California, the California Museum of Science and Industry have all protested the lack of a transit station at Exposition Park. Your excuse has been that CALTRANS will provide a busway about 20 years hence. Freeways are not useful travel routes for inner city populated areas, however good they may be for suburban areas. Pedestrian approaches are plain horrible and even bus stops are awkward because of off-ramp traffic and steep access paths. 3) The LACTC LA-Long Beach Line is a scandalous example of a political-engineering approach which is heading for economic disaster. So little thought is given to supplementing the Proposition A monies by way of economic development that it is a source of astonishment to many urban transportation specialists. Long Beach is a spectacularly bad example with practically no attention being given to a local development input to make transit stops self-financing.

Letter from Coalition for Rapid Transit to LACTC (March 26, 1985), M339167 at M339167-68.

220. Two-thirds of Long Beach Blue Line riders are former passengers of express and local bus lines that the Blue Line replaced. When the Blue Line opened in 1991, the

1 express bus lines that were replaced charged \$2.70 cash or \$90 for a monthly pass. The Blue
2 Line charged only \$1.10 cash fare or \$42.00 for a monthly pass. *MTA, A Look At The MTA*
3 *(Jan. 1994), 800042A at 800089A*. Blue Line riders continue to be charged less than express
4 bus riders.

5 221. "The Blue Line has one of the lowest, if not the lowest, urban rail fares in the
6 United States." *Memo from Tom Rubin to Richard Stanger re Metrolink Costs, at 5 (April 24,*
7 *1993), 011067 at 011071*. The fares, in fact, are so low that the Blue Line fare collection costs
8 actually exceed the fares collected: "in FY92 we spent \$4.9 million in fully allocated collection
9 costs to collect \$4.2 million in cash fares." *Id. at 6, 011072*.

10 222. According to the federally-required cost/subsidy per-new-passenger statistic
11 which accounts for former bus riders that transfer to rail and adjusts for value of time saved
12 by faster transit trips, the annualized subsidy per-new-passenger for the Long Beach Blue
13 Line was \$1,083.43. *MTA, A Look At The MTA (Jan. 1994), 800042A at 800101A-02A*.

14 223. An assessment of the Long Beach Blue Line found that it was not cost effective
15 relative to a bus alternative.

16 To assess its cost-effectiveness, James Moore used a
17 capital cost of \$877 million (as reported, but underestimated
18 because many Blue Line-related costs were not charged to the
19 project), standard assumptions of a 10 percent opportunity cost
20 of social capital and a 40-year project lifetime, and operating
21 costs of \$38.6 million in fiscal 1991. Using the Southern
22 California Rapid Transit District's August, 1991 boardings of
23 32,600 per day (and assuming that weekend-day matches
24 weekday boardings), Moore computed an annual cost per
25 passenger roundtrip of \$7,873 -- or over \$21 per day.

26 But that is not the end of the story. Survey responses
27 indicate that only 21 percent of riders were previously drive-
28 alone motorists; most of them previously rode the (much-less-
subsidized) bus. Thus, as a means of "getting single-occupant

vehicles off the freeway," the Blue Line costs taxpayers \$37,489 per year for every such car eliminated. The Blue Line's trip costs are about double those on the four most recently completed light rail projects studied by the U.S. Department of Transportation.

Peter Gordon & Harry W. Richardson, The CounterPlan for Transportation in Southern California: Spend Less, Serve More (Feb. 1994) (footnotes omitted), M324043 at M324054-55.

224. An MTA survey shows that fully 95 percent of the riders of the bus lines in the Long Beach Blue Line corridor were minority and only five percent white. By contrast, 24 percent of Long Beach Line riders boardings are white. In addition, the number of boardings underestimates the extent to which the Blue Line serves whites because white riders take significantly longer trips. Controlling for distance traveled, using passenger miles, the ridership is 32 percent white, one of the highest white riderships in the MTA. *Brian Taylor, Martin Wachs, et al., Variations in Fare Payment and Public Subsidy by Race and Ethnicity: An examination of the LAMTA, at 17 (Nov. 5, 1995), E100567 at E100584; Testimony of Brian Taylor and Thomas Rubin.*

225. The Long Beach Blue Line was built to accomodate the increased white ridership. It was not built to provide either better transportation or redevelopment for the minority communities that it traverses. During the consideration of the Long Beach Blue Line, MTA's predecessor LACTC agreed with the criticism that "[t]he northern portion of the proposed line does not adequately serve the main black population center of south central Los Angeles, and it is not capable of much redevelopment." LACTC acknowledged that: "It is true that the south central Los Angeles communities of Adams, Exposition, and South Vermont would not be well served by the proposed line, nor would the Hoover or Adams-Normandie redevelopment projects." *The Long Beach - Los Angeles Rail Transit Project, Final Environmental Impact Report (March, 1985), M306934 at M307206.*

226. In January 1995, MTA decided not to impose distance - based fares on the Long Beach Blue Line that the MTA Board had adopted in July 1994.

C. MTA Spent \$1 Billion To Construct The Green Line

1 227. Gordon and Richardson estimate that the Green Line cost approximately one
2 billion dollars. *Peter Gordon & Harry W. Richardson, The Counter Plan for Transportation in*
3 *Southern California: Spend Less Serve More (Feb. 1994), M324043 at M324055.*

4 228. Similar to what happened along the Blue Line, the opening of the Green Line
5 in August 1995 was preceded by MTA reducing and canceling bus service along the rail
6 corridor. An "aggressive" set of changes was implemented to reduce bus service and to
7 reduce costs in the amount of 2-3 million dollars annually by rerouting bus services to serve
8 nearby Green Line stations, adjusting the frequency of bus service for lines parallel to the
9 Green Line, and cutting back bus service to terminate at Green Line stations. The effect of
10 this policy is to create a ready pool of rail riders, but also to disrupt travel patterns of bus
11 riders making local trips. *Dep. of Karen Heit at 57-58 (July 27, 1995); Dep. of Dana Woodbury*
12 *at 481 (Aug. 14, 1995) (Vol. 4); Testimony of Brian Taylor.*

13 229. According to MTA staff:

14 Unlike the Metro Red and Blue Lines, the Metro Green
15 Line was not built in a major bus corridor where replacement of
16 duplicative bus service was possible. No bus lines, or substantial
17 line segments will be conceded as a result of Metro Green Line
18 service. The only existing bus line that duplicates the Metro
19 Green Line for any significant distance is Line 120 (Imperial
20 Highway-LAX Bus Center/Brea Mall). This line will be
21 segmented and truncated to serve local trips, and to encourage
22 people making longer trips to use the Metro Green Line.

23 In addition to the cost of operating the Green Line, the MTA proposed a Metro Green Line
24 Bus/Rail Interface Masterplan to spend an additional \$6.4 million annually on MTA services.

25 Three quarters of the added cost was to add 13 new feeder bus service routes, and \$1.6
26 million was to divert existing MTA bus lines to access Green Line stations. The MTA also
27 planned upward of \$8 million in additional municipal operator costs to access Green Line
28 stations. Thus, opening the Green Line required MTA to spend \$14.8 million annually to
 provide bus feeder service. The Interface Plan makes no claim that it will improve service to

riders. Because of unavailability of funds, MTA adopted a less expensive Intermediate Access Plan. *MTA, A.T. Leahy & J. Wilson, Adoption of the Final Metro Green Line Bus/Rail Interface Plan and Implementation of Phase I for June 1995 (Feb. 23, 1995), D111775 at 111775-78.*

230. The Green Line stops in El Segundo within sight of the Los Angeles International Airport (LAX). A bus is required to reach LAX. The *Los Angeles Times* referred to the Green Line as the "train to nowhere." *L.A. Times at B2 (Oct.6, 1995).*

231. MTA was able to complete the Green Line only by transferring \$300 million from Proposition C sales tax revenues designed to be used for highway improvements such as high occupancy vehicle (HOV) lanes on highways and freeways.

232. According to former CEO Franklin White:

When I arrived in April of 93, the organization was bankrupt. .

. . [O]n the construction side there was not enough money to fund the Green Line. Everybody in this room who was on the Board at that time should remember that. We had to move roughly \$300 million from TSM, transportation systems management and TDM, transportation demand management, in order to finish the Green Line. Think how preposterous that is.

But there was not enough money to pay the bills that were headed toward the organization. Frank White didn't do that. Frank White said you better find this \$300 million. And by the way, you're taking it away from activities which are more desirable than the Green Line today.

MTA, Transcript of Franklin White's Comments Made in Open Session Regarding His Performance Appraisal, December 20, 1995, Board Meeting, at 3-5 (undated), M808381 at M808383-85.

**D. MTA Plans To Spend \$5.8 Billion
To Construct The Red Line**

233. A recent assessment has found that the heavy-rail Red Line subway from downtown Los Angeles to MacArthur Park cost almost one and a half billion dollars, or \$453 million per mile, and is not cost effective.

The recently opened "minimum operable segment" of the underground Red Line (4.4 miles, from Union Station to MacArthur park, as advertised by the agency but recently admitted to be only 3.2 miles; the 4.4 miles includes the length of rail storage tracks) has cost \$330 million per mile when cost overruns are accounted for (actually, \$453 million per mile at 3.2 miles). That contrasts with \$188 million per mile when Congress provided the initial funding in 1983 (which would be \$265 million in 1992 dollars). It is also much larger than the \$101-million per mile cited for "CBD = 0.7 miles" in the first adopted environmental impact statement on this project in 1979 (\$170 million in 1992 dollars). The 25-cent "teaser" fare has been extended indefinitely because ridership has averaged only 15,000 boardings per weekday. When operating costs become known, the full costs per passenger will probably surpass those documented for the Blue Line. . . . [T]he recent closings of landmark enterprises along the Red Line route (including the Ambassador Hotel, Bullocks Department Store, and the Sheraton Town House Hotel) indicate that real estate markets are not optimistic about the performance of the subway.

Peter Gordon & Harry W. Richardson, The CounterPlan for Transportation in Southern California: Spend Less Serve More (Feb. 1994), M324043 at M324055.

234. A comparison of travel time via the proposed Red Line and existing bus service from the San Fernando Valley to the Los Angeles Civic Center showed that the travel time on

MTA Bus Line 424 was 18 minutes while the travel time on the proposed Red Line would be 40 minutes, or 122 percent greater. *Rubin, Impact on Travel from San Fernando Valley to Civic Center of Operating of Red Line (undated), 005244 at 005245.*

235. The MTA has not conducted any surveys of the race or ethnicity of Red Line riders. However, LADOT's DASH Downtown service provides comparable services for a similar population, and both DASH and the Red Line charge the same 25 cents to move people around downtown. Thirty-two percent of DASH Downtown riders indicating race or ethnicity are white. *DASH Downtown On Board Survey Final Report (April 1994), S0890 at S0917.*

236. The white ridership of the Red Line actually is higher given that the Red Line serves large numbers of Metrolink riders, at least 69 percent of whom are white. *Dep. of Richard Stanger at 124 (July 27, 1995) (Vol. I); MTA, Metrolink Line by Station (undated), M800809 at M800821.* Currently, 38 percent of Metrolink passengers use the Red Line. *Metrolink 1995 On Board Survey (1995), M800691 at M800701; see also MTA News Release (Jan. 21, 1994) (MTA put more Red Line trains in service and synchronized Red Line trains to accommodate Metrolink transfers), M339291.*

237. Although the Red Line was originally designed to run on the heavily-travelled Wilshire Corridor, its route has been changed so that its route will no longer run on Wilshire after Western Avenue.

238. The MTA Board has approved two extensions of the Red Line.

239. MTA estimates that the Red Line will cost \$5.8 billion.

E. **MTA Plans To Spend Over \$800 Million To Build
The Pasadena Light Rail Line Using Funds That Could
Be Used On MTA Bus Operations**

1. **Background**

240. The Pasadena Line is one of the “baseline” projects in the MTA’s recent 20-Year Plan. The relative merits of the Pasadena Line were never evaluated and compared with other projects in the Plan. In planning the Pasadena Line, the MTA did not consider any bus alternative. *MTA, Certification of Supplemental Environmental Impact Report, Budget Approval and Project Adoption for the Pasadena - Los Angeles Light Rail Transit Project (Jan.*

13, 1993) 01411 at 014026; LACTC, *Final Environmental Impact Report, Pasadena - Los Angeles Light Rail Transit Project* (Feb., 1990), 951033 at 951033, 951039-46.

241. The current admitted MTA budget for the Pasadena Line is \$803.9 million. The Line is currently configured as a 13.7 mile, 13 station light rail transit line that will run from Los Angeles Union Station to Sierra Madre Villa Station on the east side of the Pasadena central business district. The current \$803.9 million budget does not include the many of the costs of getting the Line ready to operate, such as rail cars, costs of issuing and servicing debt, and many other costs that MTA commonly does not associate with rail lines but should.

242. MTA has had to resort to discretionary funding sources to finance the construction of the Pasadena Line because state rail construction bonds that MTA had anticipated using for the Pasadena Line were defeated at the polls and Proposition A local tax revenues for rail projects have been exhausted on other rail projects.

243. The California Legislature authorized a three billion dollar statewide rail bond package in 1989. While the first billion dollar bond passed in 1990, both the second billion dollar bond, Prop 156, and the third billion dollar bond failed in 1992 and 1994, respectively. Fully \$316.6 million from the failed 1992 bond was supposed to go to the construction of the Pasadena Line. LACTC, N. Peterson, *Impact of Failure of Proposition 156: The \$1.0 Billion Rail Bond* (Dec. 1, 1992), M032001 at M0320002.

244. According to MTA's predecessor, "[t]he immediate impact of the loss of Prop. 156 funds is that the Pasadena Light Rail Line, which will be ready to go this spring, has lost half its budgeted funding." LACTC nevertheless recommended that "available state funds would be allocated to projects ready to expend those funds, such as LACTC's Pasadena Light Rail Line." *Id.* M0320002, M0320006-07.

245. MTA's main source of local tax revenue funding dedicated to rail construction is Proposition A 35% Rail Construction and Operations funds. *Declaration of Tom Rubin* (June 29, 1996) ("*Rubin Decl.*"). Proposition A was enacted in 1980 as a half cent local Los Angeles County tax. Proposition A currently is almost entirely utilized for debt service commitments on funds borrowed for past rail capital expenditures and therefore is not available for the Pasadena Line. *Id.*

2. **The MTA Board Voted To Use Discretionary Funds
For The Pasadena Line, Even While Contending
That Bus Fare Restructuring Was Necessary**

246. **The Court previously found that a month after voting to eliminate the monthly bus pass and to raise bus fares purportedly because no other funds were available for bus operations, the MTA voted to spend discretionary funds for the planning of the Pasadena Line:**

MTA Board member Villaraigosa urged his fellow MTA Board members to avoid the need to harm bus service later by refusing to approve a \$59 million discretionary fund allocation to plan the Pasadena rail project. The MTA Board, ignoring Mr. Villaraigosa and the plaintiff, voted to allocate the \$59 million to that project. Plaintiffs claim that the \$59 million should have been spent on bus services to avert the bus fare increase and pass elimination.

Findings of Fact and Conclusions of Law Re: Preliminary Injunction (Sept. 21, 1994) at 2, ¶ 4.
A week after the MTA Board voted fare restructuring, the Board voted to spend an additional \$123 million on the Pasadena Line. *Id. at 3, ¶ 5.*

247. **Then-CEO White characterized MTA's decision to proceed with the Pasadena Line as "idiocy."**

... [O]n the issue of risks that the CEO must take -- any CEO -- I faced several right away. One of them was Pasadena. And at the time in 1993 after having had to move several hundred million to get the Green Line finished the issue of Pasadena going to construction was on the table in the budget to be developed for 93/94. I thought frankly it was some kind of idiocy to talk about commencing a multi-year construction period of Pasadena given where we were. I thought it was self-evident that it didn't make sense. I got into a 3-month fight over Pasadena which delayed the adoption of the budget, which

ended in a way which was against my better judgment, but I made enemies in that regard. Made enemies, people who remembered that "I was not supportive" at the time.

MTA, Transcript of Franklin White's Comments Made in Open Session Regarding His Performance Appraisal, December 20, 1995, Board Meeting, M808381 at M808383-85.

248. Part of the \$123 million the MTA authorized for planning in 1994 was \$32.8 million of Proposition C 25% Transit Related Highway Improvement funds, which include high occupancy lane (HOV) funds. CEO White unsuccessfully opposed the use of HOV funds for rail construction as "dangerous" and "spend[ing] money we didn't have," noting that HOV projects are better "producers of congestion relief." *MTA Board Minutes (June 20, 1994), 951724 at 951726.*

249. After his unsuccessful efforts to avert the funding of planning and early work on the Pasadena Line with discretionary funding, Mr. White felt "traumatized" and unable to obtain more discretionary funding for bus operations. *MTA, Transcript of Franklin White's Comments Made in Open Session Regarding His Performance Appraisal, December 20, 1995 Board Meeting at 10, M808381 at M808390* ("I agree our discretionary dollars ought to go to making this bus system a better bus system. And I would plead guilty, I will plead guilty, that traumatized by the events in 93 regarding rail construction, I didn't at that point run to take every dollar into buses, but I think we need to make that bus system better.").

3. The 1996 Designation of Discretionary Funds for Construction

250. On February 28, 1996, the MTA Board approved a staff recommendation to approve a new budget for the Pasadena Line of \$803.9 million, a reduction of \$193.8 million and a "reaffirm[ation of MTA commitment to the [Pasadena Line] project and the financial capacity to fund the project with a ROD [Revenue Operations Date] in 2001." *Pasadena Blue Line Report to the MTA Board of Directors from Patricia V. McLaughlin, Arthur T. Leahy, and Stanley G. Phernambucq (Feb. 22, 1996), 960117.* An amendment was defeated to proceed with the Pasadena Line only if bus services and fares were safeguarded.

251. The \$803.9 million budget for the Pasadena Line is a \$193.8 million reduction from the previous \$997.7 million budget, based on implementation of cost reduction tactics

1 proposed in a peer review report and a cost reduction report. *Operations Peer Review*
2 *Committee Report on the Pasadena Blue Line (Oct. 10, 1995), and Pasadena Cost Reduction*
3 *Task Force Report (Nov. 29, 1995), attached as Exhibits 1 & 2 to Pasadena Blue Line Report to*
4 *the MTA Board of Directors from Patricia V. McLaughlin, Arthur T. Leahy, and Stanley G.*
5 *Phernambucq (Feb. 22, 1996), 960117.*

6 252. According to the cash flow plan, the second source of funds for the project is
7 \$263.1 million of Proposition C 40 Percent Discretionary funds, \$60.6 million of which was
8 already expended in prior years. Although these funds can be used for bus operations, the
9 MTA previously has used Proposition C 40 Percent Discretionary funds principally as
10 collateral to issue bonds for rail construction projects. *Pasadena Blue Line Report to the MTA*
11 *Board of Directors from Patricia V. McLaughlin, Arthur T. Leahy, and Stanley G. Phernambucq*
12 *(Feb. 22, 1996), 960117.*

13 253. The Board approved a cash flow plan showing the funds required by source for
14 each fiscal year. The cash flow plan shows that MTA plans to obtain \$387.8 million of the
15 \$803.9 million budgeted from State grant funds, only \$88.0 of which has been allocated to
16 date. Of the allocated funds, \$22.9 million has already been expended. One of the
17 assumptions of the plan was that the State would not reduce its level of financial participation
18 in the project. The State, however, has decided to delay full payment to MTA of the grant
19 funds from 1997 until 2002, *Rubin Decl. ¶¶ 23-29*, requiring MTA to “front” the State share
20 and, at a minimum, to pay finance charges. The State may also delay payment further or
21 reduce its share. *Id.*; *Pasadena Blue Line Report to the MTA Board of Directors from Patricia*
22 *V. McLaughlin, Arthur T. Leahy, and Stanley G. Phernambucq (Feb. 22, 1996), 960117.*

23 254. The second source of funds for the Pasadena Line is \$263.1 million from MTA
24 Proposition C 40% Discretionary funds, \$60.6 million of which was already expended in prior
25 years, leaving \$202.5 million for proposed construction costs. Although these funds can be
26 used for bus operations, MTA has previously principally used Proposition C 40%
27 Discretionary funds as debt service on bonds for rail construction projects. In its 20 Year
28 Plan, MTA estimated that only ten percent of Prop C 40% funds would be used for bus
operations or capital while 81 percent would be used for rail. *Pasadena Blue Line Report to*

1 *the MTA Board of Directors from Patricia V. McLaughlin, Arthur T. Leahy, and Stanley G.*
2 *Phernambucq (Feb. 22, 1996), 960117.*

3 255. The third source of funds for the Pasadena Line is \$153.0 million in
4 Proposition C 25% Transit-Related Highway Improvement Funds, \$48.7 of which has been
5 expended. MTA is currently spending little of Prop C 25% funds for specifically enumerated
6 uses such as HOV lanes or transit ways that would improve bus operations. Instead, MTA
7 has borrowed against the funds for rail construction, although rail construction is not a
8 specifically enumerated purpose for these funds. MTA has used a significant portion of the
9 Highway Improvement funds, as noted above, for debt service for the completion of the Green
10 Line and for Pasadena Line planning. MTA could use these funds for operating bus lines on
11 or crossing freeways. *Id.*

12 4. There Was Strong Dissent At The February 28
13 Board Meeting Against The Pasadena Blue Line

14 256. The MTA Board decision to proceed with construction of the Pasadena Blue
15 Line was not made without hesitation by some Board Members, nor without strong dissent by
16 others. Excerpts from the transcript of relevant portions of the February 28 Board meeting
17 concerning the Pasadena Line follow.

18 MTA Board Member Heit:

19 [T]he inability of the revenue stream to support the bonding are
20 a concern of mine and say we get to the, to 2001 and we don't
21 have the money to pay the bonds where do we get it from?

22 *Transcript of Board Meeting re Pasadena Line (Feb. 28, 1996) at 1.*

23 Supervisor and MTA Board Member Yaroslovsky:

24 [W]hat are the contingencies that we have to be concerned about
25 in connection with this or with any other line. Where is it the
26 estimates that you've made concerning the cost of the
27 construction are, sound or not, that all of the other financial
28 assumptions . . . assume obligations are sound, on other lines,
other construction projects, other operational needs.

1 I think in this case you have to make an assumption that
2 you're going to win the bus fare lawsuit and you've made that
3 assumption in this case. . . .

4 [M]y primary concern about this is what happens if one
5 of your assumptions doesn't pan out? What happens if there is
6 another problem on the red line that requires as we voted on
7 today a 120, a 130 million dollars worth of additional funds to
8 fix the sinkhole. What happens if the 800 million dollars turns
9 out to be 1.1 billion dollars on Pasadena for reasons that you
10 can't even phantom at this point in time.

11 What happens if you do lose the bus fare lawsuit? What
12 happens if Congress does reduce the amount of appropriation to
13 the rail capital program?

14 *Id. at 2.*

15 Supervisor and MTA Board Member Yaroslovsky:

16 The funding mix, this business about the funding mix is a phony
17 issue because its all, its all the same money, money, money is
18 being laundered from one fund to the other

19 *Id. at 5.*

20 Supervisor and MTA Board Member Yaroslovsky:

21 The last thing I want to say is this. . . . This is not just
22 about rail construction money. This is about all of our
23 discretionary money. As your memo to me, and I think you
24 copied every other member of board, expressly points out and I
25 would like to quote from it, just so that:

26 If the MTA did not build the Pasadena Blue Line,
27 Proposition A 35% rail funds could be used to
28 fund rail operations instead of rail capital. This
would free up Prop C 40% discretionary funds

1 currently programmed for rail operations which
2 could be used for other purposes such as bus
3 operations.

4 I just want to be clear for my own edification. When you
5 answered her question saying that today's action commits us,
6 obligates us on these other bonds, these rail bond issues If
7 it commits us then we are also committing, we are also
8 compromising our ability to use, what is it, Prop C 40%
9 discretionary funds for bus operations, are we? As a practical
10 matter.

11 *Id. at 9-10.*

12 MTA Official Linda Bohlinger

13 Now if we do not do the Pasadena Line at all . . . , then you could
14 free up rail operations money which then could free up
15 discretionary dollars.

16 *Id. at 9-10.*

17 Supervisor and MTA Board Member Yaroslovsky:

18 So as a practical matter, I just, let me just ask. Ask the
19 question, as a practical matter the money that is being
20 committed today, the, the source of funds that are being
21 committed today, commit us also or prevent us also from
22 accessing some of the discretionary dollars for bus operations
23 that we could have otherwise if we didn't do this project, isn't
24 that right?

25 Linda Bohlinger:

26 Correct.

27 *Id. at 11.*

28 Supervisor and MTA Board Member Yaroslovsky:

Alright, I, I hope that's, that's clear, because this is not

about one little fund here and one little fund there, as though they don't operate in tandem with one another. This is a laundering and I don't mean it in a negative sense. You are using one fund to do something here which freezes up some other fund to do what that other fund is also eligible to do, as your memo so aptly points out, and make no mistake about it. . . . The commitment to do this has a direct impact on bus operations and anybody who thinks and anybody who says that we can do this and improve the bus operations is smoking some good stuff, its just not there.

Id. at 12.

MTA Board Member Dewidsiak:

My concerns are to vote with what we can afford, and, basically I'm not really sure that, I'm not really sure that the, UCLA forecast which what is . . . this is all based upon, with a 5 percent growth in our, Prop C and Prop A monies is a realistic forecast, and I'll, I will refer you to this week's edition of Businessweek magazine which charts the economic growth over the last 40 years and there is no 5 year period with an average, 5 percent growth. I, I envision a shortfall right from the get go.

Id. at 15. "I don't think this agency has a history of bringing in anything under 10% of cost overruns." *Id. at 16.* "[Y]ou shouldn't give me an overly optimistic, rosy picture that, that pushes this and that everything is wonderful." *Id.*

5. MTA's Plan To Issue Bonds To Finance The Pasadena Line

257. MTA plans to issue a series of bonds to raise funds for the construction of the Pasadena Line. MTA anticipates that over half of the current budgeted cost of the Pasadena Line will come from bonding that uses future Proposition C 40% Discretionary and 25% Transit Related Highway tax revenues for debt service. The annual debt service required for

1 construction of the Pasadena Line is \$22.6 million annually for 30 years. *Rubin Decl.* ¶ 10, ¶¶
2 19-22.

3 258. A conservative estimate of annualized and one-time cost of continuing work on
4 the Pasadena Line to be paid out of funds that could be utilized for bus operations or
5 improvements over the next 30 years is \$1.2 billion dollars. *Rubin Decl.* ¶¶ 10-12 (including
6 debt service, the cost of fronting State grant funds, the cost of rail cars and operating
7 subsidy). For the same amount of money, the MTA could provide bus service to almost three
8 times as many riders as the Pasadena Line would serve. *Rubin Decl.* ¶¶ 14-17. Moreover,
9 because the great majority of Pasadena Line passengers are likely to be former bus
10 passengers, MTA will effectively convert many bus trips into Pasadena Line trips that coast
11 three times as much, risking service reductions. *Id.*

12 259. Halting expenditures on the Pasadena Line will preserve the last significant,
13 available funds that exist for relief in the instant action on behalf of MTA bus riders. MTA
14 and its predecessor, the LACTC, have already largely “used up” the existing Proposition A
15 35% Rail Construction and Operations revenues, committing most of these funds for decades
16 to come to cover past borrowings, leaving very little for subsidizing additional rail
17 construction or for paying the ongoing operating and capital renewal and replacement costs
18 of operating rail lines. MTA has also committed a large portion of Proposition C 25%
19 Transit-Related Highway Improvement funds, shifting funding from projects such as high
20 occupancy vehicle lanes and freeway extensions to backfilling overpromised financing to pay
21 for the completion of the Green Line and starting the Pasadena Line. Finally, MTA has
22 already made massive commitments of the last available major funding source, Proposition C
23 40% Discretionary funding, tying up large segments of these funds for three decades into the
24 future to support rail construction and to operate urban rail systems. If action is not taken
25 soon to prevent MTA from continuing with its past practices, such a large portion of the
26 funding from these three funding sources listed above will be committed for rail construction
27 projects and rail operations that the amounts available for other purposes, particularly bus
28 operations and capital, will be reduced to the point of insignificance. *Rubin Decl.* ¶ 9.

“Forcing a halt to Pasadena Line spending will preserve Proposition C 40% Discretionary

1 and 25% Transit Related Highway Improvement funds for other, more productive purposes
2 for the greater benefit of all Los Angeles County residents, taxpayers, and transit users, but
3 particularly minority members of these groups. Any other action will allow continued 30-
4 year commitments of this last hope for real improvement in the Los Angeles transit system to
5 non-productive rail construction and operating expenditures.” *Id.*

6 260. Once funds are obtained from bond issuance, they will be further committed
7 when MTA enters into construction contracts. At the present time, MTA has not entered into
8 many major contractual commitments for Pasadena Blue Line construction purposes and,
9 therefore, delaying construction of it would have relatively minor negative cost impact if a
10 decision was later made to allow construction to proceed. Conversely, allowing construction
11 to proceed at this point would result in major, non-recoverable commitments to construction
12 that would have no benefit if construction were later to be cancelled. Depending on the exact
13 timing of such a future decision to cancel construction of the Pasadena Line, such non-
14 recoverable expenditures could run into the hundreds of millions of dollars. If these scarce
15 funds are expended on construction of the Pasadena Line, then they will not be available to
16 assist in the resolution of the current lawsuit in favor of the plaintiff. *Rubin Decl.* ¶ 4.

17 6. Issuing Bonds For The Pasadena Line Will Cause

18 MTA To Exceed Restrictions On Its Debt Load

19 261. In 1995, an MTA consultant calculated MTA’s existing annual debt service for
20 fiscal year 1995-96 as \$226.5 million and exceeding \$250 million in 2003-04. *MTA, Public*
21 *Financial Management, Inc., Outstanding Debt Analysis (Aug. 15, 1995)*. MTA’s annual debt
22 service is not scheduled to fall below \$200 million until 2011-12 and below \$196 million in
23 2021-22. *Id.* See also *MTA, Public Financial Management, Inc., Debt Management Schedule*
24 *(Feb. 3, 1995) M301984*. The following chart entitled “Stacked Debt Landscape” illustrates
25 the mountain of MTA’s debt service load. *MTA, Investor Presentation (June 1996), M821158,*
26 *M821208*.

THIS PAGE INTENTIONALLY LEFT BLANK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Issuance of further bonds for the Pasadena Line will increase MTA's debt service obligations
2 by \$22.6 million for 30 years.

3 262. MTA Board member and County Supervisor Zev Yaroslavsky has stated that
4 MTA will reach its bonding limit if it tries to finish the Pasadena project, leaving MTA
5 without funds to improve bus service: "I think the MTA staff has to demonstrate to the board
6 and the public how it can improve the bus system and exhaust its bonding capacity, as it will
7 do with Pasadena." According to Supervisor Yaroslavsky, "I just don't see how you can do
8 it." *Boyarsky, Satisfying 2 Powerful Politicians a Tough Challenge for MTA Chief, Los Angeles*
9 *Times, February 23, 1996, B-1 at B-6.*

10 263. Proposition 192, the Seismic Retrofit Bond Act, was passed in 1996 to require
11 that State funds could not be programmed to mass transit guideways in Los Angeles County
12 until a finding that MTA "has adopted a specific plan that the agency can reduce its debt,
13 achieve solvency, and restore affordable bus service for the transit-dependent population."
14 *Rubin Decl. at 21.* Proposition 192 adopts a State policy requiring that MTA reduce its debt, a
15 policy MTA will violate if it issues bonds for the Pasadena Line and incurs further debt. *Id.*
16 *at ¶¶ 45-47.* Construction of the Pasadena Line will also operate against the State policy of
17 requiring MTA to "restore affordable service for the transit-dependent." *See generally MTA,*
18 *Briefing For California Transportation Commission re Prop 192 (Apr. 30, 1996).*

19 7. The Development Of The Pasadena

20 Line Is Replete With Irregularities

21 264. In June and July, 1993, the MTA Board rejected as unworkable various
22 financing options for the Pasadena Line, including federalizing the Pasadena Line.
23 Nevertheless, the MTA Board voted on August 25, 1993, to proceed with the Pasadena Line in
24 an amount not to exceed \$97 million for FY 1993-94 to complete final design, to proceed with
25 utility relocation, to proceed with the Los Angeles River Bridge, and to complete the
26 acquisition of properties for approved stations. The Board also voted to identify "alternative
27 funding sources" of \$57 million for the Pasadena Line. *MTA, Tom Rubin, Discussion of*
28 *"Special Work Program -- Pasadena Line Budget -- Funding from FY 93-94 Work Program"*
and "Alternative Approaches to \$57M for Pasadena Line" (Oct. 20, 1994), 011340.

1 265. The initial published budget for the Pasadena Line was \$841 million, not
2 including costs of rail cars, capitalized interest and unallocated common rail construction.
3 The \$97 million allocated in August 1993 was on top of millions allocated in previous years.
4 *Id.*

5 266. On September 15, 1993, MTA staff identified three sources for the \$57 million:
6 \$30 million from TOS/Proposition C 25% funds from previously-approved highway
7 improvement projects, \$20 million from allocation of previously committed California State
8 rail bond funds that could be committed only upon submission of a full funding plan from the
9 Pasadena line, and \$7 million in a loan from the City of Pasadena. The staff presentation
10 stated that the only alternatives considered were various funding alternatives and that "[n]o
11 consideration was given to 'no-build' or multi-year funding alternatives." *Id. at 011342-43.*

12 267. On July 20, 1994, a week after approving the fare restructuring, the MTA
13 Board voted to transfer \$32.8 million of unexpended funds from highway HOV projects to the
14 Pasadena Line. CEO Franklin White unsuccessfully opposed the use of HOV funds as
15 "dangerous" and "spend[ing] money we didn't have." MTA Board minutes state:

16 CEO Franklin White attempted to explain that the HOV funds
17 cover projects to be accomplished over the next 30 years, not
18 just a few months. He said these funds should not be removed
19 from HOV into Rail Construction. It is important to maintain
20 this account because we are at the beginning of these projects
21 and even if one is under budget, another could be over. It is
22 dangerous to remove funds this early in the program, it could
23 result in some projects not happening due to a lack of dollars.
24 The HOV projects are among the best producers of congestion
25 relief, which is the goal of the 30 year plan. Mr. White also
26 expressed concern that allocating the \$60.8 million would be a
27 commitment to embark on laying rail and there is no assurance
28 there will be funds next year.

* * *

1 CEO Franklin White said we were on the edge of repeating what
2 happened on the Green Line, proceeding too far without
3 assurance there was enough money. If we move money from
4 HOV projects, it will change the 30 year plan. There is no way
5 to know when additional dollars will be available. HOV gives
6 more to relieve congestion than rail. He asked the Board not to
7 spend money we didn't have.

8 *Minutes of MTA Regular Board Meeting (July 20, 1994), 951724 at 951726-28.*

9 268. MTA staff failed to evaluate for the Board the fiscal impact of the Pasadena
10 Line extension on the MTA budget and bus operations. Shortly after the Pasadena Line vote,
11 MTA staff made available deficit models which revealed that approval of the line would
12 contribute to a budget deficit while disapproval would have largely avoided the deficit.

13 *Testimony of Antonio Villaraigosa; Testimony of Thomas Rubin.*

14 F. MTA Has Spent Hundreds Of Millions Of Dollars
15 On Metrolink, A Commuter Rail System That Provides
16 Superior Service To An Overwhelmingly White Ridership

17 269. Prior to the existence of the regional commuter rail system now known as
18 Metrolink or the Southern California Regional Rail Authority ("SCRRA"), the LACTC
19 during the late 1980s began to plan a regional five-county commuter rail system. *MTA*
20 *Admission No. 63 (admitted).*

21 270. The Metrolink commuter rail system is a five-county network of rail services.
22 The member agencies of Metrolink/SCRRA are MTA, the Orange County Transportation
23 Authority, the Riverside Transportation Commission, the San Bernardino Associated
24 Government, and the Ventura County Transportation Commission. *Amended Pretrial*
25 *Conference Order at 6 (Jan. 4, 1996).*

26 1. The Metrolink Ridership Is Quite Small,
27 Financially Well-Off And Non-Transit-
28 Dependent, And Overwhelmingly White

29 271. During FY 1994-95, Metrolink averaged approximately 16,400 daily inbound
30 and outbound daily boardings. *MTA Admission No. 65 (admitted).* The lowest number of
31 average-daily-boardings per month during that fiscal year was 15,136 in August 1994; the

1 highest number was 18,090 in March 1995. Since most Metrolink patrons are roundtrip
2 commuters, the number of daily inbound and outbound boardings is approximately double
3 the number of people who use Metrolink each day. As the MTA staff advised the MTA Board
4 in 1995: "Metrolink currently serves about 17,000 daily boardings, or approximately 8,500
5 riders." *Metrolink Performance Summaries for the Month of May, 1995, at 2 (undated),*
6 *M332571 at M332572; Ridership Report, at 3 (Sept. 1995), M804716 at M804720; Supplement*
7 *to SCRRRA Report, at 2 (Feb. 3, 1995), M335870 at M335871.*

8 272. The typical Metrolink passenger tends to be a professional worker, with a
9 household income of approximately \$60,000 to \$65,000, and with access to a car. *MTA*
10 *Admission No. 66 (admitted).*

11 273. A large majority of all Metrolink passengers are white. Of Metrolink
12 passengers identifying their race or ethnicity during a 1993 survey, 72 percent were white.
13 *Metrolink Rider Survey (April, 1993), M801073 at M801076-77; see also MTA's Relationship*
14 *with the SCRRRA, at 11 (Jan. 25, 1995), M323405 at M323415.* On the only Metrolink line
15 operating entirely within Los Angeles County -- the Santa Clarita Line -- 78 percent of the
16 Metrolink passengers identifying their race or ethnicity were white. *Id.* On the Ventura Line
17 -- most of which is within Los Angeles County -- 80 percent of the Metrolink passengers per a
18 1994 on-board survey responded that they were white/Caucasian. *MTA Admission No. 67*
19 *(admitted).*

20 2. **Metrolink Passengers Receive High Quality Service**

21 274. Metrolink provides quality service to its passengers, particularly vis-a-vis the
22 bus service provided by the MTA to its bus riders. Each of the Metrolink double-decked
23 passenger coaches has soft-cushion seating, a restroom, a bicycle rack, a water fountain,
24 counters for laptop computers, and a cellular phone. *MTA Admission No. 68 (admitting in part*
25 *that "each Metrolink passenger car is double-decked, has padded seats, a restroom, a water*
26 *fountain and counters").*

27 275. Metrolink "Ambassadors," part-time employees, work at Metrolink Stations in
28 the morning to help passengers with ticketing, to answer questions, and to convey messages;
the Ambassadors provide the same assistance in the afternoon at Union Station.

1 *Metrolink/SCRRRA Annual Financial Report For The Fiscal Year Ending June 30, 1992, at iv*
2 *(Dec. 28, 1992), M332577-A at M332600-A; Metro Moves (May, 1993), 000200 at 000201; Dep.*
3 *of Richard Stanger, at 158-59 (Sept. 26, 1995) (Vol. 2).*

4 276. Unlike the MTA, which tried to eliminate monthly passes for MTA bus riders,
5 Metrolink encourages the use of discounted monthly passes. As stated by MTA official and
6 Metrolink Executive Director Richard Stanger in a sworn Declaration submitted in this case
7 in the fall of 1994: "The Metrolink fare structure encourages the purchase of monthly or 10-
8 trip passes." *Dec. of Richard Stanger, at 6, ¶19 (Sept. 20, 1994).* Asked about why fares
9 should be structured to encourage the use of discounted monthly passes, Mr. Stanger replied
10 in sworn testimony: "We do that to encourage the habit of commuting. Any -- I imagine
11 most businesses, if you buy a lot at one time, you get a quantity discount. So we're doing
12 nothing more than what I think ordinary business would do, anyway." *Dep. of Richard*
13 *Stanger, at 147-48 (Sept. 26, 1995) (Vol. 2); MTA Admission No. 69 (admitted that "the quoted*
14 *deposition testimony of Richard Stanger speaks for itself").*

15 277. Metrolink sells its monthly passes through the mail and over the phone for
16 purposes of rider convenience, and it also allows its riders to purchase monthly passes and
17 other fare media through the use of a credit card. MTA staff reported to the MTA Board in
18 1995 that "[t]wo-thirds of Metrolink riders purchase monthly passes." *Dep. of Richard*
19 *Stanger, at 147, 181, 209-10 (Sept. 26, 1995) (Vol.2); MTA's Relationship with the SCRRRA, at 13*
20 *(Jan. 25, 1995), M323405 at M323417.*

21 278. Metrolink passengers who use monthly passes or round-trip tickets need not
22 pay a separate fare or even buy a transfer in order to board an MTA bus, a municipal bus,
23 the Red Line, and even the Blue Line (for transit stops close to downtown Los Angeles) on
24 their way to and from a Metrolink Station. All that the Metrolink passengers need to do is to
25 show their Metrolink fare media when they board adjacent public transit, and they then ride
26 for free. *MTA Admission No. 70 (admitted in substance).*

27 3. MTA Has Paid Hundreds Of Millions Of Dollars To Build And To Operate Metrolink

28 279. MTA (LACTC) negotiated with the Southern Pacific and Santa Fe railroads

1 for the acquisition of the rail rights-of-way necessary for such a commuter rail system. *MTA*
2 *Admission No. 64 (admitted)*. The rights-of-way for the commuter rail system and for other
3 purposes were acquired not by Metrolink but by the respective countywide transit agencies.
4 Of the approximately \$1 billion paid for the rights-of-way, MTA (LACTC) paid
5 approximately \$600 million, more than was paid by the other four countywide transit
6 agencies combined. *Dep. of Richard Stanger, at 117 (July 27, 1995) (Vol. 1); Metrolink/SCRRRA*
7 *Annual Financial Report For The Fiscal Year Ended June 30, 1992 (Dec. 28, 1992), M332577-*
8 *A.*

9 280. During Metrolink's first fiscal year, FY 1991-92, MTA (LACTC) paid nearly
10 three-quarters of Metrolink's capital expenses: \$147.6 million out of a total of \$204.8 million.
11 *MTA Admission No. 71 (admitted "that in FY 1991-92, the LACTC contributed \$147.6 million*
12 *to Metrolink's total capital budget of \$204.8 million").*

13 281. As to the MTA's initial improvement of the rail lines and its contribution to the
14 purchase of 23 locomotives (at \$2.2 million each) and 94 passenger coaches (at \$1.37 million
15 each), Metrolink reported in 1993 that the MTA had spent \$388 million not including its
16 purchase of rail rights-of-way. *Exh. 3 to Dec. of Richard Stanger (Sept. 20, 1994); Metrolink/*
17 *SCRRRA Annual Financial Report For The Fiscal Year Ending June 30, 1992, at iv (Dec. 28,*
18 *1992), M332577-A at M332600-A; Metrolink/SCRRRA Final Budget Fiscal Year 1993-94,*
19 *Appendix A, at Chart 4 (Sept., 1993), 957221 at 957327.*

20 282. As to operating expenses during Metrolink's first fiscal year, FY 1991-92, and
21 for every year thereafter, MTA has paid more than 60 percent of Metrolink's operating
22 expenses. *MTA Admission No. 72 (admitted).*

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

283. With regard to the Metrolink/SCRRRA budget for FY 1994-95, MTA's

contributions to Metrolink/SCRRRA were as follows:

| | |
|---------------------|---|
| \$ 27,580,100 | Operating Subsidy |
| \$ 5,256,200 | Maintenance of Way |
| \$ 36,975,000 | Capital Improvements |
| <u>\$ 2,500,000</u> | Reserve for the Expanded Santa Clarita Line |
| \$ 72,311,300 | Total MTA Contribution to Metrolink |

Authorization of LACMTA Share of FY 1994-95 SCRRRA Budget (May 2, 1994), M0230134; MTA Admission No. 73 (admitting "that in its 1994-95 budget, MTA contributed \$76.0 million to SCRRRA").

284. Although the foregoing MTA contribution to Metrolink for FY 1994-95 was higher than normal due to increased capital and operating expenses within Los Angeles County following the Northridge earthquake, MTA's contribution for FY 1994-95 was less than MTA's amended contribution of \$98 million to Metrolink for FY 1993-94. *MTA Admission No. 74 (admitting that "MTA's total contribution to the SCRRRA budget for Fiscal Year 1994-95 was less than the MTA's amended contribution of \$98 million to the SCRRRA budget for Fiscal Year 1993-94"); Memo from Richard Stanger to the MTA Finance, Budget, & Efficiency Committee, at 2 (Jan. 21, 1994) (revised Jan. 25, 1994), M322539 at M322540; Minutes of the MTA Regular Board Meeting, at 5 (Jan. 26, 1994), M901902 at M901906.*

285. Metrolink passengers receive the highest subsidies of all riders of public transit in Los Angeles County. As calculated by the MTA in 1994, Metrolink passengers in 1992 received a total subsidy per boarding of \$21.02, and a total subsidy per passenger mile of \$1.25. For FY 1992, apart from the maintenance-of-way costs and also putting to one side the hundreds of millions of dollars spent on acquiring the rights-of-way, when the MTA combined merely the annual capital subsidy with the annual operating subsidy for Metrolink, the MTA reported that "the total subsidy per passenger becomes \$34.45 -- this compares with the total subsidy per passenger of \$1.17 for the average SCRTD bus rider in FY92 and \$.34 for the subsidy on the most cost-effective bus line, the 204 (Vermont)." *MTA, A Look At The MTA (Jan. 1994), 800042A at 800071A-74A; MTA, Metrolink Costs, at 8 (April 24, 1993), 011067 at 011074.*

1 286. Metrolink riders also receive a high subsidy for the security provided by
2 Metrolink, which is not all of the security provided to Metrolink. As calculated by the MTA
3 in 1994, each passenger boarding Metrolink receives \$1.29 of personal security per boarding
4 for the security provided by Metrolink, while MTA bus riders receive only 3¢ of security per
5 boarding. *MTA, A Look At The MTA (Jan. 1994), 800042A at 800093A-95A.*

6 287. The security provided by Metrolink includes only the on-board security
7 contracted out to the Los Angeles County Sheriff's Department at more than \$2 million per
8 year, and the layover facility security contracted out to a private security service at
9 approximately \$1.3 million per year, but it does not include: first, the security necessary to
10 protect the Metrolink rights-of-way, which is paid for by the counties or their transit agencies
11 (for the three fiscal years ending on June 30, 1995, MTA paid approximately \$3,928,905 for
12 this security); or, second, the security at Metrolink Stations, which is provided by the
13 jurisdictions that own and operate the various Metrolink Stations and/or by their police or
14 sheriff's departments. *Dep. of Richard Stanger at 197-98, 247-49 (Sept. 26, 1995) (Vol.2);*
15 *Evaluation Criteria for Contract No. MS056 Law Enforcement Services (Feb. 3, 1995),*
16 *M332895, attached to Metrolink/SCRRRA Agenda (Feb. 10, 1995), M332857; A Descriptive Study*
17 *of Transit Policing Systems Within Los Angeles County, at 6 (Jan. 19, 1993), D112144 at*
18 *D112150.*

19 288. As to the Metrolink on-board security provided under contract with the Los
20 Angeles Sheriff's Department (LASD), the Metrolink/SCRRRA Board in the spring of 1995
21 considered but rejected a less expensive proposal for that security presented by the MTA
22 Transit Police. In part because the MTA Transit Police proposal was half-a-million dollars
23 less over three years than the proposal by the LASD, MTA staff recommended a contract
24 with the MTA Transit Police. At the Metrolink/SCRRRA Board meeting on April 21, 1995,
25 Metrolink Executive Director Richard Stanger explained to the Board that the MTA Transit
26 Police proposal not only had "a lower price" but also promised "33 patrol officers compared
27 with 23 deputies in the Sheriff's proposal." The Metrolink/SCRRRA Board rejected the staff
28 recommendation and unanimously agreed to award the three-year contract to the LASD at
the higher amount of \$7,859,623, plus a 10 percent contingency reserve, for a possible total

amount of \$8,645,585. *Evaluation Criteria for Contract No. MS056 Law Enforcement Services (Feb. 3, 1995), M332895, attached to Metrolink/SCRRRA Agenda (Feb. 10, 1995), M332857; Recommendation for Contract Award Contract No. MS056 Law Enforcement Services (April 14, 1995), M332762, attached to Agenda for Continued Metrolink/SCRRRA Board Meeting (April 21, 1995), M332758; Minutes of SCRRRA Continued Board Meeting (April 21, 1995), M332674, attached to Agenda for Metrolink/SCRRRA Board Meeting (May 12, 1995), M332637.*

4. The Metrolink Ridership Receives Millions Of Dollars Of Additional Subsidies And Benefits

Nowhere Set Forth In The Metrolink/SCRRRA Budgets

a. Metrolink Stations Are Not Owned Or Operated By Metrolink, But Primarily By

The Local Jurisdictions Served By Metrolink

289. The Metrolink ridership receives millions of dollars of additional public subsidies and benefits nowhere set forth in the Metrolink budgets, nor used to calculate what would be even higher per-passenger subsidies on Metrolink. Metrolink Stations, for example, are not the responsibility of Metrolink, but instead, as stated in Metrolink budgets, the Metrolink Stations are "[c]onsidered off-budget" as they are built, owned, operated, and maintained (including the provision of police security) by the local jurisdictions being served, usually the cities but occasionally Los Angeles County. *MTA Admission No. 79 (admitted that "Metrolink stations are built, owned, operated, and maintained by the local jurisdictions being served by them"); Metrolink/SCRRRA Preliminary Budget Fiscal Year 1994/95, at Capital Budget, III-1 (May 17, 1994), 957420A at 957466; A Descriptive Study of Transit Policing Systems Within Los Angeles County, at 6 (Jan. 19, 1993), D112144 at D112150; Dep. of Richard Stanger, at 192, 284-86 (Sept. 26, 1995) (Vol. 2).*

290. As an MTA official admitted on behalf of the MTA in deposition testimony, this local ownership of the Metrolink Stations was dictated by the MTA, which also has a minority ownership in some of the stations:

It was the MTA's policy that the cities would be responsible for constructing the individual commuter rail stations. And there were some specific instances where agreements were negotiated between the MTA and individual cities whereby the MTA would

1 contribute some portion of the cost, and in doing so, acquire the
2 minority ownership in the station.

3 *Dep. of Dana Woodbury, at 44 (July 21, 1995) (Vol. 1); MTA Admission No. 80 (admitted that*
4 *"the quoted deposition testimony of Dana Woodbury speaks for itself").*

5 291. Although Metrolink recognizes that constructing a Metrolink Station can cost
6 millions of dollars -- construction of the Norwalk/Santa Fe Springs Metrolink Station and
7 Transportation Center cost approximately \$5,388,836 -- Metrolink has been able to
8 acknowledge, with regard to a \$5 million expenditure such as this, that "this project had no
9 impact on the SCRRA budget." *MTA Admission No. 81 (admitted in substance).*

10 292. Although Metrolink thus has not been financially responsible for the Metrolink
11 Stations, another agency, MTA, has played a role in approving the financing of Metrolink
12 Station planning, construction, operations, maintenance, and security, a role which it has
13 played in part through its administration and approval of all spending of Proposition A and
14 Proposition C Local Return funds. Through its authority and control, MTA has approved the
15 expenditure by local jurisdictions of tens of millions of dollars on Metrolink Stations and
16 adjacent facilities. *MTA Admission No. 82 (admitted that the "MTA administers the Proposition*
17 *A and C Local Return Program and that through this program local jurisdictions have funded*
18 *the construction of Metrolink Stations"); Dep. of Patricia McLaughlin, at 139, 239-75 (Sept. 6,*
19 *1995) (Vol. 2); Proposition A Local Return Program FY 1991-92, at 8-9, 13-14 (Aug. 26, 1992),*
20 *D116296 at D116303-04, D116308-09; Proposition A (25%) and Proposition C (20%) Local*
21 *Return Program Approved Projects Report FY 1992-93, at 2-30 (July 26, 1993), D116109 at*
22 *D116110-38.*

23 293. For example, during FY 1991-92, when the construction of Metrolink Stations
24 was just beginning, MTA (LACTC) approved the expenditure of \$7,362,664 on Metrolink
25 Stations and adjacent facilities, as follows: \$50,000 by Baldwin Park; \$827,132 by
26 Claremont; \$614,000 by Covina; \$1,081,000 by El Monte; \$192,664 by Glendale; \$5,250,000
27 by the City of Los Angeles (for the Chatsworth Metrolink Station); \$175,000 by Norwalk;
28 and \$50,000 by Pomona. *Proposition A Local Return Program FY 1991-92, at 8-9, 13-14 (Aug.*
26, 1992), D116296 at D116303-04, D116308-09.

294. During the following fiscal year, FY 1992-93, when some of the big bills were due and when Proposition C Local Return funds became available, MTA approved the expenditure of \$24,701,257 on Metrolink Stations and adjacent facilities, as follows:

| <u>Expenditure</u> | <u>Jurisdiction</u> |
|--------------------|---|
| \$1,503,060 | Baldwin Park, |
| \$1,815,170 | Burbank, |
| \$ 788,309 | Claremont, |
| \$ 973,003 | Covina, |
| \$ 603,068 | El Monte, |
| \$4,293,932 | Glendale (plus \$1,443,900 for a commuter rail shuttle), |
| \$ 60,000 | Lancaster, |
| \$2,054,000 | Los Angeles (for the Chatsworth Metrolink Station and Child Care Facility), |
| \$2,833,334 | Los Angeles (for the Sylmar/San Fernando Metrolink Station), |
| \$2,737,000 | Los Angeles (for the Van Nuys Metrolink Station), |
| \$3,000,000 | Los Angeles (for Union Station), |
| \$1,181,855 | Norwalk, |
| \$1,234,500 | Pomona, |
| \$1,524,020 | Santa Clarita, |
| \$ 100,000 | West Covina (plus \$35,000 for a Metrolink shuttle). |

Proposition A (25%) and Proposition C (20%) Local Return Program Approved Projects Report FY 1992-93, at 2-30 (July 26, 1993), D116109 at D116110-38; MTA Admission No. 84 (admitting higher "total costs" for most of the foregoing Metrolink Stations, e.g., "\$19.690 million" for the "Chatsworth Metrolink station and child care facility, land purchase and roadway").

295. In subsequent years, the MTA approved tens of millions of dollars of additional Local Return spending on Metrolink Stations and adjacent facilities, initially again mostly on construction, and thereafter increasingly on operations, maintenance, insurance, and security.

1 *Memo to Pat McLaughlin re: FY-94 Proposition A and FY94-FY96 Proposition C Local Return*
2 *Approved Projects Report (July 22, 1994), D116238, and attached Reports at 1-31, 1-26 (July 21,*
3 *1994), D116239-95; Memo to Pat McLaughlin re: FY-95 Proposition A and Proposition C Local*
4 *Return Approved Projects Report (Feb. 2, 1995), D116314, and attached Reports at 1-31, 1-37*
5 *(Feb. 1, 1995), D116315-72.*

6 296. Even prior to the availability of Proposition C Local Return funds for MTA-
7 approved local expenditures on the purchase and renovation of Metrolink Stations, MTA
8 (LACTC) cited the "Commuter Rail stations" as among the "most notable projects" funded
9 by MTA-approved Proposition A Local Return funds. *Memo from Neil Peterson re Review of*
10 *Proposition A Local Return Policies, at 2 (Nov. 6, 1990), M1041440 at M1041441.*

11 b. MTA Has Expended Millions Of Dollars
12 To Reroute Buses, To Create New Bus
13 Feeder Systems, And Otherwise To Make
14 Commuting Easy For Metrolink Passengers

15 297. Metrolink passengers also have benefited from the MTA's expenditure of
16 millions of dollars to reroute bus lines to serve Metrolink Stations, to create new bus feeder
17 routes to serve Metrolink stations, and to upgrade the bus-rail interface at Union Station. As
18 to the latter, an MTA official stated in deposition testimony that the purpose was "to establish
19 bus service to specifically meet the needs of commuter rail patrons arriving at Union Station."
20 *Dep. of Dana Woodbury, at 49 (July 21, 1995) (Vol. 1). See also MTA Admission No. 85*
21 *(admitted "that MTA did reroute bus lines to serve Metrolink stations," and "that MTA improved*
22 *bus rail interface at Union Station"); Union Station Bus/Rail Interface Update (Sept. 8, 1992),*
23 *M330881; Metrolink Bus Plaza Charges, at 2 (Sept. 18, 1992), M330887 at M330888.*

24 298. The bus-rail interface at Union Station involved not just an initial grant of
25 \$645,000 to LADOT to provide a new DASH Downtown feeder line, but also the construction
26 at Union Station of a new Metrolink Bus Plaza, sometimes also referred to as the Upper Level
27 Terminal:

28 [A] special terminal was constructed known more commonly as
the Upper Level Terminal at the Union Station, which would be
served by bus lines identified by the various carriers operating

1 in the area, specifically to facilitate the transfer between
2 Metrolink patrons and those connecting bus services.

3 The construction of this Metrolink Bus Plaza cost MTA at least \$1,240,000. *Union Station*
4 *Bus/Rail Interface Update (Sept. 8, 1992), M330881; Dep. of Dana Woodbury, at 51, 55, 60*
5 *(July 21, 1995) (Vol. 1); Metrolink Bus Plaza Charges, at 2 (Sept. 18, 1992), M330887 at*
6 *M330888; MTA Admission No. 86 (admitted "that LADOT received a \$645,000 grant to provide*
7 *new feeder service to Union Station").*

8 299. In planning the rerouted and new bus service in downtown Los Angeles,
9 Metrolink and MTA (LACTC) agreed that "there should be minimal overlap with the Red
10 Line service" due to begin in 1993, as there was "a real possibility otherwise of making the
11 bus service so attractive it diverts people away from the Red Line." *Memo from Richard*
12 *Stanger to Judy Wilson re: Distribution of Bus Service at Union Station (April 27, 1992),*
13 *M330780.*

14 c. Thanks To MTA Funding, Some Metrolink
15 Passengers Receive Free Transportation
16 From Metrolink Stations To Their Places
17 Of Employment, And Some Passengers
18 Receive Subsidized Child Care Too

19 300. Metrolink passengers also have benefitted from MTA's expenditure of funds
20 for free bus shuttles from Metrolink Stations to the passengers' places of work and back. For
21 example, to facilitate commuting to and from the Chatsworth Metrolink Station -- in
22 Chatsworth, in Los Angeles County, on the Metrolink Ventura Line -- MTA helped to create
23 and initially fully funded the "12th Council District TMA Flat-Fare Taxi Shuttle," a free
24 shuttle service based at the Chatsworth Metrolink Station. This free shuttle service was
25 described in a 1993 report/study by an MTA consultant as follows:

26 The service is designed to take employees to and from worksites
27 in the Chatsworth area, connecting with the Chatsworth
28 Metrolink Station. The system is designed to serve employers
with 100 or more employees in the following communities, a
roughly 5 mile radius from the Chatsworth Metrolink Station:
Chatsworth, Canoga Park, Granada Hills, West Hills,

Northridge, Winnetka, Woodland Hills.

* * *

Contrary to the service name, no fare is charged. . . . The project started with an annual budget of \$76,000 and was increased to \$184,000 to meet the demand for service. All funding is provided by an LAMTA (LACTC) grant to the MTA.

San Fernando Valley Transit Restructuring Study, Task 2.2 Service Assessment, at 8 (Oct., 1993), D110020 at D110028; Dep. of Jon Hillmer, at 107-09 (Aug. 11, 1995); MTA Admission No. 87 (admitted that "MTA has awarded funding to projects that provide free transportation from transit centers to work places such as the 12th Council District MTA Flat-Fare Shuttle that circulates employees between the Chatsworth Metrolink Station and local job sites").

301. MTA (LACTC) similarly provided \$152,000 in funding to the Burbank Media District Shuttle, a shuttle service providing workplace transit connections for Metrolink passengers between the Burbank Metrolink Station and their places of employment in the Burbank Media District. *MTA Admission No. 88 (admitted).*

302. MTA also has paid millions of dollars to construct and to support child-care facilities at Metrolink Stations, child-care facilities which have a priority for the children of Metrolink passengers first, the children of bus riders second. For example, the MTA Board in the summer of 1995 authorized the expenditure of nearly \$1 million (actually \$935,000) for the construction of a child-care facility at the Sylmar/San Fernando Valley Metrolink Station on the Metrolink Santa Clarita Line. *MTA Admission No. 89 (admitted that "MTA in summer 1995 approved award of a contract for \$935,000 for the construction of a child-care facility located at the Sylmar/San Fernando Metrolink Station, which is located on Metrolink's Santa Clarita Line"); MTA Operations Committee Recommendation (June 14, 1995), M322690; Dep. of Richard Stanger, at 258-59 (Sept. 26, 1995) (Vol. 2).*

303. On February 22, 1995, the MTA Board authorized the expenditure of \$1,395,000 for the construction of a child care facility at the Chatsworth Metrolink Station on the Metrolink Ventura Line. The MTA Board thereafter agreed to pay "\$56,000 to supply both centers with appliances, play-yard equipment, and indoor furnishings . . . to ensure . . . a

1 quality operation . . . for new child care centers." *MTA Admission No. 90 (admitted that "on*
2 *February 22, 1995, the MTA Board approved the award of a \$1,395,000 fixed-price contract for*
3 *the construction of the Chatsworth Station Depot and Child Care Center")*; *Minutes of MTA*
4 *Regular Board Meeting, at 12 (Feb. 22, 1995), M902235 at M902246; Planning and*
5 *Programming Committee Recommendation (June 14, 1995), M322756 at M322757.*

6 304. The use of these Metrolink Station child-care facilities was not intended to
7 serve everyone on a first-come-first-served basis, or even to serve all transit-related parents
8 and children on a first-come-first-served basis. Instead, as stated by MTA, the child-care
9 facility at the Sylmar/San Fernando Valley Metrolink Station was specifically intended to
10 serve the children of Metrolink passengers first, and the children of bus riders second:

11 To ensure that Metrolink patrons and other mass transit users
12 have access to the facility, a priority system for filling child care
13 spaces would be established: priority would be given to children
14 whose parents commuted via Metrolink commuter rail either to
15 or from the station site, followed by children whose parents
16 commute via bus or other forms of mass transit.

17 *MTA Environmental Initial Study, Sylmar/San Fernando Metrolink Station Child Care Center,*
18 *Findings, at 3 (undated), M338960 at M338962, attached to Planning and Programming*
19 *Committee Recommendation re Sylmar/San Fernando Station Child Care Center (Dec. 15,*
20 *1994), M338930; MTA Admission No. 91 (admitted that the quoted document "speaks for*
21 *itself").*

22 d. Through Its "Call For Projects," MTA Spends
23 Millions Of Dollars On Transit Projects Which
24 Enhance Metrolink's Commuter Rail Service

25 305. MTA, through its 1995 Call for Projects, awarded approximately \$9 million to
26 transit projects which benefited or enhanced Metrolink, its image, and/or its commuter rail
27 services. Among the transit projects funded by MTA were proposed projects to provide
28 additional security at the Metrolink Stations in Burbank, Claremont, Norwalk/Santa Fe
Springs, Pomona, and Vincent Grade/Acton. *MTA Admission No. 92 (admitted that "MTA*
awarded funds under the Transit Security modal category of the 1995 Call-for-Projects for: the

1 *Burbank Regional Intermodal Transportation Center, the City of Claremont Watchful Eyes*
2 *Depot Security Project, the Norwalk/Santa Fe Springs Transportation Center, the Pomona*
3 *Regional Transit Center Security System Project, and the Acton Park-and-Ride Lot");*
4 *Transportation Improvement Program (TIP) Call for Projects Staff Recommendations, at 35-76*
5 *(May 16, 1995), M322807 at M322841-82; Dep. of Richard Stanger, at 263-74 (Sept. 26, 1995)*
6 *(Vol. 2); Dep. of Bob Cashin, at 67-70 (Oct. 2, 1995).*

7 e. Most Metrolink Passengers Receive Large
8 Transit Subsidies From Their Employers

9 306. Apart from the public subsidies received by Metrolink passengers, many
10 Metrolink passengers also receive transit subsidies from their employers: Metrolink Executive
11 Director Richard Stanger testified in his deposition, Metrolink surveys have shown that
12 "about half of the Metrolink riders are subsidized by their employers" at "an average of \$56"
13 per month. *Dep. of Richard Stanger, at 148-49 (Sept. 26, 1995) (Vol. 2); MTA Admission No.*
14 *100 (admitted that "the quoted deposition testimony of Richard Stanger speaks for itself").*

15 5. Through The MTA/Metrolink Extension Of
16 Rail Service Another 45 Miles To Lancaster,
17 MTA Spent -- And Continues To Spend --
18 Millions Of Additional Dollars On Metrolink

19 307. Metrolink's Santa Clarita Line was extended 45 miles to Palmdale and
20 Lancaster on January 24, 1994, following the January 17, 1994 Northridge earthquake. *MTA*
21 *Admission No. 93 (admitted).* Because this extension of the Santa Clarita Line, which more
22 than doubled its length, was entirely within Los Angeles County, and because the tens of
23 millions of dollars in capital and operating expenses needed to extend this line to Lancaster
24 would be borne by the MTA, prior approval by the MTA Board was required. The MTA
25 Board, however, did not meet after the earthquake until January 26, 1994. Two days earlier,
26 on January 24, 1994, Metrolink trains began running on the extended Santa Clarita Line to
27 and from Lancaster. *Memo from Richard Stanger to Finance, Budget and Efficiency*
28 *Committee, at 2-3 (Jan. 21, 1994) (revised Jan. 25, 1994), M322539 at M322540-41; MTA's*
Relationship with the SCRRA, at 5 (Jan. 25, 1995), M323405 at M323409; Minutes of MTA
Special Board Meeting (Jan. 5, 1994), M901896; Minutes of MTA Special Board Meeting (Jan.
26, 1994), M901899; Minutes of MTA Regular Board Meeting (Jan. 26, 1994), M901902; Dep.

of Dana Woodbury, at 190, 197-206 (July 31, 1995) (Vol. 2).

308. According to MTA official and Metrolink Executive Director Richard Stanger, between January 17 and January 26, Metrolink "acted on behalf of LACMTA in obligating purchase orders and change orders totalling \$8 million primarily for material procurement." *Memo from Richard Stanger to Terry Matsumoto (Jan. 31, 1994), M322551; MTA Admission No. 94 (admitted that the quoted document "speaks for itself")*.

309. When the MTA Board finally did meet on January 26, it effectively ratified Metrolink's actions and expenditures on behalf of MTA, and the MTA Board also agreed to double MTA's contribution to Metrolink that fiscal year from approximately \$49 million to approximately \$98 million. *Minutes of MTA Regular Board Meeting, at 5 (Jan. 26, 1994), M901902 at M901906; see also Dep. of Dana Woodbury, at 202-03 (July 31, 1995) (Vol. 2)*.

310. In a memo to the Metrolink Board pertaining to the costs of extending the Santa Clarita Line and of related matters, Metrolink's Richard Stanger explained: "Capital and operating costs for the incremental services total \$63.2 million." *Approval of the Metrolink Emergency Transportation Services Plan, at 2 (Feb. 4, 1994), M322531 at M322532, attached to Metrolink/SCRRRA Agenda (Feb. 11, 1994), M322498; MTA Admission No. 95 (admitted that the cited document "contains the language quoted")*. The MTA sought reimbursement of these costs and other MTA costs from the Federal Emergency Management Agency ("FEMA"). However, because some of the Metrolink projects had been previously planned, and because there had been a pre-existing need for other Metrolink projects, FEMA formally disallowed reimbursement for approximately \$10.2 million of expenditures on the Santa Clarita Line, and FEMA (as of August, 1995) also declined to provide reimbursement for another approximately \$10.5 million of expenditures on the Santa Clarita Line. This had no negative affect on the Metrolink budget because, as Richard Stanger testified, "it was the MTA's funds that were backing this up." *Dep. of Dana Woodbury, at 171 (July 31, 1995) (Vol. 2); Accounting of Advanced Funds, at attached charts (Aug. 8, 1995), M341193 at M341198-99; Dep. of Richard Stanger, at 276-79 (Sept. 26, 1995) (Vol. 2); Dep. of Richard Stanger, at 33-34 (July 27, 1995) (Vol. 1)*.

311. In approving the extension of the Santa Clarita Line north to Palmdale and on

1 to Lancaster, the MTA had hoped for reimbursement from FEMA not just of the MTA's
2 capital expenses, but also of the operating expenses along the 45-mile extension at least
3 through November 1994. The highway interchange at Interstate 5 and Route 12, however,
4 was repaired and reopened many months earlier on July 15, 1994, after which FEMA refused
5 to consider reimbursement operating expenses. This loss of reimbursement from FEMA did
6 not immediately affect MTA -- which at that very time was raising MTA bus fares and
7 eliminating MTA bus passes -- because MTA had already budgeted "a reserve of \$2,500,000 .
8 . . to be used for operations subsidy and maintenance of way expense between Via Princessa
9 [in Santa Clarita] and Lancaster in the event that FEMA participation in this service is
10 terminated prior to November 30, 1994," with this \$2.5 million being "sufficient to provide
11 for operating and maintenance of way subsidies for four months." *FEMA Funding for*
12 *Metrolink Projects (July 20, 1994), M322481; Northridge Earthquake Relief Funding (Oct. 12,*
13 *1994), M322451; Authorization of the LACMTA of FY 1994-95 SCRRRA Budget, at 1-2 (May 2,*
14 *1994), M0230134 at M0230134-35.*

15 312. Within a week of the extension of the Santa Clarita Line, Metrolink conducted
16 a morning-boarding ridership survey on the Santa Clarita Line, a survey which revealed that:
17 "90 percent of the survey respondents boarded at the Santa Clarita Station; 4 percent
18 boarded at the Palmdale Station; and 5 percent boarded at the Lancaster Station." *Memo*
19 *from S.T. Parry to Earthquake Transportation Subcommittee Members, at attachment (Feb. 2,*
20 *1994), M322575 at M322578.*

21 313. Several months later, Palmdale closed its Palmdale Station, meaning that
22 Metrolink trains no longer stop there. Although the Lancaster Station remains open, a
23 Metrolink ridership survey revealed that, in November 1994, less than a year after the
24 Northridge earthquake, an average of only 143 passengers boarded Metrolink trains each
25 morning at the Lancaster Station. *Dep. of Dana Woodbury, at 208-09 (July 31, 1995) (Vol. 2);*
26 *MTA's Relationship with the SCRRRA, at Exhibit 2 (Jan. 25, 1995), M323405 at M323421; MTA*
27 *Admission No. 98 (admitted that "Palmdale is no longer a stop on Metrolink's Santa Clarita*
28 *Line").*

314. In part because of the small number of passengers being served

1 on the Santa Clarita Line, a high-level MTA finance official
2 recommended, in June 1994 -- in a memo addressing ways in
3 which the MTA could save money -- the elimination of
4 Metrolink service on the Santa Clarita Line, at least on the 45-
5 mile extension from Santa Clarita to Lancaster:

6 Metrolink is proving itself to be one of the most
7 outstanding transportation failures in the history of the U.S.
8 transit industry. In particular, the extension of the Santa
9 Clarita line to Palmdale and Lancaster, with Metrolink
10 management using the excuse of the January 17, 1994,
11 earthquake to justify this expensive and almost unutilized line,
12 should be undone as soon as possible.

13 * * *

14 [The] MTA will be stuck with the operational expenses of
15 running this line without a purpose for decades to come unless
16 the Board takes action to stop it.

17 Since the North County Line is exclusively within Los
18 Angeles County, the entire cost of this line is borne by MTA.
19 Therefore, it is well within the power of MTA to cancel this
20 entire line.

21 *Comments on MTA FY95 Budget at 5-6 (June 27, 1994), 011807 at 011812-13. This*
22 *recommendation has never been acted on by, and never even presented to, the MTA Board.*

23 6. **MTA Has Absolute Control Over**
24 **All MTA Funding Expended On Behalf**
25 **Of Metrolink Within Los Angeles County**

26 315. As set forth in the originating Metrolink/SCRRA Joint Powers Agreement, and
27 in numerous MTA memos and documents, MTA has absolute control over what it spends on
28 Metrolink (with regard to, e.g., capital expenses, operating expenses, maintenance-of-way
expenses, security expenses, and so on) within Los Angeles County. *Joint Powers Agreement,*
at 3, § 4.4 (July/August, 1991), M902439 at M902441; see also MTA's Relationship with the

1 *SCRRRA, at 5 (Jan. 25, 1995), M323405 at M323409.*

2 **G. MTA's Development Of Rail Lines Has Not Provided**
3 **Efficient And Effective Benefits To Minority Communities**

4 316. The MTA has never evaluated whether bus riders suffer from the reduced bus
5 service when bus lines that are near train lines are eliminated or modified. The introduction
6 of train lines has effectively reduced the mobility of minority poor residents and increased
7 their transportation costs. *Testimony of Martin Wachs, and Marvin Holen.*

8 317. MTA's urban rail strategy was not designed to serve minority poor bus riders'
9 transportation needs. The vast majority of minority poor do not live within walking distance
10 of train stations and cannot readily reach the train. Commuter trains, with stations often a
11 mile apart, were not designed with poor inner city travelers in mind and do not stop at
12 grocery stores, day care sites, churches and the other destinations of minority poor riders
13 within their communities. *Testimony of Martin Wachs and Thomas Rubin.*

14 318. MTA has never conducted a study of non-riders or riders from minority poor
15 communities to find out their transportation needs and then designed a system to address
16 those needs. Nor has MTA designed a transportation plan to foster economic development in
17 the minority community. *Testimony of Martin Wachs and Antonio Villaraigosa.*

18 319. MTA's rail strategy was not designed to provide economic development in poor
19 minority neighborhoods. MTA has depleted much needed resources for the bus system on
20 which the overwhelming majority of minority poor depend. MTA's trains serve only a
21 minuscule percentage of the transit dependent minority poor. The train lines merely replace
22 preexisting bus lines that were often more convenient for local travel. In any event, five times
23 as many local jobs are created by an equal expenditure of public funds on bus operations than
24 on rail construction. *MTA, Relative Number of Local Jobs Created by an Equal Expenditure of*
Public Funds (undated) 800194; Testimony of Eric Mann, Martin Wachs and Thomas Rubin.

25 320. According to an American Public Transit Association report, the relative
26 economic impacts of rail and bus expenditures nationally are roughly comparable, with bus
27 capital projects ranking highest. *RTD, Rubin, Economic Impact of Transit Expenditures (April*
28 *22, 1992) (economic impact of bus capital projects derived by applying multiple of 3.50; of*

modernization of rail transit derived by applying multiple of 3.15; of new rail systems derived by applying 3.07; of transit operations derived by applying 3.05), 010436 at 010437.

321. RTD compared the economic impacts of bus and rail subsidies:

- A dollar spent on bus operating subsidies generates over 60% more total economic activity in the nation than does a dollar spent on rail construction
- The relative impact on the local economy is even more pronounced in favor of bus operations over rail capital -- undoubtedly at least two to one and probably well over three to one
- Since a larger portion of capital project expenditures are from material goods -- buses, rail cars, land acquisition, construction materials, etc. -- a far higher portion of expenditures from bus operations goes for people -- and jobs
- The relative impact on local employment is also far larger for bus operations subsidies than for rail capital expenditures, undoubtedly over two to one and most likely well over three to one
- The vast majority of bus jobs positions are well-paid, long-term positions providing meaningful employment for largely minority and female individuals with deep roots in the area, that are providing service to the many communities they represent
- A far higher portion of rail capital positions are outside of the local area and the United States. The local positions tend to be short-or medium-term jobs, far more likely to be filled by Caucasian males who have far less prior, current, and future likelihood to reside in the local

area

- An investment in bus operations produces local economic benefits, and jobs, many times faster than an investment in rail capital
- An investment in bus operations creates far more transit output and trips than an equal investment in rail construction and, as a result, there are far higher indirect positive economic benefits from investments in bus than in rail
- Since a far larger portion of the economic activity of bus operations than rail construction is local, investment in bus operations creates more local transit sales tax revenues and more Federal transit formula grant funds.

Id. 010436 at 010444.

322. Under current federal incentive programs to spur economic development, communities are supposed to reap substantial economic benefits from the placement of rapid rail corridors. When MTA rail lines traverse minority communities, as does the Blue Line, minority communities do not benefit from economic development. *MTA, Long Beach-Los Angeles Rail Transit Project Final Environmental Impact Report (March 1985), M306934 at M307206; Testimony of Lucius Collier.*

H. MTA's Predecessors RTD And LACTC Changed Plans That Developed Rail In Minority Communities To Plans That Provided Service To The Disproportionately White Suburbs

323. The RTD and LACTC changed plans that developed rail systems in South Central to plans that provided rail service almost exclusively to the suburbs. The changes corresponded to demographic shifts in the white population of the County. *Testimony of Lucius Collier, Brian Taylor, and Martin Wachs.*

324. An example is the history of the Crenshaw rail corridor project. In 1967-68, the RTD proposed a rail system that called for a rail line running from downtown Los Angeles, past the University of Southern California, to the Crenshaw Shopping Center,

1 Inglewood, and the Airport. At the time of this proposal, more than 50 percent of the
2 residents in the area were white. *Testimony of Lucius Collier.* (Mr. Collier, former RTD
3 Director of Community Relations, was an RTD employee for 17 years until 1988).

4 325. In 1974, the RTD proposed a rail system that included an Airport Southwest
5 Corridor that ran from La Brea and Wilshire south to the Crenshaw Shopping Center,
6 Inglewood, and the Airport. This modification of the 1967-68 alignment reflected a desire to
7 avoid the community south of downtown, near the University of Southern California where
8 the majority of residents were black and poor. *Testimony of Lucius Collier.*

9 326. In a 1988 study, SCAG recommended that LACTC and RTD should consider a
10 rail line along the Crenshaw corridor. SCAG's stated that its study "demonstrated that a
11 Crenshaw corridor rail transit line" has:

- 12 · A strong ridership potential on both the regional
13 and local levels.
- 14 · Attracted strong community support and
15 interest.

16 SCAG noted that the Crenshaw alternative had higher systemwide ridership projections than
17 the Wilshire Boulevard Metro Rail extension (59,000 ridership compared to 46,000 Wilshire
18 ridership) and that the Crenshaw line would be cheaper than the Wilshire MetroRail. The
19 Crenshaw line would serve as a link between major centers outside the study area (such as the

20 ///

21 ///

22 ///

23 central business district and LAX) as well as those within the area. SCAG stated that other
24 benefits of the Crenshaw line included service to:

- 25 · The most densely populated area of its size in the
26 region.
- 27 · A highly transit-dependent population.

28 *SCAG, Airport Southwest Area Transportation Study, Executive Summary (Dec. 1988), C002588
at C002607-08.*

1 327. The Crenshaw corridor, from Mid-City area on Crenshaw and then west to
2 LAX, contains heavily utilized bus routes and would traverse high density urban area. The
3 corridor would connect Blue Line, Red Line and Green Line as well as inner city areas with
4 LAX. The corridor project also represents "one of the best opportunities for combining
5 mobility enhancements with economic development efforts in the central city."

6 [T]his Corridor travels through some of the areas hardest hit by
7 the civil unrest of 1992 and areas which have been under-served
8 by public investment in the past. New transit services within the
9 Corridor would represent not only a significant mobility
10 improvement, but could serve to focus other public investment
11 efforts in economic development. The Corridor includes
12 Leimert Park, an emerging focal point of the African American
13 community and home to a growing concentration of minority
14 owned businesses and the two regional shopping centers serving
15 the South Central area.

16 *MTA, Korve Engineering, Inc./Terry A. Hayes Associates, Crenshaw-Prairie Transportation*
17 *Corridor Preliminary Planning Study (Oct. 1994), M325150 at M325155, M325168, M325175,*
18 *M325185.*

19 328. In 1980, the LACTC proposed Proposition A, which called for a new rail
20 system and an improved bus system. The ballot contained a map showing bands ranging
21 from two to five miles wide in minority areas which were to be considered for rail lines,
22 should the proposal pass. Although the measure was not supported by most suburban
23 communities, Proposition A passed with the support of the black and Hispanic transit-
24 dependent riders, in part due to the promise of rail transportation development and bus
25 improvements that would benefit the inner city communities of Los Angeles. *Testimony of*
26 *Lucius Collier, and Martin Wachs.*

27 329. In 1983, RTD management refused even to include a Crenshaw rail station stop
28 on Wilshire Boulevard for the then-prepared initial Metro Rail Line route. The Crenshaw
station was included only after presentations by community representatives and elected

officials at a public hearing. *Testimony of Lucius Collier.*

**VI. MTA DISPROPORTIONATELY ALLOCATES MILLIONS OF DOLLARS
TO MUNICIPAL BUS OPERATORS THAT PROVIDE QUALITY
SERVICE TO HEAVILY WHITE RIDERSHIPS**

330. Despite the McCone Commission finding that the MTA should absorb all the small municipal operators to avoid balkanization, the MTA today instead funds numerous municipal bus operators, most of which provide local and express service to outlying predominantly white, suburban areas. Rather than absorb the other bus operators, MTA (LACTC) in 1987 transferred funding for a number of MTA (RTD) bus lines to LADOT Commuter Express and Foothill Transit. *Testimony of Lucius Collier; MTA, A Look At The MTA (Jan. 1994), 800042A at 800057A-58A, 800085A.*

331. RTD calculated that in FY 1990, the turnover of RTD lines to Foothill Transit resulted in a net loss to RTD. While costs went down \$5.1 million, fares and subsidies went down \$5.6 million for a net loss of \$400,000. *RTD, Impact of Turnover of Foothill Transit Zone Routes on District Cash Flow (Aug. 24, 1991), 01035.*

332. The MTA funds 16 "included" and "eligible" municipal bus operators, all of which have base cash fares lower than the \$1.35 base cash fare for MTA buses. According to

///

///

///

///

///

the MTA, the base cash fares in FY 1995 for the twelve municipal operators which provide fixed-route bus service were as follows:

| | |
|--------|-----------------------------------|
| 80¢ | Antelope Valley Transit Authority |
| free | Commerce Bus Lines |
| 60¢ | Culver CityBus |
| 85¢ | Foothill Transit |
| 50¢ | Gardena Transit |
| \$1.10 | LADOT Commuter Express |

| | |
|-----|------------------------|
| 25¢ | LADOT DASH |
| 90¢ | Long Beach Transit |
| 75¢ | Montebello Bus Lines |
| 60¢ | Norwalk Transit |
| 75¢ | Santa Clarita Transit |
| 50¢ | Santa Monica Bus Lines |
| 50¢ | Torrance Transit |

As to the four dial-a-ride municipal operators (which provide no fixed-route bus service), their base cash fares for FY 1995 were: 75¢ in Arcadia; \$1.25 in Claremont; \$1.00 in La Mirada; and \$1.00 in Redondo Beach. *MTA Short Range Transit Plan Fiscal Years 1966-99 at 2, and at Tables 5-1, 5-2, 5-3 (June 2, 1995), M336444 at M336451, M336497-99; MTA Admission No. 20 (admitted that the first-cited table "shows" all of the foregoing fares, with the exception of the LADOT DASH 25¢ fare).*

///

///

///

///

///

///

///

333. These 16 municipal operators vary considerably in size, a fact which is reflected in part by their fixed-route peak bus fleets in FY 1995. The four dial-a-ride municipal operators -- Arcadia, Claremont, La Mirada, and Redondo Beach -- have no fixed-route buses at all. Eight relatively small municipal operators maintained peak fleets of fewer than 50 buses:

| | |
|----|-----------------------------------|
| 32 | Antelope Valley Transit Authority |
| 6 | Commerce Bus Lines |
| 24 | Culver CityBus |
| 38 | Gardena Transit |

34 Montebello Bus Lines
15 Norwalk Transit
39 Santa Clarita Transit
43 Torrance Transit

Four larger municipal operators maintained peak fleets of more than 100 buses:

186 Foothill Transit
117 LADOT
154 Long Beach Transit
106 Santa Monica Bus Lines

In comparison, MTA operations in the same fiscal year maintained a fixed-route peak fleet of 1,822 buses. *MTA Short Range Transit Plan Fiscal Years 1966-99 at Table 5-2 (June 2, 1995), M336444 at M336498.*

A. The Municipal Bus Operators Serve A
Ridership That Is Disproportionately White

334. As to the race/ethnicity of the riders on the buses of the municipal operators, ridership surveys have indicated that the ridership on the buses of several municipal operators is disproportionately white or Anglo compared with the approximately 80 percent minority ridership on MTA buses: Of the riders identifying their race/ethnicity, 59 percent are white on LADOT Commuter Express; 32 percent white on LADOT DASH Downtown; 36 percent white on Foothill Transit overall; 44 percent white on Foothill Transit express buses; and 52 percent white or Anglo on express buses operating in the San Fernando Valley (two Antelope Valley Transit Authority routes, seven LADOT Commuter Express routes, and nine MTA routes). *Final Report Commuter Express December 1992 On-Board Survey, at 6-8 (Dec., 1993), S0787 at S0797-99; Dash Downtown On Board Survey Final Report, at 26 (April, 1994), S0890 at S0917; Foothill Transit Attitude and Awareness Study, at 4-1, 4-2 (Feb., 1994), S1264 at S1280, S1281; Study of Restructuring Public Transit Service in the San Fernando Valley, On-Board Survey, at i, vii (Sept., 1993), D110304 at D110305, D110311.*

335. As to the race/ethnicity of the riders on the buses of the municipal operators in general (on the 16 "included" and "eligible" municipal operators, minus LADOT and

1 Foothill Transit for which race/ethnicity ridership data are available), 1990 census household
2 data indicate that, in the cities served by the municipal bus operators, of the transit-
3 dependent households (households without automobiles) more than 55% are white. (The
4 cities served by the municipal operators, as identified by the municipal operators in their
5 Short Range Transit Plans submitted to the MTA, include Arcadia, Bellflower, Carson,
6 Cerritos, Claremont, Commerce, Compton, Culver City, El Segundo, Gardena, Hawaiian
7 Gardens, Hawthorne, Hermosa Beach, La Mirada, Lakewood, Lancaster, Lawndale, Long
8 Beach, Lomita, Montebello, Monterey Park, Norwalk, Palmdale, Paramount, Pico Rivera,
9 Redondo Beach, Rosemead, Santa Clarita, Santa Fe Springs, Santa Monica, Seal Beach,
Signal Hill, Torrance, and Whittier.) *1990 Census Household Data.*

10 **B. The Municipal Bus Operators Offer Their**
11 **Riders High Quality Services Relative To The**
Services Given To The Riders of MTA Buses

12 336. Not only do the municipal operators charge fares lower than the \$1.35 MTA
13 bus fare, *see supra*, they also provide better service to their riders relative to the service
14 provided to the riders of MTA buses: The municipal operators' buses on average are not as
15 crowded as MTA's overcrowded buses; the municipal operators' buses on average are
16 newer/younger than MTA's buses; some of the buses operated by the municipal operators
17 have padded seats, reclining seats, overhead reading lights, and bathrooms, amenities not
18 available on any MTA buses serving local routes. *Dep. of Jon Hillmer, at 97-98 (Aug. 11,*
19 *1995); Dep. of Steven Brown, at 238-87 (Sept. 15, 1995) (Vol. 2); Dep. of Steven Brown, at 388-*
20 *406 (Sept. 18, 1995) (Vol. 3); Foothill Transit Short Range Transit Plan For Fiscal Year 1996 -*
21 *Fiscal Year 1999 (March 22, 1995), D109794; Antelope Valley Transit Authority Short Range*
22 *Transit Plan FY 1995-99 (March 22, 1995), D117353; Santa Clarita Transit Short Range Plan*
23 *FY 1994-97 (March 23, 1993), D117206; MTA, Bus Capital Funding in Los Angeles County*
24 *(July 5, 1994), M1020656.*

25 337. According to MTA, as of June, 1993, the average mileage of the MTA bus fleet
26 was 338,830 miles, whereas the average mileage of the buses of the municipal operators was
27 185,331 miles. While the average age of MTA buses was 8.2 years, LADOT buses had an
28 average age of 6.6 years and an average mileage of 65,104 miles, Foothill Transit buses had an

1 average age of 4.3 years and an average mileage of 117,293 miles, Antelope Valley Transit
2 Authority buses had an average age of 3.6 years and an average mileage of 91,756 miles, and
3 Santa Clarita Transit buses had an average age of 2.8 years and an average mileage of 65,000
4 miles. *MTA, Bus Capital Funding in Los Angeles County (July 5, 1994), M1020656 at*
5 *M1020665-66.*

6 338. An MTA-commissioned study of express bus service in the San Fernando
7 Valley, which in part compared characteristics and preferences of LADOT Commuter
8 Express bus riders vs. MTA express bus riders, reported that the LADOT routes tend to
9 carry higher-income passengers who are more likely to have cars, and that the riders
10 "choosing to drive to an express route prefer to drive to LADOT routes, probably because of
11 speed and/or because of the more modern and comfortable buses that run on most of those
12 routes." *Study of Restructuring Public Transit Service in the San Fernando Valley, On-Board*
13 *Survey, at x (Sept. 1993), D110304 at D110314; San Fernando Valley Transit Restructuring*
14 *Study, On-Board Survey Analysis, at ix (July 1993), D110214 at D110222, attached to Memo*
15 *from Russell Chisholm (July 8, 1993), D110210.* The reason for the speedier trips on the
16 LADOT routes is not that the LADOT buses are faster: "the buses are not faster than are
17 MTA or RTD buses; it's just that they are on bus routes that are on the freeway for longer
18 distances." *Dep. of Jon Hillmer, at 97 (Aug. 11, 1995).* As to the LADOT's more comfortable
19 buses: "The coach that they run is more of an inter-urban style coach," "their buses were
20 designed primarily for longer-distance travel," "they have reclining seats and so forth
21 designed for longer-distance travel." *Id.* As to the LADOT's more modern buses: "LADOT
22 buses, on average, are newer than MTA buses simply because LADOT began service in 1988-
23 1990 on these routes, so the buses are that vintage," whereas MTA buses sometimes are 14
24 years old, somewhat older than the 12-year average life for a bus. *Id. at 98.*

25 339. The foregoing study of the express bus services in the San Fernando Valley also
26 surveyed and compared rider satisfaction (rating the service as good, very good, or excellent)
27 on LADOT Commuter Express buses, on Antelope Valley Transit Authority express buses,
28 and on MTA express buses. All of the express routes operated by the LADOT and by the
Antelope Valley Transit Authority were rated as "excellent" or "very good." Of the nine

1 routes operated by the MTA, none was rated as "excellent," three were rated as "very good,"
2 and six were rated as only "good." *Study of Restructuring Public Transit Service in the San*
3 *Fernando Valley, On-Board Survey, at ix (Sept. 1993), D110304 at D110313.*

4 340. On Santa Monica Municipal Bus Lines, "a bus line operates within one-quarter
5 mile of every Santa Monica residence," *History of Santa Monica's Big Blue Bus, at 9 (1992),*
6 *S0696 at S0706, which makes bus riding extremely convenient for Santa Monica residents*
7 *given the transportation industry standard that potential riders of public transit will not walk*
8 *farther than ¼ mile to access public transit. Dep. of Jon Hillmer, at 119 (Aug. 11, 1995); Dep.*
9 *of Richard Stanger, at 104 (July 27, 1995) (Vol. 1); Study of Restructuring Public Transit*
10 *Service in the San Fernando Valley, On-Board Survey, at iv (Sept., 1993), D110304 at D110308.*

11 341. Riders on Foothill Transit had and continue to have -- before and after the
12 MTA voted to eliminate its discounted monthly MTA bus passes -- the opportunity to
13 purchase a discounted Foothill/MTA joint monthly pass for use both on Foothill Transit buses
14 and on MTA buses. The MTA agreed to implement and to continue this joint monthly pass,
15 in part, in order to offer riders the "convenience" of one monthly pass. Even after the MTA
16 Board voted to eliminate its discounted MTA regular pass, the MTA never rescinded its joint
17 monthly pass with Foothill Transit: In August 1994, the MTA announced through a formal
18 written "notice" that its regular monthly passes would be "discontinued as of September 1,
19 1994," but that the "joint monthly pass privileges with Foothill . . . Transit remain in effect."
20 *Private Sector Forum Agenda (April 13, 1993), M0220232 at M0220267; Joint Pass Agreement*
21 *with Foothill Transit (Feb. 28, 1995), M323174; RTD Fares & Transfer Notice No. 94-61 New*
22 *Fare Structure - MTA (Aug. 22, 1994), M807050; MTA Admission No. 25 (admitted in part*
23 *"that the joint monthly pass for use on MTA and Foothill Transit buses remains in effect").*

24 C. MTA (LACTC), Through Its Bus Service
25 Continuation Project, Helped To Create Two Of The
26 Largest Commuter-Express Municipal Bus Operators

27 342. In the mid-to-late-1980s, the MTA (LACTC), through its Bus Service
28 Continuation Project (BSCP), helped to expand LADOT bus service by arranging for
LADOT to take over eleven express and local lines previously operated by the RTD, and by
arranging for the financing of the capital costs and operating costs on the transferred lines.

As described by LADOT:

The BSCP was implemented in 1987. . . . A total of 11 lines, including 2 local and 9 express, were assumed by the City from SCRTD. . . . As part of this project, the City received approximately \$4.5 million in Section 3 funds from an UMTA grant for acquisition of 40 transit vehicles. The LACTC acted as the grantee for the project, and contributed approximately 50 percent of the local match. . . .

The BSCP service has essentially maintained the routing and schedules previously operated by SCRTD. . . . The BSCP COMMUTER EXPRESS lines operate between Downtown Los Angeles and the San Fernando Valley, Westside, South Bay communities.

City of Los Angeles Department of Transportation Short Range Transit Plan 1994-97, at 1-2 (undated), D109728 at D109729-30; MTA Admission No. 26 (admitted that the "document speaks for itself").

343. As to Foothill Transit: "On December 2, 1987, the LACTC [the MTA's county-wide planning agency predecessor] established the Foothill Transit Zone. . . . Based on certain rules established by the LACTC, the Foothill Transit Zone is tentatively established as an operator of public transportation services." *Foothill Transit Zone Short Range Transit Plan FY 1989-1991, at 1 (May, 1988) (brackets and ellipsis added), D119544 at D119547.*

344. The MTA (LACTC) used its Bus Service Continuation Project (BSCP) to create Foothill Transit by arranging for Los Angeles County and then for Foothill Transit to take over six express and local lines previously operated by the RTD, and by arranging for the financing of the capital costs and operating costs on the transferred lines. As described by the MTA:

The Bus Service Continuation Project (BSCP) was a project undertaken by the City of Los Angeles and Los Angeles County to operate, via private contractors, local and express

1 routes which were formerly operated by the Southern California
2 Rapid Transit District (SCRTD). Eleven SCRTD local and
3 Express lines were transferred to the City of Los Angeles and six
4 local & Express lines were transferred to the County of Los
5 Angeles. The project started in FY 1987. The total operating
6 cost of the project for the first year was approximately \$4
7 million.

8 The Capital Cost was about \$11.5 million. The operating
9 costs were shared between L.A. City, County and the LACTC.
10 The Capital Costs were shared between the LACTC, the City of
11 Los Angeles and the FTA. The City's and County's share of
12 funds came from their local return allocation. LACTC's share
13 came from the Prop. A incentive funds.

14 Foothill assumed administration of the BSCP lines in
15 November, 1990, and started getting Prop A incentive funds
16 directly for the service from LACTC.

17 *MTA, Item #5, Foothill Transit Zone Package (undated), D107579, attached to Bus Operations*
18 *Subcommittee Agenda (July 25, 1995), D107561; MTA Admission No. 27 (admitted that the*
19 *cited document "contains the indented passages," and that "the document speaks for itself").*

20 345. The LACTC/MTA has continued to provide funding to LADOT and to Foothill
21 Transit for the operation of these Bus Service Continuation Project (BSCP) bus lines ever
22 since. *MTA Admission No. 28 (admitted that the "MTA allocates funds to LADOT and to*
23 *Foothill Transit for operation of lines that are part of the Bus Service Continuation Project").*

24 346. For FY 1995-96, for example, the MTA provided Foothill Transit with
25 \$2,209,305 to operate its BSCP bus lines, which was \$943,957 more than Foothill Transit had
26 anticipated and had budgeted for in its FY 1995-96 Budget, a matter summarized by Foothill
27 Transit in June 1995 as follows:

28 Update on Foothill Transit Bus Continuation Project (BSCP) --
Staff met with the MTA's Executive Officer of Planning and

1 Programming, Judy Wilson, to discuss the funding of the Bus
2 Service Continuation Project. It was agreed to fully fund the
3 BSCP lines in Fiscal Year 1995 . . . [in the amount of] \$2,209,305
4 next year instead of the proposed \$1,265,348 -- an increase of
5 \$943,957 over our adopted FY 1995/96 budget.

6 *Memo from Foothill Transit to Executive Board, at 2 (June 23, 1995), S1438 at 1439.*

7 347. The Chief Financial Officer of the RTD stated in 1992 that the Foothill Transit
8 (sometimes also called the Foothill Transit Zone or "FTZ") experiment is beginning to turn
9 Los Angeles into a two-class transit County:

10 Another problem with the FTZ experiment is that it is
11 beginning to turn Los Angeles into a two-class transit County.
12 Areas that tend to be more white, suburban middle class, such
13 as many of the areas now served by FTZ, are receiving brand
14 new buses with passenger amenities such as soft seats and
15 reading lights. The central city, served by SCRTD, with
16 passengers with much more of a tendency to be members of
17 minority groups and the transit dependent, receive older buses
18 with hard seats -- and the most overcrowded service of any
19 major transit operator in the United States. The generally more
20 affluent FTZ passengers also receive the benefit of fares lower
21 than SCRTD's riders, subsidized in part by the over-removal of
22 funds from SCRTD to fund FTZ.

23 *RTD, Making the Decision for Contracting Services -- The Right Way (undated), 001103 at*
24 *001109-10; MTA Admission No. 29 (admitted that the document "speaks for itself").*

**D. Through A Variety Of Creative Funding Programs,
MTA Has Provided Disproportionate Funding To
-- And Thus Has Helped To Maintain The Low Fares
And Better Service Of -- The Municipal Bus Operators**

**1. In The Late 1970s, MTA (LACTC)
Adopted Its FAP Formula, Through
Which MTA (LACTC) Began to Funnel
Millions Of Dollars Of State And Federal
Funds To The Municipal Bus Operators**

348. The principal means by which MTA distributes federal, state, and local operating funds to the municipal bus operators, and to MTA bus operations, is through the application of an allocation formula called the Formula Allocation Procedure (FAP). The FAP formula was devised and adopted by the LACTC in 1979, and initially applied to allocate federal and state operating funds to the then 12 "included" municipal operators, and to the RTD. The FAP formula is not based upon total bus ridership or upon total bus rider miles but instead upon in-service revenue vehicle mileage plus fare units, and is formally defined as follows:

**50 percent weight on in-service revenue vehicle mileage; [plus]
50 percent weight on Fare Units (defined as total farebox
revenue divided by the base fare).**

MTA Short Range Transit Plan Fiscal Years 1966-99, at 2, 9-12 (June 2, 1995), M336444 at M336451, M336458-61; MTA Admission No. 30 (admitted that "MTA allocates funds to municipal operators in Los Angeles County, that the Formula Allocation Procedure (FAP) was adopted by the LACTC in 1979, and that the FAP speaks for itself and consists of" the definition quoted).

349. Following the enactment in 1980 of the ½¢ sales tax measure known as Proposition A, and following the actual implementation of Proposition A, the LACTC added 95 percent of the Proposition A 40 Percent Discretionary funds to the operating funds being distributed to the then-12 municipal operators and the RTD via the FAP formula. These funds have totalled more than \$100,000 million each year over the last 15 years. *Dep. of Steven Brown, at 19, 27 (Aug. 21, 1995) (Vol. 1); MTA Short Range Transit Plan Fiscal Years 1996-99, at Tables 4-1 & 4-2 (June 2, 1995), M336444 at M336466-67; MTA Admission No. 31*

(admitted "that, following the adoption of Proposition A, the LACTC began allocating Proposition A 40 Percent Discretionary dollars to the 'included' municipal operators and the RTD").

**2. In The Early 1990s, MTA (LACTC)
Made Four More Municipal Bus
Operators Eligible For Millions Of
Dollars Of Additional Funding From MTA**

350. In the early 1990s, subsequent to the enactment in 1990 of the ½¢ sales tax measure known as Proposition C, the LACTC responded to four of the newest municipal operators -- LADOT, Foothill Transit, Antelope Valley Transit Authority, and Santa Clarita Transit -- which had applied to the LACTC to be designated as "included" municipal operators so that they too could receive operating funds from the LACTC through the FAP formula. *MTA, Included Municipal Operator Status for the City of Los Angeles (July 3, 1991), D118287; MTA, Included Municipal Operator Status for Santa Clarita Transit and the Antelope Valley Transit System (July 3, 1991), D118281; Dep. of Steven Brown, at 15-28, 107 (Aug. 21, 1995) (Vol. 1); Dep. of Steven Brown, at 146-283 (Sept. 15, 1995) (Vol. 2).*

351. The LACTC designated LADOT an "included" operator, Foothill Transit a "permanent" and "eligible" operator, and Antelope Valley and Santa Clarita "eligible" operators. *MTA Admission No. 32 (admitted).*

352. At the same time, the LACTC agreed to fund the four new operators through the FAP formula from a different source of funds -- not from the 95 percent of the Proposition A 40 Percent Discretionary funds allocated to the initial 12 "included" municipal operators, but from the 5 percent of the Proposition A 40 Percent Discretionary funds known as the Proposition A Incentive Fund. *MTA, Included Municipal Operator Status for the City of Los Angeles (July 3, 1991), D118287; MTA, Included Municipal Operator Status for Santa Clarita Transit and the Antelope Valley Transit System (July 3, 1991), D118281; Dep. of Steven Brown, at 15-20, 107 (Aug. 21, 1995) (Vol. 1); Dep. of Steven Brown, at 146-283 (Sept. 15, 1995) (Vol. 2); MTA Admission No. 33 (admitted "that LADOT, Foothill Transit, Antelope Valley Transit Authority, and Santa Clarita Transit have received funding from the Proposition A incentive fund").*

1 **353. Designating the LADOT as an "included" operator required a change in policy**
2 **by the LACTC given that the LADOT simply did not meet and could not meet the long-**
3 **standing criteria of the LACTC necessary for the LADOT to become an included operator.**
4 **The policy change, which involved amending the criteria which needed to be met by a**
5 **municipal operator in order to be designated as an "included" municipal operator, was**
6 **agreed to by the LACTC -- as admitted by an MTA official in sworn deposition testimony --**
7 **so as "to allow the City of Los Angeles DOT to be funded [and] designated as an Included**
8 **Municipal Operator." MTA, *Included Municipal Operator Status for the City of Los Angeles***
9 **(July 3, 1991), D118287; Dep. of Steven Brown, at 151-52 (Sept. 15, 1995) (Vol. 2); MTA**
10 **Admission No. 34 (admitted "that the LACTC recommended that a ninth criterion be added for**
11 **an 'included operator' designation upon eight affirmative votes of the Commission, and that in**
12 **1992 the City of Los Angeles received designation as an 'included' operator").**

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

3. For FY 1995-96, MTA Allocated
\$77 Million In Operating Funds, And
Another \$25 Million In Capital Funds
To The Sixteen Municipal Bus Operators

354. The varying amounts of the \$77.6 million in operating funds programmed by the MTA to the 16 included and eligible municipal bus operators for FY 1995-96 through the MTA's FAP formula were as follows:

| | |
|--------------|-----------------------------------|
| \$ 765,345 | Antelope Valley Transit Authority |
| \$ 501,391 | Arcadia Transit |
| \$ 143,360 | Claremont |
| \$ 264,892 | Commerce Bus Lines |
| \$ 3,820,065 | Culver CityBus |
| \$17,171,952 | Foothill Transit |
| \$ 3,912,590 | Gardena Transit |
| \$ 2,754,426 | LADOT |
| \$ 236,162 | La Mirada |
| \$19,394,544 | Long Beach Transit |
| \$ 5,451,963 | Montebello Transit |
| \$ 1,434,990 | Norwalk Transit |
| \$ 78,404 | Redondo Beach |
| \$ 860,857 | Santa Clarita Transit |
| \$17,478,128 | Santa Monica Municipal Bus Lines |
| \$ 5,026,543 | Torrance Transit |

MTA Admission No. 35 (admitted).

355. MTA bus operations also receive funding through the FAP formula, but the funding received does not represent the MTA share of countywide bus riders or bus-rider miles, and its FAP allocation percentage has been steadily decreasing: Although MTA/RTD bus operations served 85% of all of the bus riders in Los Angeles County in 1992, and provided 86% of all bus-rider-miles, MTA/LACTC through the FAP formula provided only 81.9 percent of the total bus operating funds to MTA/RTD bus operations in FY 1991-92, only

80.4 percent in FY 1992-93, only 79.9 percent in FY 1993-94, and only 79.8 percent in FY 1994-95, with the remaining 20 percent or so allocated among the 16 municipal operators. *MTA, A Look At The MTA (Jan., 1994), 800042A at 800055A; Finance, Budget & Efficiency Committee Recommendation, at Table 2 (July 13, 1994), M323880 at M323885; MTA Admission No. 36 (admitted in part "that MTA's allocation through the FAP formula were 81.9% of the total bus operating funds in FY 1991-92, 80.44% in FY 1992-93, 80% in FY 1993-94, and 79.8% in FY 1994-95").*

356. As to the distribution of capital funds to the 16 municipal operators (and to MTA bus operations), MTA allocates 85 percent of the capital funds pursuant to a formula somewhat similar to the FAP formula, and MTA awards the remaining 15 percent of the funds on a discretionary basis. Through the formula allocation and through the discretionary awards, MTA for FY 1995-96 distributed approximately \$25.1 million for capital expenses to the 16 municipal operators, approximately as follows:

| | |
|---------------------|-----------------------------------|
| \$ 368,428 | Antelope Valley Transit Authority |
| \$ 88,620 | Arcadia Transit |
| \$ 29,533 | Claremont |
| \$ 538,396 | Commerce Bus Lines |
| \$ 2,202,505 | Culver CityBus |
| \$ 3,146,956 | Foothill Transit |
| \$ 4,569,040 | Gardena Transit |
| \$ 59,446 | La Mirada |
| \$ 3,396,973 | Long Beach Transit |
| \$ 1,380,641 | Los Angeles (LADOT) |
| \$ 1,981,142 | Montebello Bus Lines |
| \$ 3,053,442 | Norwalk Transit |
| \$ 21,483 | Redondo Beach |
| \$ 814,965 | Santa Clarita Transit |
| \$ 2,272,709 | Santa Monica Municipal Bus Lines |
| <u>\$ 1,176,925</u> | Torrance Transit |

\$25,101,204 Total

MTA Admission No. 37 (admitted "that, for FY 1995-96, the MTA distributed approximately \$25.1 million for capital expenses to municipal operators in the amounts listed"); MTA Proposed 1995-96 Budget, at 94 (undated), M301108 at M301207; MTA Short Range Transit Plan Fiscal Years 1996-99, at 2, 13, 16, & Table 4-15 (June 2, 1995), M336444 at M336451, M336462, M336465, M336485.

357. Although MTA bus operations also received some of the 85 percent of the capital funds allocated via formula, and although MTA bus operations are eligible for the 15 percent of the capital funds awarded on a discretionary basis, MTA awarded none of the 15 percent discretionary capital funds to MTA bus operations for FY 1995-96. MTA, instead, awarded millions of dollars of discretionary capital funds to three of the smallest municipal operators providing fixed-route bus service: Commerce Bus Lines, Gardena Transit, and Norwalk Transit. *Dep. of Steven Brown, at 206-09 (Sept. 15, 1995) (Vol. 2).*

358. Over the years, MTA/RTD bus operations have received a smaller percentage of the total MTA/LACTC capital funds than the percentage of countywide riders carried by MTA/RTD buses, and similarly a smaller percentage of the total MTA/LACTC capital funds than the percentage of countywide bus-rider miles on MTA/RTD buses. *MTA, Bus Capital Funding in Los Angeles County (July 5, 1994), M1020656 at M1020657-58, M1020661-64; MTA, A Look At The MTA (Jan. 1994), 800042A at 800055A.*

///

///

///

///

///

///

///

359. As to the percentage of total capital funds distributed by the MTA/LACTC to MTA/RTD bus operations, vis-a-vis the municipal operators, the percentages for six fiscal years are as follows:

MTA/RTD Capital

| <u>Allocation % Share</u> | <u>Fiscal Year</u> |
|----------------------------------|---------------------------|
| 74.3% | 1989-90 |
| 73.3% | 1990-91 |
| 77.0% | 1991-92 |
| 66.2% | 1992-93 |
| 74.6% | 1993-94 |
| 76.3% | 1994-95 |

MTA, Bus Capital Funding in Los Angeles County (July 5, 1994), M1020656 at M1020657-58, M1020661-64; MTA Admission No. 39 (admitted that the cited document "indicates" precisely the foregoing percentage shares).

- 4. For FY 1995-96, MTA Allocated An Additional \$15 Million To The Municipal Bus Operators Through A Variety Of**
Arbitrarily Established Funding Programs

360. For FY 1995-96, MTA allocated \$15 million or so to various municipal bus operators through MTA's bridge funds, through MTA's Base Bus Restructuring Program, through MTA's Transit Service Expansion Program, and through MTA's Recession Assistance Allowance. MTA Admission No. 40 (admitted).

361. For FY 1995-96, MTA overspent the revenue available for its Proposition A Discretionary Incentive Fund Program by approximately \$1.5 million; MTA had used its Proposition A Discretionary Incentive Fund Program in part to provide operating funds to

///

///

///

///

///

LADOT, Foothill Transit, Antelope Valley Transit Authority, and Santa Clarita Transit; MTA then made up the difference through bridge funds:

| | |
|---------------------------|--|
| \$ 9,311,648 | Program Expenses |
| <u>- 7,799,930</u> | Program Revenues (income and carryover) |

- 1,511,718 Bridge Funds

\$ 0 Balance

MTA bus operations received none of these MTA Bridge Funds. *FY 1996 Proposition A Discretionary Incentive Fund Program Budget (July 10, 1995), D109688; MTA Admission No. 41 (admitted "that, for FY 1995-96, the MTA had used its Proposition A Discretionary Incentive Fund Program in part to provide operating funds to LADOT, Foothill Transit, Antelope Valley Transit Authority, and Santa Clarita Transit").*

362. According to the MTA FY 1995-96 Budget: "Base Bus Restructuring funds are provided to four operators (Foothill Transit, Torrance Transit, Montebello Municipal Bus Lines, and Commerce Municipal Bus Lines) for services programmed in their Short Range Transit Plans which were approved by the LACTC and added between July 1, 1990, and April 24, 1991. These services are not included in the Proposition A base service level and are not eligible for Proposition A discretionary funding. The total funding level has been frozen at the FY92 level with no adjustments for inflation." *MTA Admission No. 42 (admitted).*

363. For FY 1995-96, MTA provided approximately \$2.8 million in this type of funding to four municipal operators, as follows:

\$ 170,000 Commerce Bus Lines

\$ 776,362 Montebello Bus Lines

\$ 494,000 Torrance Transit

\$1,361,000 Foothill Transit

\$2,801,362 Total

MTA bus operations received no funds under the MTA Base Bus Restructuring Program. *Proposed Funds Programmed to Included, Permanent, and Eligible Transit Operators in FY96 Budget, at 2 (July 18, 1995), D118337 at D118338; MTA Admission No. 43 (admitted "that, in FY 1995-96, a total of \$2,801,362 was allocated to the municipal operators of Commerce, Montebello, Torrance, and Foothill").*

364. According to the MTA FY 1995-96 Budget: "The Transit Service Expansion Program was originally intended to fund additional congestion-relieving transit service, including providing connections to the Metro Blue Line," and it is funded from Proposition C

40% Discretionary funds. *MTA Proposed 1995-96 Budget, at 95 (undated), M301108 at M301208; MTA Admission No. 44 (admitted "that the Transit Service Expansion Program is funded from Proposition C 40% discretionary funds, and that the paragraph quoted . . . appears in the MTA 1995-1996 Budget and that the document speaks for itself").*

365. For FY 1995-96, the MTA allocated \$5.7 million for this Transit Service Expansion Program in the following amounts to the following transit operators:

| | |
|-------------|-----------------------------------|
| \$ 264,000 | Antelope Valley Transit Authority |
| \$ 159,554 | Culver CityBus |
| \$ 220,623 | Foothill Transit |
| \$ 471,000 | Gardena Bus Lines |
| \$2,044,724 | LADOT |
| \$1,555,000 | Long Beach Transit |
| \$ 147,000 | Lynwood Metro Blue Line Shuttle |
| \$ 251,000 | MTA |
| \$ 139,700 | Torrance Transit |
| \$ 411,790 | Torrance Transit for MAX |

Allocation of Funding Through the Transit Service Expansion Program (June 14, 1995), M322790; MTA Admission No. 45 (admitted "that, in FY 1995-96, the MTA allocated \$5.7 million under the Transit Service Expansion Program to municipal operators in amounts as listed . . . with the exception of LADOT").

366. Of the foregoing \$5.7 million spent on its Transit Service Expansion Program for FY 1995-96, MTA gave only 4.4 percent to MTA bus operations. *Allocation of Funding Through the Transit Service Expansion Program (June 14, 1995), M322790; MTA Admission No. 46 (admitted "that, of the \$5.7 million allocated to the Transit Service Expansion Program in FY 1995-96, the MTA allocated \$251,000 to MTA bus operations").*

367. The \$411,790 awarded by MTA through its Transit Service Expansion Program to Torrance Transit for the Municipal Area Express (MAX), which it administers, came about as result of a policy change in the MTA's funding/evaluation criteria. As explained by Torrance Transit:

1 **Proposition C Discretionary** are funds from the Metropolitan
2 Transportation Authority from the Transit Service Expansion
3 (TSE) Program. Last year evaluation criteria were established
4 which precluded MAX from receiving funding. However, the
5 MTA Board directed their staff to revise the criteria in order to
6 make them more equitable. Under the current criteria, MAX
7 qualifies for full funding under the program.

8 This "full funding" from the MTA covered a full "62%" of the initial MAX budget for FY
9 1995-96, and it also allowed for "significant reductions in the [financial-contribution] shares
10 from all participants" in MAX. *MAX Policy Steering Committee Meeting, at Item II C,*
11 *Attachment II (Aug. 7, 1995), S0216 at S0224; MTA Admission No. 47 (admitted that the*
12 *document cited "contains the indented passage and excerpted quotations . . . and that the*
13 *document speaks for itself").*

14 368. Because of the economic recession of the early 1990s, the MTA (LACTC)
15 Board at that time decided to allocate Recession Assistance Allowance funding to all of the
16 "included" and "eligible" municipal operators (as well as to the MTA (RTD)), it did so
17 through another and different formula (akin to FAP), and it has done so annually ever since.
18 *Dep. of Steven Brown, at 209-12 (Sept. 15, 1995) (Vol. 2); Proposed Funds Programmed to*
19 *Included, Permanent, and Eligible Transit Operators in FY96 Budget, at 2 (July 18, 1995),*
20 *D118337 at D118338; MTA Admission No. 48 (admitted "that, in 1992, the LACTC Board*
21 *decided to allocate Recession Assistance funds to all 'included' and 'eligible' municipal operators*
22 *and the RTD through a formula").*

23 369. For FY 1995-96, MTA allocated \$6,988,751 from Proposition C Discretionary
24 funds through this Recession Assistance Allowance funding to the 16 municipal operators
25 (while also awarding some monies to the MTA). Subsequent to the inception of this Recession
26 Assistance Allowance in the early 1990s, the MTA has provided the 16 municipal operators
27 with well over \$30 million in this type of funding. *Dep. of Steven Brown, at 209-12 (Sept. 15,*
28 *1995) (Vol. 2); Proposed Funds Programmed to Included, Permanent, and Eligible Transit*
 Operators in FY96 Budget, at 2 (July 18, 1995), D118337 at D118338.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. **MTA Also Funds The Municipal Operators
Through Various Other Ad Hoc Funding Measures**

370. In May of 1995, MTA informally proposed that the MTA should formally help to close the FY 1994-95 MTA budget gap by allocating approximately \$15.5 million in Proposition A and C interest funds to the MTA, but the MTA ended up also allocating \$3.1 million to the municipal operators. As described by Foothill Transit: after the municipal operators learned about the MTA shortfall proposal, "MTA Chairman Larry Zarian met with the municipal operators to discuss the matter. It was agreed to allocate \$3.1 million (20%) of the interest funds to the municipal operators. This agreement was approved by the MTA Board. . . . Foothill Transit will receive an additional \$618,985 in Fiscal Year 1996." *Dep of Steven Brown, at 114-15 (Aug. 21, 1995) (Vol. 1); Minutes of the MTA Regular Board Meeting, at 4 (May 24, 1995), M322660 at M322663; Foothill Transit Executive Director's Report, at 1-2 (June 23, 1995), S1438-39; Minutes of MTA Regular Board Meeting, at 4 (May 24, 1995), M322660 at M322663; MTA Admission No. 49 (admitted "that the MTA Board in May 1995 approved the allocation of \$3.5 million of Proposition A Interest funds and \$12.0 million of Proposition C Interest funds to the MTA; that it approved the allocation of \$3.1 million of Proposition A and C Interest funds to the municipal operators, and that the quoted Foothill Transit document speaks for itself").*

6. **Through Its "Call For Projects," MTA In The
Summer Of 1995 Granted Millions Of Dollars
In Funding To A Variety Of Transit Projects,
Many Of Which Directly Or Indirectly
Benefit The Sixteen Municipal Bus Operators**

371. Through its biennial Call for Projects, MTA in the summer of 1995 approved the allocation of millions of dollars in funding to support more than a hundred transit projects within Los Angeles County. *MTA Admission No. 50 (admitted).* More than a dozen of these MTA-selected-and-funded transit projects were designed and sponsored by the municipal operators, while many other projects merely benefitted the municipal operators. The projects sponsored by and/or benefitting the municipal operators were funded by MTA in an amount of more than \$11 million. *Transportation Improvement Program (TIP) Call for Projects Staff Recommendations, at 35-76 (May 16, 1995), M322807 at M322841-82; Dep. of*

1 *Bob Cashin, at 67-70 (Oct. 2, 1995).*

2 372. Several of the projects funded by MTA through its FY 1995-96 Call for
3 Projects -- involving police security and other security -- resulted from a policy change by the
4 MTA in the winter/spring of 1995, a policy change which resulted in removing money from
5 MTA bus operations. In previous years, MTA had programmed most or all of the
6 Proposition C 5% Transit Security funds to the MTA Transit Police. But, in the winter of
7 1995, the MTA Board recommended that "in the 1995-96 Call for Projects" nearly \$1 million
8 -- actually only "\$960,000" -- "of Proposition C 5% security money be set aside to fund
9 transit security proposals from interested parties (excluding MTA)." Although the MTA staff
10 reminded the MTA Board that such action would reduce the MTA budget for MTA Transit
11 Police for FY 1995-96 by nearly \$1 million and that "the MTA's budget deficit will increase
12 by an equivalent amount," the MTA Board nevertheless decided to take that nearly \$1 million
13 from MTA and to award it instead to other transit operators. *Call for Projects Ad Hoc*
14 *Committee, Committee Recommendation (Feb. 2, 1995), M323554 & M323555; Transportation*
15 *Improvement Program (TIP) Call for Projects Staff Recommendations, at 74-76 (May 16, 1995),*
16 *M322807 at M322880-82; Dep. of Patricia McLaughlin, at 204-05 (Sept. 6, 1995) (Vol. 2);*
17 *MTA Admission No. 51 (admitted "that, previously, a significant portion of the Proposition C 5%*
18 *transit security funds were programmed to the MTA Transit Police"); MTA Admission No. 52*
19 *(admitted that "in February 1995, the MTA Board approved \$960,000 of Proposition C 5%*
20 *(Transit Security) funds, for FY 1995-96 only, to be set aside for funding transit security*
21 *proposals from interested agencies (excluding the MTA) on a competitive basis").*

22 7. MTA Funds Not Just The Sixteen "Included"
23 And "Eligible" Municipal Bus Operators But

24 Other Bus Operators In Los Angeles County Too

25 373. MTA gives funding to other bus operators in addition to the 16 "included" and
26 "eligible" municipal operators, for example, to the Municipal Area Express (MAX), which
27 operates limited express bus service along two routes between the Palos Verdes Peninsula in
28 the South Bay and the employment district in El Segundo. *MTA Admission No. 53 (admitted*
that "the MTA gives funding to bus operators in addition to the 16 'included' and 'eligible'
municipal operators"); MAX Program Orientation, at 1-3 (Aug. 3, 1995), S0236-38; MAX 1st

1 *Class Commuter's Guide (Aug. 2, 1993), S0240; MAX Policy Steering Committee Meeting, at*
2 *Item III A, Attachment I (Aug. 7, 1995), S0216 at S0232.*

3 374. According to MAX: the targeted and "typical" rider of MAX is an "El
4 Segundo employee," "a professional or technical worker, 22-35 years old, with a household
5 income of over \$50,000" per year; few of the riders on MAX pay the full fares as "most of the
6 employers subsidize the sale of MAX tickets and [monthly] passes to their employees"; MAX
7 provides "luxury commuter coaches" with "special commuter amenities" such as high-
8 backed "airline style seats that recline," overhead "reading lights," overhead parcel racks
9 "for your briefcase or parcels," and "year-round climate control"; MAX also offers
10 underused/uncrowded coaches even at peak hours as its ridership averages fewer than 12
11 riders per hour. *MAX Program Orientation, at 1-3 (Aug. 3, 1995), S0236-38; MAX 1st Class*
12 *Commuter's Guide (Aug. 2, 1993), S0240; MAX Policy Steering Committee Meeting, at Item III*
13 *A, Attachment I (Aug. 7, 1995), S0216 at S0232; MTA Admission No. 55 (admitted that "MAX*
14 *provides high-backed seats that recline, reading lights, and parcel racks").*

15 375. MAX service increased somewhat beginning in the summer of 1995 after the
16 MTA awarded it \$404,727 in annual funding to extend one of its routes so as to provide feeder
17 services to the new rail station in El Segundo on the Metro Green Line. Through this funding,
18 in addition to other MTA funding, the MTA provided approximately 73 percent of the MAX
19 budget for FY 1995-96. *MAX Policy Steering Committee Meeting, at Item II C and Attachment*
20 *I (Aug. 7, 1995), S0216 at S0219, S0221; MTA Admission No. 56 (admitted "that, for FY 1995-*
21 *96, MTA awarded Torrance MAX \$404,727 in CMAQ funds to operate the Green Line shuttle*
22 *service in El Segundo").*

23 8. MTA, For FY 1995-96, Also Approved
24 The Expenditure By Local Jurisdictions Of
25 Millions Of Dollars Of Proposition A & C
26 Local Return Funds, Thus Providing Even More
27 Funds Benefitting The Municipal Bus Operators

28 376. Two final -- and large -- sources of funding for the municipal operators are the
MTA-administered Proposition A 25 Percent Local Return funds and the MTA-administered
Proposition C 20 Percent Local Return funds, local transit funds which together total well
over \$150 million a year for MTA-approved transit projects. With regard to FY 1995-96, for

1 example, Proposition A Local Return funds were estimated by the MTA to be somewhat more
2 than \$93.3 million, and Proposition C Local Return funds were estimated by the MTA to be
3 somewhat more than \$76.6 million, for a total of nearly \$170 million. The MTA allocates
4 these funds on a population basis to the 88 cities within Los Angeles County, and to the
5 County itself (with regard to the unincorporated portions of the County); MTA prior
6 approval as to the appropriateness of any proposed transit expenditure is required before
7 jurisdictions can draw down and spend the funds. *Dep. of Patricia McLaughlin, at 139 (Sept.*
8 *6, 1995) (Vol. 2); FY96 Bus Transit Fund Estimates & Revenue Allocations, at Tables 1-2 & 8*
9 *(March 21, 1995), D109674 at D109675-76, D109686; MTA Short Range Transit Plan Fiscal*
10 *Years 1996-99, at Table 4-8 (June 2, 1995), M336444 at M336475-77; MTA Admission No. 57*
11 *(admitted "that the municipalities in Los Angeles County receive Proposition A 25 Percent Local*
12 *Return Funds and Proposition C 20 Percent Local Return funds, and that MTA staff estimated*
13 *that, in Fiscal Year 1995-96, approximately \$93.3 million in Proposition A 25 Percent Local*
14 *Return funds would be available for distribution and approximately \$76.6 million in Proposition*
15 *C 20 Percent Local Return funds would be available for distribution").*

16 377. All 16 of the "included" and "eligible" municipal bus operators receive MTA-
17 approved direct allocations of Local Return funds from the jurisdictions they serve. *Dep. of*
18 *Terry Matsumoto, at 55 (Sept. 18, 1995) (Vol.1); Proposition A (25%) and Proposition C (20%)*
19 *Local Return Program Approved Projects Report FY 1992-93, at 11, 16, 21 (July 26, 1993),*
20 *D116109 at D116119, D116124, D116129.*

21 378. For example, in FY 1992-93 the MTA approved the direct allocation of Local
22 Return funds to the Antelope Valley Transit Authority from Lancaster in the amount of
23 \$1,300,000, from Palmdale in the amount of \$1,206,730, and from the County of Los Angeles
24 in the amount of \$762,800. *MTA Admission No. 58 (admitted).*

25 379. Long Beach Transit has an agreement with the City of Long Beach pursuant to
26 which Long Beach Transit receives a direct allocation of approximately 70 percent of the
27 Proposition A Local Return funds received by the City of Long Beach. *MTA Admission No.*
28 *59 (admitted).* Long Beach Transit also has contractual agreements with the nine other cities
it serves for the direct allocation of Local Return funds from those cities. Per these

1 agreements, Long Beach Transit in FY 1995 received an MTA-approved direct allocation of
2 Local Return Funds in the amount of \$3,289,919 from the City of Long Beach, and MTA-
3 approved direct allocations of Local Return funds totalling \$189,000 from the other cities
4 served. *Long Beach Transit Short Range Transit Plan FY 1996-1999, at 18-20 (undated),*
5 *M705470 at M705488-90.*

6 380. Torrance Transit in FY 1990-91 received from Torrance MTA-approved direct
7 allocations of Proposition A Local Return funds totaling \$1,847,680 for capital expenditures,
8 in addition to MTA-approved direct allocations of Proposition A Local Return funds totaling
9 \$927,899 for operating expenses. *Torrance Transit Short Range Transit Plan FY 1992-1994, at*
10 *3, 43-44 (March 1991), D116755 at D116761, D116801-02.*

11 381. Of the 89 jurisdictions that are eligible to receive and spend Local Return
12 funds, with MTA approval, many do contribute Local Return funds to their local municipal
13 bus operators. For example, with regard to FY 1991-92, jurisdictions received MTA approval
14 to spend approximately \$92 million of their Proposition A Local Return funds (Proposition C
15 had not then yet been implemented) to enhance the services of their municipal operators:
16 \$40.1 million on fixed-route transit, \$12.2 million on commuter bus service, \$2.1 million on
17 transit security, \$13.0 million on bus fare subsidies, \$1.9 million on bus stop improvements,
18 \$1.9 million on vehicle modifications, \$4.8 million on vehicle purchases, \$3.6 million on bus
19 platform installations/modifications, \$1.8 million on adjacent park-and-ride parking lots, and
20 \$12.3 million on transit facility improvements. *Proposition A Local Return Program FY 1991-*
21 *92 (Aug. 26, 1992), D116296; MTA Admission No. 61 (admitted "that cities receiving Local*
22 *Return funds contribute Local Return funds to municipal bus operators").*

23 382. Apart from occasional contributions of Local Return funds to MTA bus
24 operations from the County of Los Angeles, and apart from some contractual payments of
25 Local Return funds for services rendered (such as the MTA's Hollywood Bowl bus service
26 provided under contract with the City of Los Angeles), MTA bus operations receive *no*
27 allocation of Proposition A Local Return funds or of Proposition C Local Return funds from
28 any jurisdiction. *MTA Admission No. 62 (admitted); Dep. of Terry Matsumoto, at 57, 70 (Sept.*
18, 1995) (Vol.1).

VII. DEPARTURES FROM REGULARITY

383. MTA routinely departs from substantive public transit norms and from procedural norms in managing its affairs, as discussed below.

A. MTA's Long Range Plans Are Economically
Unrealistic

384. MTA's financial and transportation planning matters have been guided by the old 30-Year Plan and the current 20-Year Plan. MTA adopted the old 30-Year Plan in 1992 and jettisoned it almost immediately because it was economically unrealistic. The current 20-Year Plan, which the MTA adopted in 1995, superseded the old 30-Year Plan. The 30-Year Plan envisioned mass transit projects costing \$183 billion over thirty years covering 250 miles of freeway car-pool lanes, 4,200 new buses, 296 miles of new rail lines, and 200 miles of Metrolink rail service. In contrast, the scaled-back 20-Year Plan -- which was adopted just two years later -- covers fewer projects costing a claimed \$72 billion over a twenty year period. Both Plans are economically unrealistic and perpetuate MTA's discriminatory practices. *See generally LACTC, 30-Year Integrated Transportation Plan ("30-Year Plan") (April 1992), 014261; MTA, A Plan for Los Angeles County: Transportation for the 21st Century ("20-Year Plan") (March 1995), M300452.*

385. Then-CEO Franklin White conceded that the MTA's long range plans -- the abandoned 30-Year Plan and the current 20-Year Plan -- do not satisfy the business or public transit necessity standard and do not justify the MTA's discriminatory policies and practices. "I think we need what I call a common sense transportation plan. And we didn't have one with [the old] \$183 billion [30-Year Plan]. And many people argue, some very persuasively, that we don't have one now." *MTA, Transcript of Franklin White's Comments Made In Open Session Regarding His Performance Appraisal, December 20, 1995, Board Meeting, M808381 at M808384.* "The old plan I said had something for everybody. . . . It was not a plan that asked as the first question, what is our transportation problem. It was a plan that said what do we need to put in it to make various people happy so that we can get a vote for this plan." *Id.* "We had a plan that was going nowhere, and it didn't deserve to go anywhere. There were parts of that plan that should never see the light of day -- even if you had the money to build

1 it. It wouldn't be spending the taxpayers' money wisely." *Id. at M808394*. According to Mr.
2 White, the 30-Year Plan was not economically realistic, the projections were not sound, the
3 Plan was not achievable, and the Plan was overly ambitious. *Dep. of Franklin White at 69-77*,
4 *81-83 (Oct. 27, 1995); A Vision for the MTA (undated), 957100; The Stakeholder (July, 1995),*
5 *957658*.

6 386. The 20-Year Plan "still appears to contain significant uncertainty regarding
7 availability of funding, and if available, when." *MTA, Arthur Andersen Final Report of*
8 *Recommendations, Vol. A, at II-19 (April 24, 1995), D121959; accord, id. at V-16*. According to
9 Linda Bohlinger, who was primarily responsible for drafting both the 30-Year Plan and the
10 financial model in the 20-Year Plan, the 20-Year Plan is no more economically realistic than
11 the 30-Year Plan. *Dep. of Linda Bohlinger at 49 (Aug. 31, 1995) (Vol. 3)*.

12 1. The 30-Year Plan Was Totally Unrealistic

13 387. The 30-Year Plan was not economically realistic from the start. *Dep. of Gary*
14 *Spivack at 26 (Oct. 11, 1995)*. Mr. Spivack was manager of planning and public affairs at
15 RTD at the time the 30-Year Plan was adopted and his responsibilities included commenting
16 on the draft 30-Year Plan before it was adopted. Spivack is currently the acting manager of
17 operations planning at MTA. *Id. at 8-11, 16-22, 32-33, and exhibits cited; Comments on 30-*
18 *Year Plan (undated), 10142; SCRTD 30-Year Plan (undated), 10221*.

19 388. MTA admitted just one year after the 30-Year Plan was adopted that there
20 would be a \$20 billion shortfall over the life of the Plan because of the impact of the California
21 recession local sales tax revenues. *MTA, Judith Wilson, Long Range Transportation Plan*
22 *Purpose, Work Plan and Methodology (March 7, 1993), M0280300, M0280301*. The failure to
23 assess the potential for the economic recession is one of the key factors that caused the demise
24 of the 30-Year Plan. *Id. at 25; 23-28; Dep. of Keith Killough at 42-50 (July 26, 1995) (Vol. 1)*.
25 The drafters of the 30-Year Plan did not attempt to assess the potential for an economic
26 recession before adopting the final plan. Staff members warned the drafters to do so, and the
27 drafters "certainly" could have done so. *Dep. of Gary Spivack at 26 (Oct. 11, 1995)*.

28 389. "[T]he pattern of [the] 30-Year Plan [was] basically [to] provide[] everything
for everybody." *Dep. of Keith Killough at 22 (July 26, 1995)*. "[T]he 30-Year Plan seemed to

1 have something for everybody." *Dep. of Franklin White at 81 (Oct. 27, 1995)*. "We were
2 always assured that the money was there [for the 30-year plan]," according to Los Angeles
3 City Councilman Richard Alatorre, MTA's former Chairman and present Board member.
4 *Los Angeles Times (May 15, 1993), 801661 at 801663*. But, as Mr. Alatorre realized: "The
5 money is not there." *Id.*

6 390. According to former MTA Board alternate and Finance Committee Chair
7 Marvin Holen, the 30-Year Plan launched the MTA on the path to bankruptcy. Nobody is
8 willing to defend the 30-Year Plan anymore. *Dep. of Marvin Holen at 39-41, 45 (Dec. 7, 1994)*.
9 Tom Rubin, the former Chief Financial Officer of MTA's predecessor agency the RTD,
10 warned then-MTA CEO Franklin White in an internal memo in mid-1993 that the Plan's
11 projections about rail ridership were pure "Fantasyland," and recommended that the MTA
12 "disown" the 30-Year Plan because it was "badly flawed and worthless." *MTA Memo from*
13 *Tom Rubin re: Review of FY 1994 Budget (July 1, 1993), 011156*.

14 391. The LACTC declined to prepare the 30-Year Plan as a joint document with the
15 RTD or to seek federal funding to prepare the Plan. Instead, the LACTC prepared the Plan
16 itself with local funding. *Letter from Alan Pegg to Neil Peterson (Nov. 12, 1990), 009950; Letter*
17 *from Tom Rubin to Linda Bohlinger (Nov. 7, 1989), 009966*.

18 392. According to the RTD's analysis of the draft 30-Year Plan, the Plan ignored
19 non-rail alternatives such as busways, contained "numerous questionable" assumptions, and
20 presented scenarios "that appear designed to make rail alternatives more attractive." *RTD,*
21 *Alan Pegg, LACTC 30-Year Plan (March 5, 1991), 010018 at 010019-20*.

22 393. The RTD criticized a draft of the 30-Year Plan because the LACTC
23 misrepresented costs and utilization of bus and other modes of transit, used questionable
24 ridership forecasts, failed to consider alternative such as busways, used inconsistent inflation
25 assumptions, failed to acknowledge lack of cost effectiveness of the 14 rail systems proposed,
26 and used questionable financial assumptions. *RTD, Tom Rubin, Comments on August 26,*
27 *1991, Version of LACTC 30-Year Plan (Sept. 8, 1991), 010180*.

28 394. The RTD proposed a "Transit Now" alternative to the draft 30-Year Plan.
The principles of the alternative were:

- 1 • **Recognition that bus service must be the key component of the future transit**
2 **system as it will carry the vast majority of transit riders and the majority of**
3 **rail passengers to and from rail lines.**
- 4 • **A consistently high level of service quality must be provided on both the rail**
5 **and bus systems.**
- 6 • **Safety levels, cleanliness standards, and loading (crowding) standards must be**
7 **comparable for all transit modes.**
- 8 • **Equity in the provision of the same quality, quantity, and types of service must**
9 **be a priority throughout the county.**

10 **With respect to equity principles, the RTD stated that: "Requiring that all rail and alternative**
11 **technology projects are cost-effective and efficient will help ensure that projects that are**
12 **needed, not just desired, will be built. It is also important to design bus systems for residents**
13 **in all areas of the region that are accessible, clean, convenient, fast, and safe." RTD, Alan**
14 **Pegg, Consider General Manager's Report Concerning a "Transit Now" Alternative to the**
15 **LACTC's Draft 30-Year Integrated Transportation Plan (Nov. 15, 1991), 008425 at 008427.**

16 **395. The 30-Year Plan assumed that the 1992 and 1994 state rail bond issues would**
17 **be approved. LACTC, N. Peterson, Proposed 30-Year Integrated Transportation Plan (March**
18 **30, 1992), M0110041 at M0110049. They were not approved, thus weakening the financial**
19 **assumptions underlying the Plan.**

20 **396. The bus component of the 30-Year Plan proposed to increase the peak bus fleet**
21 **by approximately 1,700 buses by the year 2010. Approximately 65 percent of the increase was**
22 **proposed for the first ten years. LACTC, City of Los Angeles Department of City Planning and**
23 **City of Los Angeles Department of Transportation, Los Angeles Transportation/Land Use Policy,**
24 **Background Report (Dec. 1991), C000744 at C000797.**

25 **397. In 1994, the MTA circulated a copy of Peter Gordon & Harry Richardson,**
26 **Counterplan for Transportation in Southern California: Spend Less, Serve More, Reason**
27 **Foundation (Feb. 1994), M324043, along with a response, MTA, For the Record: A Practical**
28 **Approach to Providing Mobility For All Los Angeles County (May 1994), M324069. The**
 Counterplan, written by two professors at the University of Southern California, including

1 the Dean of the School of Urban Regional Planning, offers an alternative to the MTA 30-Year
2 Plan. The Counterplan states in part:

3 Southern California politicians and transportation
4 planners have embarked on a course that can only end in
5 disaster. With the tempting lure of initial federal subsidies and
6 the acquiescence of deceived voters, they are building a
7 transportation system that will not work, that cannot work.
8 Regardless of how low the fare charged, regardless of how many
9 competing but cost-effective bus lines are closed down,
10 regardless of how strong the efforts and land-use zoning changes
11 to force new development (both residential and commercial)
12 close to the stations, regardless of what additional sacrifices we
13 are forced to make to bridge the rail budget shortfalls, this
14 metropolitan region did not develop with a spatial structure
15 compatible with fixed rail. Nothing can change this. There is
16 insufficient potential to cut door-to-door rail travel times for
17 enough people either to reduce the ballooning subsidies to
18 manageable proportions or to relieve congestion on the highway
19 system. In other words, we are spending billions and billions for
20 minimal gains, if any. It is particularly ironic that lavish rail
21 spending is continuing in times of extreme fiscal penury. If we
22 consider the areas of public expenditure starved of resources
23 (e.g. education, criminal justice, affordable housing, community
24 health), and step back and look at the overall allocation of
25 public fiscal resources from the perspective of maximizing social
26 welfare, the scale of spending on rail not only appears irrational;
27 it is irresponsible.

28 Although it is too late to shout "Stop the train, we want
to get off!," this paper has outlined an alternative that can slow

1 it down. While it is inconceivable that federal monies will be
2 returned, and hence closing down the rail projects altogether
3 will not happen, we believe that limiting the Red Line to the
4 Downtown-North Hollywood link and stopping light rail after
5 the opening of the Green Line is a sensible strategy. The
6 alternative approach that we favor would cost far less, would
7 improve the mobility of millions rather than thousands (as a
8 result of the region-wide system of HOV/HOT lanes), would
9 stimulate private-sector transportation initiative (in the form of
10 investment in shuttle service), and generate substantial revenues
11 for transportation and other purposes. Further, it would
12 preserve and expand (rather than risk gutting) the bus system.
13 And the favorable impacts on congestion and air quality would
14 be more substantial than under the rail plan.

15 *Counterplan, at M324067.*

16 398. According to the Counterplan:

17 The guaranteed failure of rail transit is not different to
18 explain. Even if the rail transit plans were implemented in their
19 entirety (a most unlikely outcome), the vast majority of the
20 region's population will live (or work) too far away from transit
21 steps to patronize the system. Of course, everybody could drive
22 to a station and park there to take the train, but modal transfers
23 add many minutes to door-to-door travel times (and still involve
24 pollution-inducing "cold starts"). Door-to-door travel time is
25 the major determinant of modal choice, and the decentralized
26 spatial structure of the Los Angeles region means that only
27 door-to-door travel modes (such as autos, taxis, and vans) are
28 competitive for most people.

Increased vehicle occupancy in door-to-door vehicles is

1 therefore the key to resolving the region's traffic congestion
2 problem. HOV lanes and transitways for buses, vanpools and
3 carpools would reduce these vehicles' trip times -- a competitive
4 advantage.

5 *Counterplan, at M324057.*

6 **2. The 20-Year Plan Also Is Economically Unrealistic**

7 399. The MTA has trumpeted its 20-Year Plan, adopted by the MTA Board in
8 March 1995, after the plaintiffs initiated this lawsuit, as a "well-defined vision for
9 transportation in the next two decades." *Dep. of Franklin White at 80 (Oct. 27, 1995)*. "A
10 thorough understanding of the 20-Year Plan is in order. It's a good idea to become familiar
11 with it because it is what all of our activities will be based on in the coming years." *Id. at 81*;
12 *see generally id. at 77-83; The Stakeholder (July 1995), 957658.*

13 **a. The 20 Year-Plan Does Not Evaluate Rail Projects
14 That The MTA Board Had Already Approved**

15 400. By its own terms, the 20-Year Plan does not constitute a justification for or
16 validation of rail projects that the MTA Board had previously funded or approved, such as
17 the Pasadena Blue Line and the Metro Red Line. The Plan is premised on a "baseline" of
18 projects that the MTA had previously funded or approved. *See, e.g., MTA 20-Year Plan, at*
19 *30-45 (March 5, 1995), M300452; MTA 20-Year Plan Technical Appendices, at 49-50 (March 5,*
20 *1995), M302623.* The evaluative criteria used for other projects in the Plan were not applied
21 to the baseline projects. *Dep. of Keith Killough at 66-67 (July 26, 1995) (Vol. 1); Dep. of*
22 *Franklin White at 40-41 (Oct. 27, 1995); Dep. of Dana Woodbury at 507-12 (Aug. 18, 1995) (Vol.*
23 *4). The Pasadena Line and Red Line extension projects are both included in the "baseline."*
24 *MTA 20-Year Plan Technical Appendices, at 49-50 (March 5, 1995), M302623.*

25 **b. The Rail Projects In The 20-Year Plan Are Not
26 Cost-Effective Under The MTA's Own Measures**

27 401. The 20-Year Plan purports to evaluate transit projects in terms of mobility, air
28 quality and cost effectiveness. *See, e.g., MTA 20-Year Plan Technical Appendices, at 5-8*
(March 5, 1995), M302623 at M302628-31; Dep. of Keith Killough at 55-68 (July 26, 1995) (Vol.
1). According to MTA's own measures of combined cost-effectiveness, mobility, and air

1 quality for all projects considered in the planning process, all the rail projects considered in
2 the Plan performed significantly worse than virtually every other transportation project in
3 the Plan (with the possible exception of bike lanes in some regards). *MTA 20-Year Plan*
4 *Technical Appendices, at 20-21 (March 5, 1995), M302623 at M302643-44.* Then-CEO
5 Franklin White was unable to explain this dramatically poor showing. *Dep. of Franklin White*
6 *at 91-93 (Oct. 27, 1995).* According to the MTA's own Big Six accounting firm: "The MTA
7 bases too few decisions on factual cost/benefit analysis." *MTA, Arthur Andersen Final Report*
8 *of Recommendations, Vol. A, at VIII-3 (April 24, 1995), D121959; Thomas Rubin, Concerns*
9 *about the MTA Long Range Plan, at 1-3 (Oct. 25, 1995), E100596.*

10 402. The poor performance of rail projects is echoed by MTA Board Members.
11 According to Los Angeles City Councilman, MTA Board Member and former MTA
12 Chairman Richard Alatorre, "we're spending too much money on Metrolink." *Dep. of*
13 *Richard Alatorre at 42 (Oct. 17, 1995).* "It's not . . . helping the rider that . . . it should be
14 helping, period." *Id.* Transit dollars should be spent to help "[p]eople that pay the freight.
15 You know, bus riders." *Id. at 43.*

16 403. Similarly, according to MTA Board Member and Los Angeles County
17 Supervisor Michael Antonovich, the MTA's subway and heavy rail projects are costly and
18 disastrous. *Dep. of Michael Antonovich at 9-10 (Oct. 16, 1995).* According to Supervisor
19 Antonovich: "It is time for Congress to pull the plug on the Red Line subway construction in
20 Los Angeles." *Letter from Michael Antonovich to Newt Gingrich (June 28, 1995), M806076.*
21 Subway and heavy rail projects in Los Angeles are neither cost effective nor cost efficient, and
22 they take money away from transit projects that are both. *Dep. of Michael Antonovich at 54*
23 *(Oct. 16, 1995).* The Red Line rail project is a "pork barrel project," *id. at 74, 77,* "benefitting
24 a few," *id. at 77.*

25 404. The original budget for the Pasadena Line -- a light rail line -- illustrates the
26 runaway costs of MTA's rail projects. In 1995, outsider peer reviewers found that: "The
27 current budget for the Pasadena Line project is \$67 million to \$71 million per mile. This is
28 without precedent in the industry and does not appear to be warranted by the complexity of
the project." *Peer Review Report for the Los Angeles County Metropolitan Transportation*

1 *Authority: Pasadena Blue Line (April 25, 1995), M323035 at M323047. The projected costs for*
2 *the Pasadena Line led then-CEO White to advise the MTA Board that the agency was*
3 *bankrupt. Dep. of Franklin White at 42 (Oct. 27, 1995). The Pasadena Line is nevertheless*
4 *one of the "baseline" projects that was taken for granted and not evaluated in the MTA's 20-*
5 *Year Long Range Plan. Dep. of Franklin White at 42 (Oct. 27, 1995); MTA 20-Year Plan, at*
6 *30-45 (March 5, 1995), M300452; MTA 20-Year Plan Technical Appendices, at 49-50 (March 5,*
7 *1995), M302672.*

8 405. Then-CEO White admitted that the Pasadena Line was an example of the
9 "idiocy" and "junk that didn't belong that got in [the long range plan] because of the political
10 influence of several of the [MTA board] members." *MTA, Transcript of Franklin White's*
11 *Comments Made In Open Session Regarding His Performance Appraisal, December 20, 1995*
12 *Board Meeting (undated), M808381 at M808385.*

13 I thought frankly it was some kind of idiocy to talk about
14 commencing a multi-year construction period of Pasadena given
15 where we were. I thought it was self-evident that it didn't make
16 sense. I got into a 3-month fight over Pasadena which delayed
17 the adoption of the budget, which ended in a way which was
18 against my better judgment, but I made enemies in that regard.

19 *Id.*

20 c. The Assumptions Concerning Federal Funding Set
21 Forth In The 20-Year Plan Are Just Plain Wrong

22 406. The 20-Year Plan is premised on unrealistic assumptions regarding billions of
23 dollars of federal funding. The results of the federal elections in November 1994 had
24 profound implications for the future of federal funding. "[Y]ou're going to have greater
25 accountability and justification for projects that are -- that had been funded in the past."
26 *Dep. of Michael Antonovich at 71 (Oct. 16, 1995).* Prudent planning could have anticipated
27 major cutbacks in federal funding for public transit in Los Angeles before the 20-Year Plan
28 was adopted in March 1995. The planners at the MTA failed to adjust to the reality of federal
cutbacks. "They're still in shock." *Id. at 73.*

1 407. If the proposed cutbacks in federal funding are implemented, "Our 20-Year
2 Plan as we know it now would be history." *Dep. of Franklin White at 100 (Oct. 27, 1995);*
3 *Press Release (May 24, 1995), M300264 at M300269; Thomas Rubin, Concerns About the MTA*
4 *Long Range Plan, at 33-36, 117-121, 137 (Oct. 25, 1995), E100596.* The 20-Year Plan did not
5 adequately take into consideration the implications of cutbacks in federal funding which had
6 been evident since the federal elections in November of 1994. *Dep. of Linda Bohlinger at 50-57*
7 *(Aug. 7, 1995) (Vol. 2); id. at 69-107 (Aug. 31, 1995) (Vol. 3); id. at 250-58 (Sept. 12, 1995) (Vol.*
8 *4); id. at 6-32 (Oct. 12, 1995) (Vol. 7); Memo from Barry Engelberg to MTA Executive*
9 *Management Committee re: Federal Legislative Update (March 31, 1995), M337921-43; Memo*
10 *from Arthur Sohikian to MTA Board (May 12, 1995) D121613-24; Dep. of Franklin White at 93-*
11 *103 (Oct. 27, 1995).*

12 408. In a 1995 memo to the MTA Board concerning the impact of proposed federal
13 cutbacks, now-CEO Joseph Drew misstated the potential federal loss. Mr. Drew materially
14 stated the potential federal loss as a total of \$40.6 million over three to five years. Applying
15 the MTA's and Mr. Drew's own assumptions, the correct amount was a total of \$121.8 million
16 to \$203.0 million over three to five years. The correct computation is \$40.6 million each year
17 times three to five years, not \$40.6 million divided over three to five years. *Compare MTA*
18 *20-Year Plan (March 5, 1995), M300452 at M300573, with Memo to MTA Board from Joseph*
19 *Drew re: Summary of Impacts of Proposed Federal Transportation Cutbacks (May 24, 1994 [sic;*
20 *correct year is 1995]), M300264 at M300266; Dep. of Franklin White at 97-99 (Oct. 27, 1995).*

21 409. In its comments on the MTA's draft 20-Year Plan, the Southern California
22 Association of Governments (SCAG) noted its concern about the MTA's financial
23 assumptions:

24 We are also concerned about several of the LACMTA financial
25 assumptions given recent indications from Washington. For
26 example, the statement that the current operating deficit will be
27 resolved is left rather vague, and it is unclear how that will be
28 accomplished. As you are aware, approval of the 1993-97
Regional Transportation Improvement Program was made by

1 FTA and FHWA after the LACMTA Board adopted a series of
2 steps they would take to erase the previous \$126 million deficit.
3 Recent federal court action may require the LACMTA to re-
4 evaluate the deficit elimination strategies and should be
5 considered in the 20-Year Plan. . . . The current RTP [Regional
6 Transportation Plan] financial plan made assumptions about
7 finance (e.g. State board measures) that have already failed to
8 materialize and we expect to have to give significant attention to
9 that portion of the RTP amendment.

10 *Letter from Mark Pisano, SCAG Executive Director, to Franklin White, MTA CEO (March 17,*
11 *1995) (ellipsis and brackets added), M323133 at M323136. The MTA did not eliminate or even*
12 *address these problems in the adopted 20-Year Plan. Dep. of Linda Bohlinger at 281-96, 310-*
13 *16 (Sept. 21, 1995) (Vol. 5); compare Letter from Mark Pisano, SCAG Executive Director, to*
14 *Franklin White, MTA CEO (March 17, 1995), M323133, with MTA 20-Year Plan (March 5,*
15 *1995), M300452 at M300472; MTA 20-Year Plan Staff Recommendation (March 5, 1995),*
16 *M300601 at M300617; FY 1996 MTA Budget, D121611.*

17 d. The 20-Year Plan Is Internally Inconsistent, And It
18 Misstates Costs And Revenues By Billions Of Dollars

19 410. The 20-Year Plan misstates by up to four billion dollars the projected revenues
20 that will be available to MTA over the next twenty years, even assuming the underlying
21 accuracy of its projections. The 20-Year Plan states projected sales tax revenues to be \$33
22 billion at page 10, \$34 billion at page 96, and \$30 billion at page 104. *MTA 20-Year Plan, at*
23 *10, 96, 104 (March 5, 1995); M300452 at M300473, M300559, M300567. In sworn deposition*
24 *testimony, the MTA official responsible for the financial sections of the 20-Year Plan could*
25 *give no explanation for these discrepancies. Dep. of Linda Bohlinger 375-76 (Sept. 21, 1995)*
26 *(Vol. 5). Then-CEO Franklin White, in his sworn deposition testimony, similarly could find*
27 *no explanation for these discrepancies. Dep. of Franklin White at 84-87 (Oct. 27, 1995). If the*
28 *higher figure is accurate, there would be more money to fund the needs of the transit*
dependent. If the lower figure is accurate, there would be less money to fund transit projects.

1 411. The 20-Year Plan misstates by some five billion dollars the costs associated
2 with the Plan. The Plan included as part of the costs of the Plan some \$5 billion in costs
3 incurred before the period covered by the Plan. *MTA 20-Year Plan, at 102-103 (March 5,*
4 *1995), M300452 at M300565-66; Dep. of Franklin White at 87-89 (Oct. 27, 1995); Dep. of Linda*
5 *Bohlinger 363-68, 372-74 (Sept. 21, 1995) (Vol. 5); Response to Peskin Report by Tom Rubin, at*
6 *72-84 (Jan. 1, 1996), E100061.* These discrepancies reflect billions of dollars that could be
7 used to fund the needs of the transit dependent.

8 e. **The 20-Year Plan Embraces Two Inconsistent**
9 **Assumptions Concerning Population Growth**

10 412. The 20-Year Plan simultaneously embraces two dramatically inconsistent
11 assumptions concerning population growth. On the one hand, the Plan assumes a high 33.4
12 percent population growth in the Los Angeles area between 1990 and 2015 in projecting
13 transit demands by using the SCAG population forecast. On the other hand, the Plan
14 assumes a low 19 percent population growth in projecting revenues by using the lower UCLA
15 population forecast to project sales tax revenues from Propositions A and C and revenues
16 from the California Transportation Development Act. The SCAG forecast is 76 percent
17 higher than the UCLA forecast. *Thomas Rubin, Concerns About the MTA Long Range Plan, at*
18 *75-79 (Oct. 25, 1995), E100596; Memo from SCAG re: UCLA v. SCAG Population Forecasts*
19 *(Oct. 13, 1994), M1001730; MTA, Memo from Chip Conway to Keith Killogh re Population*
20 *Growth in L.A. County and the MTA's Long Range Transportation Plan (Oct. 3, 1994),*
21 *M1001732.*

22 413. If the higher population forecast does not materialize, the projected transit
23 demands would not materialize. *Dep. of Keith Killough at 21 (Oct. 3, 1995) (Vol. 2).* The MTA
24 could achieve cost savings as a result to free up money to serve the needs of the transit
25 dependent. On the other hand, if the higher population forecast does materialize, then actual
26 revenues will be higher than projected revenues. This would increase the money available to
27 serve the needs of the transit dependent. *Id.* The MTA has confidence in the UCLA forecast
28 because it is "conservative . . . cautious . . . reasonable . . . prudent." *Dep. of Franklin White at*
76 (Oct. 27, 1995); see also Dep. of Linda Bohlinger at 321-22, 336 (Sept. 21, 1995) (Vol. 5). In

1 contrast, relying on the SCAG forecasts "makes us sound like a bunch of mindless
2 bureaucrats." *MTA, Memo from Judy Wilson to Keith Killough re Mayor Riordan's Chief of*
3 *Staff, Bill Ouchi, Questions SCAG Forecasts (Sept. 29, 1994), M1001765.*

4 414. Then-MTA CEO White testified at his deposition that he had "no idea" that
5 the Plan was premised on two different population forecasts. *Dep. of Franklin White at 106*
6 *(Oct. 27, 1995).* He said that no one had ever brought this to his attention. *Id. at 105-09.* In
7 fact, SCAG brought the problem to his attention before the MTA adopted the 20-Year Plan.
8 *See Memo from SCAG re: UCLA v. SCAG Population Forecasts (Oct. 13, 1994), M1001730.*
9 Linda Bohlinger, the person responsible for the financial model used in the 20-Year Plan,
10 knew that the inconsistent population figures were a problem but did not know how it was
11 resolved. *Dep. of Linda Bohlinger at 355-56 (Sept. 21, 1995) (Vol. 5).* Keith Killough, the
12 person responsible for the transportation model used in the 20-Year Plan, was aware of the
13 mutually exclusive population forecasts. *Memo from SCAG re UCLA v. SCAG Population*
14 *Forecasts (Oct. 13, 1994), M1001730; MTA, Memo from Chip Conway to Keith Killough re*
15 *Population Growth in L.A. County and the MTA's Long Range Transportation Plan (Oct. 3,*
16 *1994), M1001732.* He did not correct the problem. He could only explain that: "We went
17 with the assumptions we went with, and that's what the plan is based on." *Dep. of Keith*
18 *Killough at 26 (Oct. 3, 1995) (Vol. 2).*

19 f. The 20-Year Plan Does Not At All Address The
20 Needs Of Minority Transit-Dependent Bus Riders

21 415. Then-CEO Franklin White testified that whatever plan there is to meet the
22 needs of the transit dependent is in the 20-Year Plan, and if it is not in the Plan, the MTA does
23 not have any such plan. *Dep. of Franklin White at 17 (Oct. 27, 1995).*

24 416. The 20-Year Plan fails to identify the needs of minority riders and to devise
25 effective strategies to meet those needs. "Race and ethnicity is not considered when we're
26 doing the plan." *Dep. of Keith Killough at 41 (Oct. 3, 1995) (Vol. 2).* MTA does not gear its
27 policies and practices to evaluate, or to enhance, the mobility needs of minority bus riders.
28 *Dep. of Marvin Holen at 120-21 (Dec. 7, 1994).* The 20-Year Plan does not discuss who uses
MTA services, what their needs are, or how best to meet those needs.

1 417. The comments of the Southern California Association of Governments (SCAG)
2 on the 20-Year plan included the statement that: "The LACMTA emphasis on longer trips
3 and higher capacity transit vehicles seems contrary to observed travel behavior which is
4 comprised of shorter distance and centers oriented trips." *Letter from Mark Pisano, SCAG*
5 *Executive Director, to Franklin White, MTA CEO (March 17, 1995), M323133 at M323135.*

6 418. The 20-Year Plan allocates \$530 million, or 9.8 percent of the available
7 Proposition C 40 Percent Discretionary funding to bus operations and capital over the entire
8 period of the 20-Year Plan. In contrast, \$4.4 billion, or 81 percent of the total, is allocated to
9 rail. Bus is actually "losing money" in the Plan allocations. *Thomas Rubin, Concerns About*
10 *the MTA Long Range Plan, at 139-42 (Oct. 25, 1995), E100596; MTA 20-Year Plan, at 104*
11 *(March 5, 1995), M300567. In its 20-Year Plan, the MTA did not evaluate reasonable*
12 *alternatives for rail lines, or even note that such alternatives exist. Thomas Rubin, Concerns*
13 *About the MTA Long Range Plan, at 171-72 (Oct. 25, 1995), E100596; MTA 20-Year Plan*
14 *Technical Appendices, at 104 (March 5, 1995), M302623 at M302636.*

15 419. The 20-Year Plan does not address funding disparities between MTA bus
16 operations and the other municipal operators or seek to redress them.

17 **B. MTA's Board of Elected Public Officials**
18 **Has Politicized Transportation Allocations**

19 1. **According To Then-CEO Franklin White, MTA's Discretionary**
20 **Dollars Should Be Used To Make The Bus System Better**

21 420. Former MTA CEO Franklin White characterized MTA as a "money train":
22 From the moment I arrived I think one of the persistent rumors
23 that I received was, "things aren't straight over at the MTA."
24 Everbody I met would say that. People did not, and many do
25 not believe, that the way we make decisions is fair. They believe
26 insiders have a track. They believe this is a money train; and to
27 a large degree it is. It is a money train. And they believe that
28 favored friends have ways of climbing aboard that money train,
and that's true. One of the things that used to infuriate me
when I arrived . . . one of the reasons I recommended the

1 elimination of the RCC . . . was because I was fed up of hearing
2 on the street what the decisions were going to be that were going
3 to be made at the RCC the next week. It was sickening, and
4 that's why people believed that there was a fix in.

5 *MTA, Transcript of Franklin White's Comments Made in Open Session Regarding His*
6 *Performance Appraisal, December 20, 1995 Board Meeting, at 7-8 (ellipses added), M808381 at*
7 *M808387-88.*

8 421. MTA fired Mr. White in December 1995. Mr. White explained his termination
9 as CEO in the following terms:

10 This is a money train and if you get between the people who
11 want the money or the people who spend the money and the
12 conductor, you've got problems. I got in front of a lot of those
13 situations, and that in part explains why we're here today.

14 *Id. at M808396.*

15 422. Mr. White said that the LACTC 30-Year Plan, which proposed "a rail line
16 virtually in every district of every member [who] voted on the LACTC," reflected the fact
17 that the MTA and LACTC Boards consisted of "elected officials having their own individual
18 agendas."

19 [The MTA Board] is largely made up of . . . and I know this will
20 be understood . . . elected officials, and an enormously large
21 board . . . elected officials having their own individual agendas,
22 with everybody wanting to have this organization produce for
23 them something that will be good for them in their next election.

24 That's what any CEO faces. That's why the last long-range
25 plan was \$183 billion. That's why the last plan had a rail line
26 virtually in every district of every member [who] voted on the
27 LACTC. That's why when the plan was examined later on,
28 everybody recognized it had something for everybody, but it was
not a plan developed from the bottom up. So what you need is a

1 CEO, whether Frank White or someone else, who's going to tell
2 Board members something they may not want to hear; and I
3 have done probably six things that I can think of, some of them
4 I'm going to recite in this meeting, which were not welcomed by
5 individual Board member or groups of Board members.

6 *Id. At M808383 (brackets and ellipses added).*

- 7 2. According to Supervisor Yaroslavsky, People
8 "In And Outside The Agency . . . Consider The MTA's
9 Tax-Funded Coffers As Their Personal Candy Jars"

10 423. In early December 1995, County Supervisor and MTA Board member Zev
11 Yaroslavsky sent a letter concerning the MTA's way of doing business to MTA Board
12 Chairman Larry Zarian and to all other MTA Board members. According to Supervisor
13 Yaroslavsky, people "in and outside the agency . . . consider the MTA's tax-funded coffers as
14 their personal candy jars." *Letter from Zev Yaroslavsky to Larry Zarian, at 3 (Dec. 7, 1995),*
15 *M808364 at M808366.*

- 16 424. Supervisor Yaroslavsky also stated in his letter the following:

17 This open letter constitutes an appeal to the Agency and
18 its Directors to come to their senses and put a stop to the
19 incessant backbiting, backstabbing and conflict which has
20 characterized our Board's way of doing business in general, and
21 the relationship of some members with the CEO in particular.

22 It's time to call them as we see them! The campaign
23 against Franklin White is not about sinkholes and
24 mismanagement; it is about ridding this agency of the one man
25 who has had the courage to tell the truth and stand up to Board
26 members, contractors and their lobbyist when the integrity of
27 the agency and the interests of the taxpaying public have been at
28 stake.

This effort is not new; it's been going on for over two
years. It's been orchestrated by a cadre of Board members and

1 outside lobbyists who want a lap dog for a CEO. Make no
2 mistake: these efforts are aimed at replacing this CEO with a
3 “yes” man who will do as he is told -- regardless of the ethical
4 or financial implications.

5 * * *

6 His efforts to replace the professionally bankrupt Rail
7 Construction Corporation with a structure that would better
8 manage our construction program and keep the agency
9 accountable were resisted for over a year by members of this
10 Board. His opposition to the \$1.2 billion Electric Trolley Bus
11 boondoggle earned him the permanent enmity of contractors,
12 lobbyists and their supporters on this Board. His determination
13 to inject a dose of fiscal reality into the affairs of this agency by
14 cautioning the Board on the number and pace of rail
15 construction projects has similarly alienated contractors and
16 their Board supporters.

17 * * *

18 The MTA’s problem is not its CEO; its problem is us. As
19 the Arthur Andersen report on MTA construction practices
20 noted, “too many of the decisions, both big and small, that
21 decide the fate of Los Angeles’ future rail transit system are the
22 result of a politically charged versus fact-based decision making
23 process.”

24 * * *

25 Arthur Andersen warned that for the good of the agency, the
26 Board should “take steps to limit the political influence in Board
27 decisions.”

28 *Letter from Zev Yaroslavsky to Larry Zarian, at 1-3 (Dec. 7, 1995), M808364-66.*

3. According To Mayor Riordan, The MTA Board Has
Inherent Conflicts That Make It Impossible For MTA

To Meet The Needs Of The People Of Los Angeles

1 **425. MTA Board member and City of Los Angeles Mayor Richard Riordan**
2 **condemned the conflicts that are inherent in the structure of MTA's current board, which**
3 **consists of elected local officials According to Mayor Riordan : "Quite simply, it's impossible**
4 **to expect that the current MTA structure can engage in the largest public works project in the**
5 **country, operate the largest bus fleet west of the Mississippi and still create innovative**
6 **transportation policy which meets the needs of the people of Los Angeles." The Mayor stated**
7 **that he would seek the introduction of state legislation to replace the present MTA Board of**
8 **elected officials with a nine-member appointed board with no elected officials or alternates.**
9 **Mayor Riordan stated that "[a]n appointed Board of non-elected officials would be liberated**
10 **from the inherent conflicts faced by politicians as they juggle the interests of multiple**
11 **contituencies." *Letter from City of Los Angeles Mayor Riordan to MTA Chairman Larry Zarian***
12 **(Aug. 17, 1995), M802141 at M802141-42.**

13 **426. Mayor Riordan's proposal to restructure the MTA Board was introduced in**
14 **the California Legislature by Assemblyman Kuykendall on September 11, 1995. According to**
15 **the Mayor: "This legislation will create a much more efficient decision-making structure that**
16 **removes many of the biases associated with having elected officials on the board." According**
17 **to Assemblyman Kuykendall: "The MTA has been plagued by competing political interests,**
18 **all at the expense of a coordinated and strategic regional approach to transportation. . . .**
19 **This new structure removes individual constituent agendas, removes the perception of**
20 **political favors, and removes the ability of politicians to use MTA projects as leverage points**
21 **in negotiations on other political issues." *Office of Los Angeles Mayor Richard Riordan, Mayor***
22 ***Hails Assembly Bill 273 to Restructure MTA Board (Sept. 11, 1995) (with attachment entitled***
23 ***"Amendments to Assembly Bill No. 273," M803136), M803135.***

24 **C. Irregularities Have Marked MTA's**
25 **Development Of Its Rail Program**

26 **427. In choosing to proceed with the Long Beach Blue Line, the LACTC rejected a**
27 **"bus alternative" calling for adding 33 conventional 40-foot buses or 24 articulated 60-foot**
28 **buses. *The Long Beach - Los Angeles Rail Transit Project, Draft Environmental Impact Report***

(May, 1984), M305837 at M306450.

428. LACTC found only "very slight" differences between bus and rail on the bases of local impact or regional transportation impact. The bus alternative had small or insignificant noise impact, no adverse visual impacts, and positive impact on traffic and transportation. *The Long Beach - Los Angeles Project, Draft Environmental Impact Report* (May, 1984), M305837 at M306439, M306442-47, M306450.

429. According to LACTC, the principal impact of the bus alternative would be "to improve service and accessibility in the corridor."

Its major population effect would be to improve service and accessibility in the corridor. The Bus alternative in the Los Angeles segment would follow the 9th Street/Olympic corridor and then turn north along either Broadway or Spring Street to Union Station. This route would provide access to major employment and activity centers, such as the flower and produce markets, the garment district, the Civic Center core, and Union Station. While it would not serve the office center on the west side of downtown Los Angeles, its more direct route to Union Station would result in better time savings for long distance commutes, relative to existing service. The route in the mid-corridor would parallel the rail transit alternative and would provide opportunities to enhance accessibility to a slightly different set of activity centers, as described in Section 251 of this chapter. Within the Long Beach segment, the Bus alternative would be similar to light rail alternative LB-2 without service to Atlantic Avenue. The route would offer a direct connection to the regional shopping center and to the Transit Mall on 1st Street.

The Long Beach - Los Angeles Rail Transit Project, Final Environmental Impact Report

(March, 1985), M306934 at M307104. In the mid-corridor segment between downtown Los

1 Angeles and Long Beach, the bus alternative had twice the number of stops as the Long Beach
2 Blue Line. *Id.*

3 430. The Long Beach Blue Line's projected capital cost of \$407 million was over 65
4 times the \$6 million projected capital cost of the bus alternative. The actual capital cost of
5 \$877 million for the Long Beach Blue Line is 146 times the \$6 million projected capital cost of
6 the bus alternative. The Blue Line's projected annual operating cost of \$13 million was over
7 six times the \$2 million projected operating cost of the bus alternative. *The Long Beach - Los*
8 *Angeles Rail Transit Project, Draft Environmental Cal Impact Report (May 1984), M305837 at*
9 *M306434.*

10 431. During consideration of the environment impact report, the City of Los
11 Angeles Planning Department concluded that "[t]he bus alternative seems to negate the
12 necessity of a fixed rail system in this location." *The Long Beach - Los Angeles Rail Transit*
13 *Project, Final Environmental Impact Report (March, 1985), M306934 at M307205.*

14 432. In fiscal year 1992, the total MTA capital and operating subsidy to operate the
15 Long Beach Blue Line was \$128 million; the Blue Line that year provided service to
16 11,300,000 passengers or 101,800,000 passenger miles. MTA in the same year provided the a
17 total subsidy in the same amount of \$128 million to 17 of the busiest MTA bus lines. The 17
18 bus lines carried 183,600,000 passengers and provided 549,700,000 passenger-miles of service,
19 16 times the number of passengers the Long Beach Blue Line carried, and more than five
20 times the passenger miles than the Long Beach Blue Line. The 17 bus lines carried almost
21 half of the total countywide bus passengers. *MTA, A Look At The MTA (Jan., 1994), 800042A*
22 *at 800087A-90A; Testimony of Martin Wachs.*

23 433. The subsidy per passenger for the 204 Line was \$.34 in 1992. The Long Beach
24 Blue Line subsidy was \$11.30, or 33 times more than the Line 204 subsidy. While the Long
25 Beach Blue Line carried 11.3 million people during FY 1992, the 204 Line carried 18.0 million
26 people in the same period or 60 percent more than the Long Beach Blue Line. The 204 Line
27 had a 150 percent higher carrying capacity per route mile than did the Long Beach Blue Line.

28 All told, each of the six bus lines had a greater average weekday ridership than the Long
Beach Blue Line, notwithstanding service reductions that reduced bus ridership. *RTD, Tom*

1 *Rubin, Line 204 Subsidy Per Passenger (Oct. 30, 1992), 010928 at 010928-29.*

2 434. In FY 1992, RTD calculated that it spent a total of \$4.9 million for fare
3 collection processing costs on the Long Beach Blue Line. In the same period RTD collected
4 only \$4.1 million through the Long Beach Line's automated ticket vending machines. The
5 fare collecting costs were 20 percent more than the amount collected. *RTD, Tom Rubin, Blue
6 Line Fare Collection Costs (Feb. 16, 1993), 010991.*

7 435. According to the RTD:

8 The emphasis for building the Blue Line was to build a
9 rail line, somewhere in the County, as fast as possible to justify
10 to the voters the sales tax that they approved. The Blue Line
11 was chosen because there was an existing rail right of way that
12 could be obtained relatively quickly. However, many of the
13 stations don't really serve anything -- there are not any
14 commercial, government, or residential clusters nearby. This is
15 particularly true in mid-corridor. In other words, once you get
16 on the Blue Line at one end or the other, you aren't going to be
17 getting off to go to some destination in the middle, other than
18 your home, which you will need to transfer to another mode to
19 reach.

20 *RTD, T. Rubin, Letter to Eric Bierce, Honolulu Office of Mass Transit (Sept. 11, 1992), 010680
21 at 010686.*

22 436. Prior to the opening of the Long Beach Blue Line, RTD projected that the use
23 of a flat fare would produce an average daily ridership of 30,386 one year after opening. The
24 Blue Line achieved that ridership after one year. The same model, however, predicted
25 ridership of only 14,432 for a zone fare equivalent to that used on the bus system, which was
26 higher than the flat fare. It thus appears that the lower flat fare alone was responsible for 53
27 percent of the Long Beach Blue Line ridership. *Tom Rubin, Response "For the Record" (June
28 10, 1994), 011736 at 011761.*

437. A large number of Long Beach Blue Line riders chose it for one or more of the

1 following reasons: their former bus lines were cancelled, the Long Beach Line fare was less
2 than half of their former express bus line fare, the Long Beach Line offered a considerably
3 faster ride than their former local bus line at the same cost, and the Blue Line fares were so
4 low that riders were tempted out of their cars. *Id. at 011761.*

5 438. Line 456 was an express bus line that ran on top of the Long Beach Blue Line
6 south of Willow and then ran to downtown Los Angeles via the Long Beach Freeway. It took
7 approximately 52 minutes to make the trip at peak. As an express line, the cash fare for Line
8 456 was \$2.70 and the monthly pass was \$90. *Id. at 011759.*

9 439. A year after the opening of the Long Beach Blue Line, Line 456 was cancelled
10 and most of the original 2,500-3,000 average weekday riders transferred to the Blue Line.
11 The travel time increased, although the fare decreased by 53 percent. *Id. at 011760.*

12 440. An RTD analysis estimated that the cost of building and operating the Long
13 Beach Blue Line for 30 years was equivalent to operating 470 buses for 33 years (including the
14 cost of building the operating divisions to support the new buses). These buses would produce
15 almost four times as many passenger miles and almost nine times as many passengers. The
16 capital costs of rail are almost four time higher than bus (when the time value of money is
17 considered) and over 30 times as high per passenger and procedures operating costs per
18 passenger mile that are almost twice as high. *RTD, T. Rubin, Bus v. Rail Costs (Sept. 4, 1991),*
19 *009934 at 009935, 009944.*

20 441. MTA proceeded with the Long Beach Blue Line construction notwithstanding
21 the parallel construction of the 10 mile Harbor Freeway Busway from Adams Boulevard to
22 the Artesia Freeway. The Busway is estimated to save 20 minutes commuting time from San
23 Pedro to downtown Los Angeles. *Metro Bus System Workshop MTA, Special Projects: Harbor*
24 *Transitway (Sept. 14, 1995), M803782 at M803799.* "This busway will significantly reduce the
25 travel time from the southern part of the County to Downtown Los Angeles over that of the
26 Long Beach Line. The [MTA's] transportation model predicts a shift of 20% of the current
27 Long Beach Line ridership to busway bus routes, assuming that buses are added to meet
28 demand at existing [MTA] service quality standards." *MTA, A Look At The MTA (Jan. 1994),*
800042A at 800096A.

1 442. MTA constructed the Long Beach Blue Line "at grade most of the way." *Dep.*
2 *of Richard Stanger at 100 (July 27, 1995) (Vol. 1)*. Virtually all of the Blue Line street
3 crossings in the 16-mile mid-corridor portions of the Blue Line, where trains travel at up to 55
4 miles per hour, are at grade.

5 443. MTA recognized that: "In the [Metro Blue Line's] mid-corridor section, the
6 trains have been moving at high speeds and the accidents have resulted in fatalities and
7 serious injuries." *MTA, Board Recommendation, Endorsement of the Metro Blue Line Grade*
8 *Crossing Safety Improvement Program (Jan. 7, 1992), 013997*.

9 444. Overall, there are three ways to construct rail lines at street intersections.
10 "[Y]ou can cross a street under, on, or over the street. In very built-up areas you have to
11 almost -- you have to go under," although "in certain instances you have to fly over." *Dep. of*
12 *Richard Stanger at 89 (July 27, 1995) (Vol. 1) (brackets added)*. The costs of these three
13 different alternatives vary considerably. "The least expensive way of building a rail line is on
14 the surface. It costs about three times as much to build an aerial structure. It costs about
15 anywhere from 10 to 20 as much to build a subway." *Id. at 100*.

16 445. Even apart from industry standards as to population density, building rail lines
17 at grade -- where trains cross street intersections on the surface -- is inherently dangerous.
18 Even MTA admits this: "Non-grade separated rail systems are inherently more dangerous
19 than grade-separated rail, most bus systems, and almost every other known transit mode."
20 *MTA, A Look At The MTA (Jan., 1994), 800042A at 800103A*. Fortunately, industry standards
21 dictate that rail lines *not* constructed at grade in populated areas. As summarized by the
22 MTA's Richard Stanger, currently the Executive Director of Metrolink/SCRRA, and
23 formerly the Director of Rail Development at the MTA (LACTC) in the 1980s during the
24 planning and preliminary engineering of the Blue Line, *Dep. of Richard Stanger at 7, 84, 86-87*
25 *(July 27, 1995) (Vol. 1)*, there is an industry standard as to population density: "There's a
26 general standard that the density be *certainly below 5,000 per square mile* and more like two
27 or 3,000 per square mile." *Id. at 128-29 (emphasis added)*.

28 446. Disregarding and directly violating this industry standard -- given that the
MTA knew that the population "density along the Long Beach Blue Line is about 5,000 per

1 square mile," *Dep. of Richard Stanger at 129 (July 27, 1995) (Vol. 1)* -- the MTA opted for the
2 *least expensive and most dangerous* of the three alternatives by building the Blue Line *at grade*
3 throughout virtually all of this heavily-populated 16-mile mid-corridor.

4 447. The residential population along and adjacent to this 16-mile mid-corridor
5 portion of the Long Beach Blue Line was and is more than 95 percent minority.

6 448. RTD reported that in its first three years of operation, the Long Beach Blue
7 Line had 15 fatalities for an average of five a year. In FY 1993, Long Beach Line had eight
8 fatalities. All light rail transit operators in the United States reported seven fatalities in 1990.
9 The Long Beach Line had the worst fatality record on four out of five types of data and
10 measures; it was second worst on the fatalities per million passenger miles criterion. *RTD,*
11 *Tom Rubin, Blue Line and National Light Rail Safety Statistics (July 26, 1993), 011290 at*
12 *011293-94.*

13 449. There were 30 fatalities along the Long Beach Blue Line corridor from 1990,
14 when the Blue Line opened, up to late 1995. Most of the fatalities occurred in the minority
15 mid- corridor, as have most of the major injuries. *Dep. of Louis Hubaud at 57-58 (Oct. 6,*
16 *1995); MTA, A Look At The MTA (Jan., 1994), 800042A at 800103A-04A.* In FY 1992, "the
17 best safety year the Blue Line has had," the Long Beach Blue Blue Line's safety record
18 measured by boardings-per-fatality was almost ten times the national average for light rail
19 lines. *Id.* at 800103A.

20 450. "We continue to experience slightly more than one train vs. automobile
21 collision per week. To date, Long Beach Line collisions have destroyed one car each from the
22 Los Angeles Police Department, Long Beach Police Department, and the Los Angeles Sheriff's
23 Department." *SCRRRA, Endorsement of the Metro Blue Line Guide Crossing Safety*
24 *Improvement Program (Jan. 7, 1992), 013997.* As of January 7, 1992, 126 train/auto and 20
25 train/pedestrian collisions resulted in 12 fatalities and numerous injuries. "[I]n the [Blue
26 Line's] mid-corridor section the trains have been moving at high speeds and the accidents
27 have resulted in fatalities and serious injuries." *Id.* See also *MTA Metro Blue Line Grade*
28 *Crossing Incident Status (March, 1995) (257 more accidents from 1993-March, 1995), M322253-*
54.

1 451. In 1992, the Los Angeles County Board of Supervisors requested MTA to study
2 the need for grade separations on surface streets along the Long Beach Blue Line route. MTA
3 reported that placement of grade separated rail crossings in the 16 mile long mid-corridor
4 segment of the Blue Line would cost \$277 million. Rail over road separations at seven major
5 streets would cost \$84 million. MTA staff recommended that neither expense be incurred
6 "due to the degree of benefits expected relative to the cost, the construction and land use
7 impacts, and the financial impacts on other transportation programs/projects throughout the
8 county," notably "significant[ly] delay of other rail projects in the 30-Year Plan." *MTA,*
9 *Metro Blue Line Grade Separation Study Requested by Board of Supervisors (Nov. 18, 1992),*
10 *M0340001-02*. Instead, the MTA has opted to install quad-gates, cameras, and other low-cost
11 warning safety devices and barriers. *Id.* To date, very few devices or barriers in fact have
12 been installed in the mid-corridor. *Dep. of Louis Hubaud at 40 (Oct. 6, 1995).*

13 452. In contrast, Metrolink, which generally operates in less populated,
14 predominantly white population areas, is pursuing a program to construct grade-separated
15 crossings in response to similar safety concerns. *SCRRRA, Grade-Crossing Policy Resolution*
16 *(Aug. 9, 1991), M0070016 at M0070019*. "The Southern California Regional Rail Authority
17 shall support and promote the elimination of rail-highway grade crossings to the extent
18 feasible through support of the following actions: a) Close existing grade crossings where
19 possible. b) Participation in the construction of grade separations where appropriate. c)
20 Participation in the construction of highways and/or railroads where appropriate. d)
21 Establish no new crossings at grade." Metrolink also resolved to install warning devices. *Id.*

22 453. Although MTA rejected constructing grade separations in the minority inner
23 city along the Long Beach Blue Line on the grounds that the grade separations would be too
24 expensive, MTA nevertheless has helped to finance the elimination of at-grade crossings in
25 Metrolink commuter rail corridors. *See, e.g., MTA, Funding the MTA/Metrolink Match for the*
26 *Ramona Grade Sepatation Project (Dec. 29, 1993), M0250019.*

27 454. Illustrative is MTA's response to a potentially-dangerous at-grade crossing
28 along the Metrolink rail tracks in Van Nuys, a crossing connecting Willis Avenue and Raymer
Street. As explained by Metrolink's Executive Director, "this is a place where school children

1 like to cross the railroad track and it has been a concern." *Dep. of Richard Stanger at 267*
2 *(Sept. 26, 1995) (Vol. 2)*. Although there have been no fatalities or even injuries at this
3 Metrolink at-grade crossing far from the inner city, *id.*, the MTA in the summer of 1995 gave
4 nearly \$2 million -- \$1,789,000 to be exact -- to the City of Los Angeles to construct a
5 "pedestrian grade separation over the Metrolink Moorpark Line [Ventura Line] right of way,
6 connecting Willis Avenue to Raymer Street in Van Nuys" so as to "provide a safe pedestrian
7 route." *Memo from Judith Wilson to Call for Projects Committee re: "Transportation*
8 *Improvement Program (TIP) Call for Projects Staff Recommendations" at 56 (May 16, 1995)*
9 *(bracketted material added), M322807 at M322862.*

10 **D. Bus Operations Have A Greater Impact**
11 **On Regional Economic Development Than**
12 **Rail Development Does**

13 455. Bus operations have two significant advantage over rail construction in
14 regional economic impact. \$1.00 of taxpayer funds allocated to rail construction will result in
15 \$1.00 of rail construction expenditures, but a dollar of taxpayer funds allocated to MTA bus
16 operations will currently result in \$1.59 being spent on bus operations. Bus operation, unlike
17 rail construction, generates part of its own funding through fares and other operating
18 revenues. *Amended Expert Report and Response to Report of Robert L. Peskin by Thomas A.*
19 *Rubin (Jan. 1, 1996), E100061.*

20 456. Besides the direct economic impact generated by expenditures to operate the
21 bus system, there is a significant tertiary impact from the transportation services provided.
22 Since more residents have access to jobs, or to better jobs, and have improved access to
23 shopping, medical services, entertainment, etc., regional economic activity is increased. Rail
24 construction generates no such tertiary impact of this type for the simple reason that no
25 transit trips are generated during the construction process -- in fact, the usual construction
26 disruptions to transportation and access to retail and other economic activity centers actually
27 produce a *negative* tertiary impact. *Amended Expert Report and Response to Report of Robert*
28 *L. Peskin by Thomas A. Rubin (Jan. 1, 1996), E100061.*

457. MTA documents show that for 1995, total MTA bus operations employment
was 5,425, and total rail employment was 989. A subsidy of \$64,737 was required to create a

1 bus operations job compared to \$413,793 for a rail construction job. As a result, a taxpayer
2 dollar spent on operating bus operations creates 6.4 as many direct jobs as does a dollar spent
3 on rail construction. *Amended Expert Report and Response to Report of Robert L. Peskin by*
4 *Thomas A. Rubin (Jan. 1, 1996), E100061.*

5 458. Three-quarters of former RTD employees are minority residents while
6 construction jobs are less likely to be held by minorities or residents. *Amended Expert Report*
7 *and Response to Report of Robert L. Peskin by Thomas A. Rubin (Jan. 1, 1996), E100061.*

8 **E. Commuter Buses Serve Regional Transportation**
9 **Needs At Lower Cost Than Rail Development Does**

10 459. A comparative analysis of the cost of Metrolink and the cost of long haul
11 commuter bus transit operations in New Jersey shows that the fare is \$.15 a mile for
12 Metrolink and \$.14 per mile for the New Jersey bus operations. However, the cost per
13 passenger mile was \$.40 per passenger mile for Metrolink and \$.17 for the bus operators. As
14 a result, the Metrolink subsidy per passenger mile is \$.24 while the bus operators subsidy was
15 \$.03 or approximately 12 percent of Metrolink's subsidy. *Amended Expert Report and*
16 *Response to Report of Robert L. Peskin by Thomas A. Rubin (Jan. 1, 1996), E100061.*

17 460. The El Monte Busway generates ten times the peak weekday passenger miles
18 per guideway mile as does the Long Beach Blue Line and carries people at a higher average
19 speed of 52 miles per hour for buses in 1992. If other High Occupancy Vehicle (HOV) lanes
20 are expanded in accordance with the MTA 20-Year Plan's proposal for 31 new HOV projects
21 in Los Angeles County, commuter buses in other areas can be expected to attain such levels.
22 *Amended Expert Report and Response to Report of Robert L. Peskin by Thomas A. Rubin (Jan.*
23 *1, 1996), E100061.*

24 461. One of the main advantages of long-haul commuter bus over commuter rail is
25 flexibility. Commuter rail can only run where the tracks are. Unfortunately, most of the rail
26 tracks were put in to serve industry -- in some cases, they were deliberately put where the
27 people *are not* and/or residential patterns developed away from noisy freight train lines with
28 their traffic delays and industrial shipper customers. In contrast, long haul commuter bus
can operate wherever there is a freeway and a demand. The capital commitment to operate

1 the service is limited to the buses to operate the service; bus stops and park-and-ride lots (in
2 many cases); and operating, maintenance, and general management facilities -- and HOV
3 lanes, which are going to be built anyway. *Id.*

4 462. Also, the problems of access to a rail guideway are greatly diminished with
5 long-haul commuter bus service because bus can provide its own guideway access. Buses,
6 unlike trains, can travel through neighborhoods, picking up passengers within walking
7 distances of their homes, and then get on a freeway or HOV lane and achieve guideway speeds
8 comparable to or, in some cases, in excess of those achieved by commuter rail. These savings
9 in access time and ease of access, plus greatly improved distribution of riders at the downtown
10 end of the trip, can be a major factor in attracting people away from their cars and to transit.
11 *Id.*

**F. Access To The Downtown Central Business District
Does Not Justify Fixed Guideway Rail Development**

463. Defendants' expert Jeffrey Zupan rests his analysis of the benefits of rail on a belief in the economic importance of traditional downtowns. This belief is particularly misplaced in Los Angeles. Suburbanization is North America's dominant and most successful congestion reduction mechanism, and Los Angeles is perhaps the leading example. Suburbanization has shifted road and highway demand to less congested routes and away from core areas. All of the available recent national survey data on self-reported trip lengths and/or durations corroborate this view. Gordon and Richardson report that the findings from *all seven* recent large-scale United States household surveys present a consistent story of the containment of metropolitan area commuting times. Evidence from National Personal Transportation Survey ("NPTS") reports a commuting questionnaire included in the American Housing Surveys (1985, 1989), and the two decennial census reports (1980 and 1990) all help to make the same point. The 1990 NPTS reveals that auto users' average shopping trip time in the New York CMSA was 12.35 minutes for central city residents and 11.8 minutes for suburban residents; the comparable numbers for the Los Angeles CMSA were 11.0 and 9.9 minutes. The Los Angeles suburbanite has a 20 percent *shorter* shopping trip than the New York center city resident. In fact, the 1990 NPTS data for private auto commuters show that trip times for commuters in the Los Angeles CMSA are significantly better than those for the other nine of the top-ten CMSAs. *Response to "A Report by Jeffrey M. Zupan" by James E. Moore (undated), E100000.*

464. The new jobs in Los Angeles are not in the Central Bus District (CBD) to any major extent, they are in the suburbs and exurbs. Using the most generous interpretation of CBD job growth, the CBD added 47,819 new jobs from 1980 to 1990 -- and the region added 1,645,680. For every job that was created in the CBD, there were *over 33* created elsewhere. If the objective is to help lower income residents to gain employment through transportation, the focus should be on helping them move to where the jobs *are* -- not to where MTA would like them to be to justify rail construction expenditures. Unfortunately, while some of the rail lines go through minority housing areas, they are not necessarily well suited to the travel

1 needs of the residents of these areas. With stations a mile or more apart in the non-CBD
2 sections of Los Angeles County, there are comparatively few residents that have easy access to
3 rail travel. These passengers will need to use bus to access rail. *Amended Expert Report and*
4 *Response to "A Report by Jeffrey M. Zupan" by Thomas A. Rubin (Jan. 1, 1996), E1000379.*

5 465. The rail map of Los Angeles will never look like that of Manhattan, where
6 there are often rail stations every few blocks from everywhere. Many of the destinations
7 where people want to go in Los Angeles are simply not close to rail stations. While this is a
8 major problem for the traditional home-to-work trips, it is a far more serious problem for
9 non-work trips. Rail is simply extremely non-productive for many trips such as home-to-
10 school, home-to-shopping, home-to-church, home-to-medical, etc. *Id.*

11 466. Again, the problem is simply that the number of jobs added in the CBD will be
12 an extremely small segment of total new jobs in the region. The CBD currently has fewer
13 than 6% of the jobs -- and fewer than 3% of the new jobs -- in the region, a number that has
14 been declining for many years. More important, what we are seeing is a CBD that is
15 becoming the employment site more and more for high-end jobs -- law firms, CPA firms,
16 headquarters, bankers, etc. The entry-level positions that are likely to be more of interest to
17 the lower-income, working poor population are just not growing in the CBD area. Los
18 Angeles does not have the CBD to make rail a success. *Id.*

19 **G. Irregularities Were Rampant During**

20 **The 1994 Bus Fare Restructuring**

21 **1. The MTA Board Committees That Studied**
22 **Fare Restructuring Did Not Recommend It**

23 467. MTA staff prepared numerous internal reports about fare restructuring
24 scenarios in order to deal with a budgetary shortfall on bus operations. Most of the work was
25 done in connection with a Fare Restructuring Committee chaired by MTA Board member
26 Antonio Villaraigosa, which started meeting in April 1993. Although he and at least one other
27 member of the Committee, Marvin Holen, wished to explore ways to obtain greater resources
28 for bus operations without raising fares, MTA staff memoranda almost exclusively considered
fare and pass price increases or elimination of passes altogether in order to raise more funds.

Testimony of Antonio Villaraigosa and Marvin Holen; Dep. of Dana Woodbury at 426-28 (Aug.

18, 1995) (Vol. 4).

468. The Fare Restructuring Committee considered restructuring scenarios in which bus fares were reduced, took account of need, varied with distance or varied by time of day. *E.g., MTA, Ridership, Costs and Revenue Impacts of Reverting to Prior MTA Fare Structures (Jan. 4, 1994), M1011087; MTA, Comparing the Impact of an All-Day Pricing Scenario to the Impacts of A Peak/Off-Peak Scenario Presented to the Oct. 21, 1993, Meeting of the Fare Restructuring Committee (Nov. 11, 1993), M1011105; MTA, Extension of the Experimental \$23 Senior-Monthly Pass Demonstration (Nov. 5, 1993), M1011102; MTA, Presentation of Fare Restructuring Concept-Working Draft (Sept. 15, 1993), M302912; Comparing the Impact of a Price Increase in All Fare Categories to the Impacts of Two All-Cash Price Structure (Sept. 24, 1993), M302939; MTA Selected Pricing Scenarios/Understanding the Fare Restructuring Concepts Discussed at the Sept. 23, 1993, Committee Meeting (undated), M1011110; MTA, Boarding and Information on Fare Collection Methods (July 2, 1993), M1011152; MTA, Additional Comparative Performance Data for 20 Largest Operators and Local Operators (Sept. 15, 1993), M302891; MTA, Selected Alternative Fare Structure with Reviewed Boarding Impacts (July 29, 1993), M1011183; MTA, Alternative Fare Scenarios (July 23, 1993), M101139; MTA, Fare Restructuring Presentation (April 1, 1993), M1011221.*

469. The Fare Restructuring Committee scenarios for fare increases were designed to generate revenue increases in the range of 15 to 25 million dollars. A staff-generated fare restructuring package of \$50 million was eventually presented to the Board. *Dep. of Dana Woodbury at 418-19, 434 (Aug. 18, 1995) (Vol. 4).*

470. According to MTA staff, a staff fare restructuring proposal that would raise the base cash fare to \$1.25 (from the then-current \$1.10 base fare), eliminate all passes except those for the elderly and disabled and implement zone fares for rail service could generate \$38 million in additional fare revenue in FY 1994-95. However, as the MTA conceded, "[o]ver one million transit dependent riders cannot afford this additional increase." *MTA, Letter from Linda Bohlinger, Deputy Executive Officer Capital Planning, to Betty Garland Federal Emergency Management Agency (May 20, 1994), M339417, attached report entitled MTA Request to the Federal Emergency Management Agency for Emergency Operating Assistance, at*

1 4 (May 20, 1994) (requesting grant to "prevent fare increase"), M33918 at M339421.

2 471. MTA reported that "a fare increase would impose economic burden especially
3 for low income transit-dependent riders and limit their mobility. Over 20% of households in
4 low-income areas do not own an automobile and depend on public transit." *Id. at 6, M339423.*

5 472. The staff declined to consider whether bus operations were adequately funded
6 vis-a-vis other modes of MTA funded or operated transit. Staff considered only issues
7 involving bus "cross-subsidization," *i.e.*, the relative contribution of different categories of
8 bus riders, notably cash and pass riders. MTA staff eventually recommended only the
9 elimination of the regular monthly bus pass because pass riders as a group were purportedly
10 cross-subsidized by cash passengers who paid less per boarding than pass passengers.
11 Regular pass passengers, however, actually were the category of pass riders who were least
12 cross-subsidized. Senior and disabled pass users were responsible for 19 percent of
13 boardings, but paid only six percent of revenue. Student pass holders were responsible for
14 five percent of boardings, but only four percent of revenue. The regular pass riders' share of
15 revenue and share of boardings were virtually identical (18.09 percent and 18.40 percent),
16 indicating no cross-subsidization at all. While the MTA Board retained senior and disabled
17 and student passes, the Board eliminated the regular monthly bus pass. *MTA, Percent of*
18 *Revenue & Boardings by Fare Paid (June 1994), 800853; Dep. of Dana Woodbury at 502-04*
19 *(Aug. 18, 1995) (Vol. 4).*

20 473. The Fare Restructuring Committee did not make any restructuring
21 recommendation or report to the Board. The Fare Restructuring Committee stopped holding
22 meetings because its chairman felt that nothing further could be gained by continuing to meet.
23 *Dep. of Dana Woodbury at 419-20, 425-26, 433-34, 470-71 (Aug. 18, 1995), (Vol. 4).*

24 474. Staff fare restructuring reports were also submitted to the MTA Finance,
25 Budget and Efficiency Committee chaired by MTA Board member Marvin Holen. The
26 Finance Committee, like the Fare Restructuring Committee, made no recommendation on
27 fare restructuring to the Board. *Dep. of Dana Woodbury at 477-79 (Aug. 18, 1995) (Vol. 4).*

28 475. In spite of the numerous staff reports, the staff failed to bring to the attention
of the Fare Restructuring Committee or the Finance, Budget and Efficiency Committee the

1 **McCone Commission Recommendations, the Fare Attitude Report, or the Inner City Transit**
2 **Needs Assessment. No analysis was performed of racial disparities in fares or subsidies of**
3 **MTA bus riders compared to rail or municipal operator passengers. Nor did the staff**
4 **conduct or present any surveys of public attitude about MTA service or fares. *Dep. of Dana***
5 ***Woodbury at 420-22 (Aug. 18, 1995) (Vol. 4).***

6 **476. In a December 17, 1993, interoffice memo, MTA CEO White ordered MTA**
7 **executive officers to draw up cost reduction plans because MTA is "faced with [rail**
8 **construction] capital demands which exceed our capacity." MTA's cost reduction plans**
9 **included no options to halt or restructure expenditures on rail lines under construction in**
10 **planning: "Due to time constraints and the scope of work requested by MTA management,**
11 **rail operations were benchmarked but not analyzed." However, MTA placed increased bus**
12 **fares and reduced bus service on the list: "It is our belief that the operating shortfall must be**
13 **addressed through a combination of cost reductions in . . . bus operations management, labor,**
14 **non-operations and bus service delivery." *MTA, Franklin White, Cost Reduction Plans and***
15 ***Agency-Wide Hiring Freeze (Dec. 17, 1993), 800541 at 800561. Accord, Deloitte & Touche, Cost***
16 ***Reduction Project-LACMTA (Feb. 9, 1994), 800541 at 800583. When asked whether their cost***
17 **reduction recommendations would include postponing spending on planned rail projects,**
18 **Deloitte and Touche, MTA's accountants, indicated that they would not review rail**
19 **construction as part of their work. *Testimony of Thomas Rubin.***

20 **477. The MTA staff's proposal for fare restructuring was presented directly to the**
21 **full Board in May 1994. In its memorandum to the Board in support of proposed fare**
22 **restructuring or service reduction, MTA staff stated that it had only considered bus fare**
23 **restructuring alternatives. MTA staff stated that it specifically did not recommend leaving**
24 **the fare structure unchanged because a projected \$126 million operating budget deficit would**
25 **then have to be covered by other means, including "reallocation of revenues." *Dep. of Dana***
26 ***Woodbury at 433-35 (Aug. 18, 1995) (Vol. 4); MTA, Judith Wilson, Proposed Changes to the***
27 ***Fare Structure for Implementation on Sept. 1, 1994 (undated), 800409, 800411.***

28 **2. The Public Hearing Revealed Great Public**
Opposition, Questioning the MTA's "Focusing
Its Financial Resources On Rail Development
At The Expense of Bus Service."

1 **478. The public notice for a meeting to receive public comment on the fare**
2 **restructuring prepared by MTA staff listed only fare increase and service reduction options.**
3 ***MTA, Approval of a Notice of Public Hearing and Hearing Date for Consideration of Fare and***
4 ***Service Modifications (Dec. 1, 1993), M302945, 800274.***

5 **479. The MTA held a public meeting on April 23, 1994, to obtain comments on the**
6 **proposed fare restructuring and service reductions. The meeting was attended by**
7 **approximately 1,000 persons. According to the MTA, half of those at the public meeting who**
8 **addressed fare restructuring "expressed opposition to a fare increase in any form." *MTA,***
9 ***Arthur Leahy & Judith Wilson, Approve Findings of Public Testimony Related to April 23, 1994***
10 ***Public Hearing for Possible Fare and Service Modifications for FY 1995 and Later (May 20,***
11 ***1994), 800607 at 800608. "Individuals with this comment most commonly cited economic***
12 **hardship and/or a perceived unfairness as the basis for their opposition. Many also cited the**
13 **general economic condition of Southland households that are suffering from employment**
14 **losses, very low or fixed-income levels and hardship caused by recovery efforts from recent**
15 **natural disasters. The Los Angeles City Council is also on record opposing any fare increase**
16 **at this time. The Council has further requested its representatives on the MTA Board to take**
17 **all measures to lower the base fare to 50 cents." *Id.***

18 **480. MTA reported that the public opposed "all 22 service [reduction] proposals."**

19 **The general consensus of the community was that transit**
20 **dependent riders such as the elderly, disabled, students and the**
21 **working poor need and use public transit to travel to and from**
22 **work, church, schools, shopping centers and medical facilities.**
23 **Hence, should service be cancelled or seriously curtailed, little or**
24 **no transportation would be available to them to lead their**
25 **normal lives. This sentiment was echoed by the Los Angeles**
26 **City Council which passed a motion protesting any reduction in**
27 **bus service. Many respondents said the bus system is already**
28 **seriously overcrowded and thought service should be added**

rather than cutback.

MTA, Arthur Leahy & Judith Wilson, Approve Findings of Public Testimony Related to April 23, 1994 Public hearing for Possible Fare and Service Modifications for FY 1995 and Later (May 20, 1994), 800607 at 800611; see also MTA Request to the Federal Emergency Management Agency for Emergency Operating Assistance, at 6 (May 20, 1994), M339418 at M339423, attached to Letter from Linda Bohlinger to Betty Garland (May 20, 1994), M339417.

481. The MTA also reported that there were numerous expressions of public concern that "MTA is focusing its financial resources on rail development at the expense of bus service."

Several respondents suggested that MTA lobby other levels of government to obtain additional revenues to help fund operations. Some suggested that new gas taxes, parking fees or tax on corporations be legislated to help fund the bus and rail system. Others suggested that the Proposition A and C allocation formula be changed to earmark more funds for the bus system.

Many respondents expressed dissatisfaction with the perception that MTA is focusing its financial resources on rail development at the expense of bus service. They expressed their concern that the availability, quality, cleanliness, security and cost for bus service are moving in an undesirable direction. Comments also reflected the concern that rail service will not be available to most of them even at build-out. This last comment reflects the concern that much of the current riding public will not benefit, either now or in the future, from the expansion of the rail network, although they believe they are the ones funding its development. Some also noted that the issue centers not so much around fund *diversion*, as around a matter of funding *priority*. These statements were tempered somewhat, however,

1 by support for the continued development of a multimodal
2 transportation system that is equitable and designed for
3 maximum public benefit.

4 Many comments in this category also tended to reflect a
5 general suspicion of government's ability to make sound
6 financial and public policy decisions. Often times, this view was
7 expressed in terms of the public's perception that agency
8 officials place their own interests before those of the public.
9 This perception resulted in comments that question the
10 judgment behind proposing a fare increase given the generally
11 poor local economy. These respondents also raised the apparent
12 inconsistency in government policy with regard to promoting
13 transit usage on one hand, while on the other, making its use
14 more difficult and more costly.

15 Another concern expressed by respondents was the lack
16 of equity in transit services. This included the concern about an
17 alleged existence of two classes of service. This dichotomy was
18 expressed both in terms of suburban express bus service versus
19 local urban service, and bus versus rail service. Some
20 respondents suggested that the rail system be priced to achieve
21 the same cost recovery as the bus system. Others suggested that
22 construction of the rail system be slowed in order to channel
23 investment into bus system improvement.

24 *MTA, Arthur Leahy & Judith Wilson, Approve Findings of Public Testimony Related to April 23,*
25 *1994 Public Hearings for Possible Fare and Service Modification for FY 1995 and Later (May*
26 *20, 1994), 800607 at 800611-12; Testimony of Eric Mann.*

27 482. MTA reported that at the May 18, 1994, public hearing on proposed fare
28 increases and service cuts, participants noted that: "[A] fare increase would impose economic
burden especially for low income transit-dependent riders and limit their mobility. Over 20%

1 of households in low-income areas do not own an automobile and depend on public transit."
2 MTA also stated that "[a]n 8% reduction in transit service would prevent a projected 4.7
3 million transit riders from using public transit to work, school, church and other important
4 destinations." *MTA, Letter from Linda Bohlinger to FEMA (with attached report entitled*
5 *"LACMTA Request to the Federal Emergency Management Agency for Emergency Operating*
6 *Assistance") (May 20, 1994), M339417 at M339423.*

7 3. The Staff Gave The MTA Board No Financial
8 Options Other Than To Restructure Bus Fares

9 483. The Board of the MTA consists of public officials and appointees with fulltime
10 employment and outside interests. The agenda for a typical Board meeting has 60 items for
11 consideration and disposition. Written Board packages of briefing materials are often
12 delivered to Board members the day before or the day of the meeting itself. The failure of the
13 staff to get packages to board members in sufficient time for deliberate consideration has
14 been a longstanding problem. *Depositions of Gloria Molina and Richard Alatorre.*

15 484. In a 1995 study commissioned by the MTA of its heavy rail construction
16 program, the Arthur Andersen accounting firm found that the MTA Board has "limited
17 transportation expertise and lacks continuity" and that Board members "rely heavily on the
18 MTA staff for guidance." The Arthur Andersen study also concluded that Board decisions
19 are "often the results of a politically charged, rather than a fact based decision making
20 process." *MTA, Arthur Andersen, Final Report of Recommendations for Contract No. LST-*
21 *135-95 Study, Volume A, at Chapter IV, 7-8 (April 24, 1995), D121959.* Follow-up study by
22 Arthur Anderson one year later came to the same conclusion. *Arthur Andersen,*
23 *Implementation Performance Reviewed 12-13 (March 1996).*

24 485. Former MTA CEO White told the MTA Board that: "I will tell you now I
25 can't vouch that everything that comes to you is absolutely straight. I can write papers that
26 can fool anybody, and stuff can go through on paper." *MTA, Transcript of Franklin White's*
27 *Comments Made in Open Session Regarding His Performance Appraisal, December 20, 1995,*
28 *Board Meeting, M808381 at M808388.*

486. At the July 13, 1994, MTA Board meeting to consider fare restructuring, MTA

1 staff failed to provide the MTA Board any options to meet the anticipated budgetary shortfall
2 other than to restructure bus fares. In particular, the staff did not provide the MTA Board
3 with any alternatives involving restructuring rail construction programs or schedules, rail
4 operations, MTA funding for Metrolink, MTA funding for municipal transit operators, the
5 Formula Allocation procedure for funding municipal transit operators, or the Call for
6 Projects' financial allocation. The staff failed to provide and the Board did not request any
7 analysis of all possible funding sources. *Dep. of Dana Woodbury at 419-20 (Aug. 18, 1995)*
8 *(Vol. 4); depts. of MTA Board members Alatorre, Antonovich, Burke, Holen, Molina, and*
9 *Villaraigosa.*

10 487. At the June 22, 1994, Board meeting to discuss the proposed fare restructuring,
11 Board member Villaraigosa objected that MTA staff had provided the Board with
12 "selective[]" data.

13 Director Villaraigosa complained about the use of indicators
14 such as operating cost and revenue instead of subsidy per
15 passenger mile. He also took issue with staff's presentation
16 showing the monthly cost of 42 work trips for passengers who
17 take two buses. People paying \$42 are people who use the bus to
18 go shopping and to church. They don't have any alternative to
19 the bus. He stated that he found the selectivity of the charts
20 offensive. Right now the average fare for a pass user is 57 cents;
21 so the fare is really going from 57 cents to \$1.35 for these
22 people, and a chart should be added that shows that. The real
23 story needs to be told.

24 Board member Holen also noted that the subsidy per passenger mile ratio, which MTA staff
25 conceded was still among the lowest in the country, had an impact. Board member Holen also
26 suggested using the 20 largest transit operators instead of ten and comparing the MTA with
27 other local Los Angeles County operators. In response to staff statements that cities with
28 lower costs of living had higher transit fares, Board members asked whether these cities had a
one cent sales tax dedicated to transit and stated that Los Angeles bus riders had already paid

for transit. *Minutes of MTA Special Board Meeting (June 22, 1994), M902048 at M902050.*

488. At the June 22, 1994, Board meeting about fare restructuring, Supervisor Burke requested a report profiling the pass user, indicating how many passes were purchased by corporations which could pay more for them. *Id. M902048 at M902050.*

489. At the June 22, 1994, Board meeting, CEO White admitted that modifying the rail construction schedule and other measures were an option to a fare restructuring.

In response to director Alatorre's request for options other than a \$1.35 fare, Mr. White offered the scenario of no service cuts and no fare increase. Sixty one million dollars of revenue would have to be replaced. The money would have to come from [rail] construction, further staff reductions, and borrowing.

* * *

Mr. White explained that if passes are retained, \$11 million would be lost. . . . That money would then have to come from a fund accumulated to pay the rail bills, making it impossible to keep the Red Line schedule.

Minutes of MTA Special Board Meeting (June 22, 1994), M902048 at M902051-52.

490. MTA Board member Molina, a board member since 1993 who was also represented on the LACTC since 1989, knows of no instance when the staff of the MTA or its predecessors has on its own initiative proposed any action to further the interest of transit-dependent minority bus riders. Supervisor Molina proposed mitigating the staff recommendation on fare restructuring by restoring passes and by keeping the token price at 90 cents; MTA staff provided little or no support to her with respect to these proposals. *Dep. of Gloria Molina at 15 (Oct. 13, 1995).*

491. MTA staff and the MTA Board considered fare restructuring separately from budget deliberations, effectively precluding consideration of alternative revenue sources to avoid fare restructuring. *Testimony of Antonio Villaraigosa.*

492. In November 1994, MTA Board member and County Supervisor Burke moved that MTA examine its legal and financial relationship with SCRRRA, obtain information about

1 the per-passenger subsidy on Metrolink, MTA rail lines, MTA bus lines and obtain
2 information about the costs and benefits to Los Angeles City residents of MTA's continued
3 participation in SCRRA. Supervisor Burke stated that, under the joint powers agreement
4 with SCRRA, MTA is to provide administrative staff and related services to SCRRA through
5 June 1998. According to Supervisor Burke "[t]he purpose of that provision was to assure that
6 the MTA, as the largest funding agency for the SCRRA, maintains administrative control
7 over the SCRRA." Nevertheless SCRRA had voted 23 new SCRRA positions without
8 advising MTA, and non-Los Angeles County SCRRA Board members were seeking to amend
9 the joint powers agreement to permit SCRRA to independently employ its staff. Supervisor
10 Burke also stated that she was "concerned over the recent announcement by Metrolink
11 officials of a 25% [holiday] discount on Metrolink monthly passes and the message that it
12 sends to the transportation customers of the MTA."

13 493. In response to Supervisor Burke's motion about MTA subsidies for Metrolink,
14 Metrolink and MTA staff provided subsidy comparisons between Metrolink, MTA, Blue Line
15 and Red Line riders based on fiscal year 1993-94 overall "costs" without taking account of
16 capital costs in prior years. *Memo from Richard Stanger & Judith Wilson to Planning and*
17 *Programming Committee re: MTA's Relationship with the SCRRA (Jan. 25, 1995), M323405,*
18 *M323410-11 at M323417-18; Testimony of Tom Rubin.* The MTA report states that MTA
19 spent \$523 million dollars on total capital costs since 1990 for Metrolink to purchase and
20 improve commuter rail rights-of-way and adjacent property to purchase trains. These capital
21 costs, typically expended prior to the commencement of railroad operations, are not
22 accounted for in MTA's subsidy comparisons and, as a result, understate the cost to MTA of
23 Metrolink. The same is true for the Blue Line and Red Line. The fiscal year 1993-94 "overall
24 cost" of Metrolink used in the comparison was \$44 million, for the Blue line \$50 million, and
25 for the Red Line \$21 million. Capital costs for a rail line are typically the largest component
26 of costs. Comparisons to bus operations, where operating costs are typically greater than
27 capital costs, are therefore especially problematic. *Testimony of Tom Rubin.*

28 494. Notwithstanding the bias in the MTA's comparisons, MTA found that fiscal
year 1993-94 subsidies per passenger boarding were:

Mode

FY93/94 Cost Subsidy

| | | |
|---|-----------|--------|
| 1 | Metrolink | \$9.94 |
| | MTA Bus | \$1.16 |
| 2 | Blue Line | \$3.77 |
| | Red Line | \$4.22 |

3
4 *Memo from Richard Stanger & Judith Wilson to Planning and Programming Committee*

5
6 *re: MTA's Relationship with the SCRRRA (Jan. 25, 1995), M323405 at 323411.*

7
8 495. MTA staff declined to recommend, and the Board declined to consider
9 alternatives to bus fare restructuring notwithstanding the protestations of plaintiff

10
11 Labor/Community Strategy Center and its request for a rail construction moratorium
12 first made in mid-1993. *Testimony of Eric Mann.*

13
14 496. MTA staff failed to provide the Board with documentation of the racial
15 composition of MTA bus riders affected by fare restructuring compared to the racial
16 composition of Metrolink riders and riders of municipal bus operators such as

17
18 LADOT Commuter Express and Foothill Transit, which were left unaffected by the
19 fare restructuring. Only information about the heavily minority composition of
20 various categories of MTA riders was provided by the staff to the Board. *Deps. of*

21
22 *MTA Board members Richard Alatorre, Michael Antonovich, Yvonne Braithwaite Burke,*
23 *Gloria Molina, and Antonio Villaraigosa; Dep. of Dana Woodbury at 420 (Aug. 18, 1995)*
24 *(Vol. 4).*

25
26 497. MTA staff failed to provide the Board with comparative levels of total
27 capital and operating subsidies of MTA bus riders compared to Metrolink riders,
28 MTA rail riders, and riders of the municipal transit operators. The staff finally
29 provided the Board with some subsidy comparisons in January 1995 -- six months
30 after the MTA Board had approved the fare restructuring -- in response to a request

31
32 for information from MTA Board member Burke. *Deps. of Board members Richard*
33 *Alatorre, Michael Antonovich, Yvonne Braithwaite-Burke, Gloria Molina, and Antonio*
34 *Villaraigosa; see also, Los Angeles Times, Fare Hike Plan Points Up Inequities In Bus,*

35
36 *Rail Subsidies (Aug., 1994), 800039; Memo from Richard Stanger & Judith Wilson to*
37 *Planning and Programming Committee re: MTA's Relationship with the SCRRRA (Jan.*
38 *25, 1995), M323405 at M323411.*

4. **MTA Officials Have Admitted That The
Fare Restructuring Was Not Necessary**

498. Board member Marvin Holen, a former chair of the RTD, sought to avoid bus fare increases by instead restructuring rail projects. According to Mr. Holen, a bus fare increase was not necessary because MTA could change its priorities and reallocate resources to bus operations in order to avoid fare restructuring. At the July 1994 Board meeting, Mr. Holen identified \$89 million that could have been used to avoid fare restructuring. Mr. Holen was readily able to identify almost a hundred million dollars that could have been used to avoid fare restructuring in 1995.

Testimony of Marvin Holen; MTA, Rail and Bus Facts (July 11, 1994), M329396 at M329402; Dep. of Dana Woodbury at 478-479 (Aug. 18, 1995) (Vol. 4).

499. Mr. Holen has reaffirmed that, shortly after White was appointed CEO of the MTA in 1993, Mr. White admitted that "this agency is bankrupt" because MTA had made rail commitments beyond its capacity to fund. *Dep. of Marvin Holen at 38 (Dec. 7, 1994).*

500. At a public meeting of the MTA Finance Committee on December 16, 1994, then-CEO White agreed with Mr. Holen that funds could be identified to avoid bus fare restructuring.

Mr. Holen: "[W]hen we use the word 'shortfall,'

Mr. White, I think it's a very slippery word. I can design a scenario in which the operating shortfall is \$440 million this year, approximately, no shortfall this year, or a surplus this year. It is a matter of policy established by the MTA board of directors as to the application of resources in any particular area in the jurisdiction and activities of the agency . . . [U]sing such phrases as a \$126 million shortfall is simply a propaganda slogan."

Mr. White: "I understand what you're saying and I omitted in my brief remarks to mention the

1 flexibility we do have, that you have often reminded us of
2 and we do have, of using money that is flexible that is
3 now being allocated for [rail] construction purposes, we
4 always have the opportunity to make a decision that says
5 we don't want to do that . . ."

6 Mr. Holen: " . . . What I guess my quarrel is that
7 don't come in and tell me I got to cut a line that carries
8 170,000 to 180,000 people because there is no choice.
9 Frank, there is another choice, there is [sic] 101 other
10 choices in terms of the allocation of resources in control
11 of this agency with respect to providing moneys to
12 support the bus system."

13 Defendant White: " . . . You are absolutely right."

14 *Transcript of MTA Finance Committee Meeting of December 16, 1994; Dec. of Eric*
15 *Mann at 2 (Jan. 9, 1995); Testimony of Eric Mann.*

16 501. Then-CEO White "plead[ed] guilty" for the MTA's failure to use
17 "discretionary dollars" to make the "bus system better." *MTA, Transcript of Franklin*
18 *White's Comments Made in Open Session Regarding His Performance Appraisal,*
19 *December 20, 1995, Board Meeting, M808381 at M808390-91.*

20 502. Then-CEO White repeatedly emphasized that the MTA had available
21 discretionary funds that it could allocate to serve the needs of the transit dependent.
22 *Dep. of Franklin White at 65-67 (Oct. 27, 1995), and exhibits cited. Mr. White, in*
23 *deposition testimony, conceded that the fare increase was not necessary. According to*
24 *CEO White, there were alternatives to raising fares and eliminating passes in 1994.*
25 *"Q. In your opinion, were there other alternatives to raising fares and eliminating*
26 *passes in August, 1994? A. There were alternatives." Id. at 60-61. MTA could have*
27 *reprioritized its objectives in order to eliminate the fare restructuring. Id. at 65, 67;*
28 *see generally id. at 59-61, 65-67.*

503. Less than a year after approving fare restructuring, the MTA agreed to

1 transfer \$50 million to the County of Los Angeles for *its* budget shortfall. According
2 to one MTA Board member: "[I]t was somewhat ridiculous to have money to turn
3 over -- to say and tell people that we had to raise the fare, on the other hand." *Dep. of*
4 *Richard Alatorre at 21 (Oct. 17, 1995)*. The source of the funds that the MTA gave to
5 the County is Proposition C 40% Discretionary funds that would otherwise be used
6 primarily for bus operations. *See generally Dep. of Linda Bohlinger at 135-42 (Sept.*
7 *12, 1995) (Vol. 3); id. at 176-86, 191-99, 201-02, 215-29, 233-37, 241-50 (Sept. 12, 1995),*
8 *(Vol. 4); id. at 271-74, 324-30 (Oct. 10, 1995) (Vol. 5).*

9 504. At the August 1, 1995, Board meeting, several Board members spoke on
10 the proposal to give MTA funds to the County. Supervisor Burke used the analogy of
11 dividing one glass of water between two very thirsty people and said that the people
12 who will really be hurt are the poor people who depend upon the bus system. Los
13 Angeles City Councilman Alatorre said this action would be devastating to the transit
14 dependent people in his district. According to Councilman Alatorre, the County is
15 taking money to assist people by keeping the County hospital open, but hurting them
16 by taking away their ability to get there. *Minutes of MTA Special Board Meeting (Aug.*
17 *1, 1995), M803904 at M803905-06*. At a later Board meeting, Councilman Alatorre
18 commented that on the one hand people are told that there is no money and the MTA
19 needs to increase the fare, and then it gives \$50 million to the County. *Minutes of MTA*
20 *Special Board Meeting (Aug. 30, 1995), M805486 at M805490*.

21 505. After voting to raise fares and eliminate the regular bus passes, the
22 MTA identified at least hundreds of millions of dollars through cost savings on various
23 projects, including savings on the Pasadena Line and on other rail construction
24 projects, *see Dep. of Linda Bohlinger at 43-44 (Oct. 12, 1995) (Vol. 7); id. at 74 (Oct. 16,*
25 *1995) (Vol. 8)*, savings that the MTA could use to avoid any fare restructuring. The
26 MTA could have taken these cost saving steps earlier. *Id.*

27 506. On August 23, 1995, MTA adopted the following changes in scope and
28 procedure in order to achieve cost savings on MTA projects and rail operations:

- a. direct staff and EMC to raise the alignment and reduce

the station box depth for two stations on the Eastside extension for a savings of approximately \$15 million and research seismic implications;

- b. reduce the L.A. Car order from 74 to 52 cars for a total savings of \$30 million to the MTA;
- c. utilize the next 30 days to study and make a determination regarding implementation of the automoted driverless features on L.A. Car;
- d. adopt the modified rail operating cost model for a savings of \$398.5 million over 20 years;
- e. adopt a lower cost HOV alternative for Route 10 with modified lane widths, median and shoulders for a total cost of \$145 million;
- f. adopt lower cost HOV alternative for Route 60 to the 605 (San Bernadino County Line) with modified lane widths, median and shoulders for a total cost of \$75 million;
- g. develop and evaluate a low-cost, restriping alternative for route 10 to provide a second HOV lane on the El Monte Busway;
- h. authorize staff to establish a reserve fund with accounts for each rail construction project in terms of the design allowance contingency and other similar discretionary expenditures, that expenditures from these accounts would require Board action in terms of the design allowance when 70% of a rail project's contracts have reached or exceeded the 60% final design phase; a report will be prepared for board action to determine if the project's design allowance should be reduced.

Minutes of MTA Special Board Meeting (Aug. 23, 1995), M803914 at M803920; MTA, J.

1 *Wilson, S. Phernambucq & A. Leahy, Cost Containment Recommendations for Red Line*
2 *Eastside Extension; L.A. Car; Rail Operating Costs; and Route 10 and Route 60 HOV*
3 *Lanes (Aug. 8, 1995), M804927; MTA, L. Bohlinger, MTA Cost Containment*
4 *Communications Plan (Oct. 18, 1995), M902494.*

5 **VIII. MTA HAS THE RESOURCES TO IMPROVE**
6 **BUS SERVICE AND LOWER FARES**

7 **A. MTA Receives, Allocates, And Spends Billions Of Dollars**
8 **In Local, State, And Federal Transportation Funds**

9 **507. For Fiscal Year 1995-96, the MTA's major sources of revenue include**
10 **the following:**

- 11 a. Net Proceeds of Prop A and C borrowings and interest income
12 plus carryover of prior year's unexpended balances: \$655.0 [\$658.8
13 million of FY96 Budgeted Prop A Revenue + \$778.1 million of FY96
14 Budgeted Proposition C Revenue (FY 1995-96 Budget) - \$392.9 million
15 of Prop A cash receipts - \$389.0 million of Proposition C cash receipts
16 (Supporting Cash Flows, M302359)] utilized primarily for rail
17 construction.
- 18 b. City of Los Angeles Proposition A and C Local Return funds for
19 Red Line Construction: \$54.3 million.
- 20 c. Other local revenues (including bond/note cash receipts): \$92.7
21 million.
- 22 d. Federal Section 3 capital: \$350.5 million, utilized primarily, if
23 not exclusively, for rail capital.
- 24 e. Federal Section 9 capital: \$203.4 million, utilized primarily, if
25 not exclusively, for bus capital.
- 26 f. Federal Section 9 operating: \$28.2 million, utilized for bus
27 operations and allocated to the MTA bus operations and to the
28 municipal bus operators per the same formula used to allocate
Proposition A 40% Discretionary funds.
- g. Federal Surface Transportation Program/Congestion Mitigation

and Air Quality (STP/CMAQ): \$98.6 million, utilized for road construction and Green Line operations.

h. Other federal: \$8.8 million.

i. Transportation Development Act: \$275.2 million, utilized primarily for bus operations subsidy and local share of bus capital grants, distributed to the bus operators by the same formula used by the MTA to allocate Proposition A 40 Percent Discretionary funds (the allocation of capital funding utilizes a slightly different formula). TDA also provides small amounts of other funds for various dedicated transportation purposes.

j. Proposition 108/116 State rail bond proceeds for rail construction: \$64.0 million.

k. Other State of California funds: \$90.9 million.

l. Bus and rail fare revenues: \$213.0 million.

MTA FY 1995-1996 Proposed Budget, at 14-15 (undated), M301108 at 301124-25.

508. The State Transportation Development Act (TDA) provides state funding to included municipal bus operators for operating and capital purposes. Revenues are derived from ¼ cent of the 6 cent retail sales tax collected statewide. The ¼ cent is returned by the state to each county according to the amount of tax collected in that county. TDA Article 4 of the Act covers the amount of funds given to municipal transit operators, transit authorities and joint power authorities. Article 4 money is 88 percent of the TDA total. The MTA's formula share of Article 4 is 84 percent. Foothill Transit's 13 percent share comes out of the MTA's share. The other 16 percent is allocated to the other municipal bus operators. *MTA, untitled document concerning end of year adjustment to FY 1993-94 budget (undated), M1020692 at M1020693.*

1. The MTA Drafted, Lobbied For, And Administers The Two One-Half-Cent Local Sales Tax Measures Known As Proposition A (1980) And Proposition C (1990)

509. Proposition A levies a ½¢ sales tax on retail sales in Los Angeles

County. The tax revenues are dedicated to public transit. Proposition A was drafted and lobbied for by the MTA. It was adopted by the voters in 1980. The MTA allocates and administers the spending of all transit revenues raised through Proposition A.

510. Proposition C similarly levies a ½¢ sales tax on retail sales in Los Angeles County. The tax revenues similarly are dedicated to public transit. Proposition C also was drafted and lobbied for by the MTA. It was adopted by the voters in 1990. The MTA allocates and administers the spending of all transit revenues raised through Proposition C.

a. **Proposition A Produces Hundreds Of Millions Of Sales Tax Dollars For Transit Each Year**

511. Proposition A is a ½ cent retail transactions and use tax imposed in the County of Los Angeles, it is to be used for public transit purposes, and it is controlled by the MTA. Proposition A was placed on the November 1980 Los Angeles County general election ballot by LACTC Ordinance No. 16, passed by the LACTC on August 20, 1980. The tax began to be collected in 1982 following its validation by the California Supreme Court in *LACTC v. Richmond*. See generally *Official Statement, MTA Revenue Anticipation Notes, Series 1995-A (April 27, 1995), M322366 at M322380*. Proposition A, by its own terms, also lowered MTA bus fares to 50¢ for three years.

512. Proposition A funds are divided by law among three categories; in practice and in fact the MTA divides the funds among four categories or "pots." After deduction of the charges of the State Franchise Tax Board for collection of the Proposition A tax revenues, the funds are divided as follows:

- a. **Administration.** 5% of the funds are allocated to the MTA for administrative purposes.
- b. **Rail Development Program.** 35% of the "net" remaining funds are allocated to the construction and operation of the MTA's light and heavy rail lines. At the present time, all of the "35% funds" are utilized for rail capital expenditures, with the majority of these funds utilized

for debt service on bonds and commercial paper issued to finance rail construction.

c. Local Return Program. 25% of the "net" funds go to 88 Los Angeles County cities, and to the County Supervisors (on behalf of the unincorporated areas of the County) for local transit. The expenditure of these funds is controlled by the MTA with regard to allocation, compliance with MTA guidelines, and enforcement. These Local Return funds are used chiefly to support the operations of the non-MTA municipal bus operators and of demand-response transit services, and also to support capital expenditures for Metrolink and for other rail projects.

d. Discretionary. 40% of the "net" funds go to MTA for public transit purposes. At the present time, most these funds are used to subsidize MTA bus operations and the other Los Angeles County municipal bus operators. These fund are distributed by the MTA to the various municipal bus operators, and to the MTA, based upon a formula which disfavors MTA bus operations.

See generally Official Statement, MTA Revenue Anticipation Notes, Series 1995-A (April 27, 1995), M322366 at M322380.

513. The historical net Proposition A sales tax receipts have been as follows:

| <u>Fiscal Year</u> | <u>Net Sales Tax Cash Receipts</u> |
|--------------------|------------------------------------|
| 1991-92 | \$401,600,000 |
| 1992-93 | \$367,600,000 |
| 1993-94 | \$371,500,000 |
| 1994-95 | \$378,900,000 (estimated) |

Official Statement, MTA Revenue Anticipation Notes, Series 1995-A (April 27, 1995), M322366 at M322380.

514. Based on UCLA forecasts, the MTA predicts that the tax revenues which will be raised by Proposition A during FY 1995-96 will total approximately

\$392.9 million, and that these Proposition A tax revenues will be even greater in the three succeeding fiscal years. The MTA Proposition A revenue estimates (in \$millions) for FY 1995-96 through FY 1998-99, by category, are as follows:

| | <u>FY95-96</u> | <u>FY96-97</u> | <u>FY97-98</u> | <u>FY98-99</u> |
|----------------------|----------------|------------------------|----------------|----------------|
| Administration | \$ 19.6 | \$ 20.6 \$ 21.7 | \$ 23.1 | |
| Local Return 25% | \$ 93.3 | \$ 97.9 \$102.9 | \$109.6 | |
| Rail Development 35% | \$130.7 | \$137.1\$144.1 | \$153.5 | |
| Discretionary 40% | <u>\$149.3</u> | <u>\$156.6</u> \$164.7 | <u>\$175.4</u> | |
| TOTALS | \$392.9 | \$412.2\$433.4 | \$461.6 | |

MTA Short Range Transit Plan Fiscal Years 1996-99, at Table 4-1 (June 2, 1995), M336444 at M336466.

b. **Proposition C Also Produces Hundreds Of Millions Of Sales Tax Dollars For Transit Each Year**

515. Proposition C also is a ½ cent retail transactions and use tax imposed in the County of Los Angeles, used for public transit purposes, and monitored and controlled by the MTA. Proposition C was placed on the November 1990 Los Angeles County general election ballot by Ordinance No. 49, adopted and recommended by the LACTC on August 8, 1990. The tax began to be collected in the spring of 1991. The validity of the Proposition C sales tax was upheld in 1992 in an unpublished decision in *Vernon v. State Board of Equalization*. See generally *Official Statement, MTA Revenue Anticipation Notes, Series 1995-A (April 27, 1995), M322366 at M322381*.

516. Proposition C funds are divided among six categories or "pots." After deduction of the charges of the State Franchise Tax Board for collection of the Proposition C tax revenues, the revenues are divided as follows:

- a. **Administration.** 1.5% of the funds are allocated by the MTA to itself for administrative purposes.
- b. **Transit-Related Improvements to Freeways and State Highways.** 25% of the "net" remaining funds are supposed to be used for essential County-wide transit related improvements to freeways and

1 state highways. At the present time, the MTA considers construction of
2 rail lines which are located within freeways, or which cross freeways, to
3 qualify for this funding. This "pot" also funds -- or at least used to
4 fund -- the construction of high occupancy vehicle (HOV) lanes on
5 freeways and on other thoroughfares.

6 c. Local Return Program. 20% of the "net" funds are for Los
7 Angeles County cities and the County Supervisors (on behalf of the
8 unincorporated areas of the County) to be used for local transit. The
9 expenditure of these funds is controlled by the MTA with regard to
10 allocation, compliance with MTA guidelines, and enforcement. These
11 Local Return funds are used chiefly to support the operations of the
12 non-MTA municipal bus operators and of demand-response transit
13 services, and also to support capital expenditures for Metrolink and for
14 other rail projects.

15 d. Commuter Rail, Etc. 10% of the "net" funds are for commuter
16 rail (Metrolink), and for the construction/operation of transit centers,
17 park-and-ride lots, and freeway bus stops.

18 e. Rail and Bus Security. 5% of the "net" funds are for transit
19 security.

20 f. Discretionary. 40% of the "net" funds go to MTA for
21 "general" public transit purposes (except that such funds may not be
22 utilized for the construction of the Red Line between Union Station and
23 Hollywood). At the present time, the majority of these funds are
24 utilized for rail operation and construction purposes, with some
25 remaining portions allocated to bus operations.

26 *See generally Official Statement, MTA Revenue Anticipation Notes, Series 1995-A (April*
27 *27, 1995), M322366 at M322381.*

28 517. The historical net sales tax receipts from Proposition C have been as
follows:

| | <u>Fiscal Year</u> | <u>Net Sales Tax Cash Receipts</u> |
|---|--------------------|--|
| 1 | 1991-92 | \$ 28,300,000 (one month in FY91 after imposition of tax) |
| 2 | | |
| 3 | 1992-93 | \$353,200,000 |
| 4 | 1993-94 | \$367,600,000 |
| 5 | 1994-95 | \$373,300,000 (estimated) |

6 *Official Statement, MTA Revenue Anticipation Notes, Series 1995-A (April 27, 1995),*
7 *M322366 at M322382.*

8 518. MTA Proposition C revenue estimates (in \$ millions) for FY 1995-96
9 through FY 1998-99, by category, are as follows:

| | | <u>FY95-96</u> | <u>FY96-97</u> | <u>FY97-98</u> | <u>FY98-99</u> |
|----|-------------------|----------------|-----------------|----------------|----------------|
| 11 | Administration | 1.5% \$ 5.8 | \$ 6.2 \$ 6.5 | \$ 6.9 | |
| 12 | Discretionary | 40% \$153.3 | \$161.6 \$170.8 | \$181.9 | |
| 13 | Freeways/Highways | 25% \$ 95.8 | \$101.0 \$106.7 | \$113.7 | |
| 14 | Local Return | 20% \$ 76.6 | \$ 80.8 \$ 85.4 | \$ 90.9 | |
| 15 | Commuter Rail | 10% \$ 38.3 | \$ 40.4 \$ 42.7 | \$ 45.5 | |
| 16 | Rail/Bus Security | 5% \$ 19.2 | \$ 20.2 \$ 21.3 | \$ 22.7 | |
| 17 | TOTALS | \$389.0 | \$410.2 \$433.4 | \$461.6 | |

18 *MTA Short Range Transit Plan Fiscal Years 1996-99, at Table 4-1 (June 2, 1995),*
19 *M336444 at M336466.*

20 2. MTA Has Locked Up Future Revenue
Streams For Rail By Issuing Long Term Bonds

21 519. The MTA has tied up future revenue streams for rail purposes by
22 issuing long term bonds which prevent any other use of dedicated funding sources
23 until the bonds are paid off, generally in thirty years. *Dep. of Franklin White at 114-*
24 *16 (Oct. 27, 1995).*

25 520. As of June 30, 1994, the MTA showed over \$4 billion of long-term debt
26 on its balance sheet. It has since added hundreds of millions of dollars of additional
27 debt to this list. There is \$3,546.3 million of *new* debt being added in the period from
28 FY96-FY13, \$1,409.1 million in FY96-FY03 alone. Repaying this new debt will take

1 \$9.0 million in FY98, \$35.5 million in FY99, \$62.0 million in FY00, \$74.2 million in
2 FY01, \$91.3 million in FY02, \$110.5 million in FY03, etc., up to \$243.4 million in
3 FY13, for a total of \$1,822.7 million over the sixteen year period beginning in FY98.

4 *See 20-Year Plan Supporting Cash Flows, at 27-28 (March 5, 1995), M302359.*

5 521. The MTA has already mortgaged the future of Los Angeles County
6 taxpayers and transit riders for the over \$4 billion of debt it has already issued.
7 Continuing to issue debt to finance its rail construction program will significantly eat
8 away at the major remaining source of general purpose funds left to it, the
9 Proposition C 40 Percent Discretionary funds. *Dep. of Franklin White at 114-16 (Oct.*
10 *27, 1995).*

11 522. Because the debt service to pay off the rail construction bonds comes
12 off the top, any shortfall will hit everything else *but* rail debt service -- and can hit
13 them very hard. If there is a shortfall in expected revenue, as occurred/is occurring
14 from the period from FY91 into the foreseeable future, and/or there are major
15 construction cost overruns, as has occurred on every single MTA rail project, the
16 shortfall hits everything else. If MTA rail spending is not brought under control, the
17 result will be as it has in the past: bus operations are reduced, HOV lanes are not
18 built, other valuable projects are delayed or cancelled, but rail construction goes on.
19 *Amended Expert Report and Response to Report of Robert L. Peskin by Thomas A.*
20 *Rubin (Jan. 1, 1996), E100061.*

21 **B. MTA Has And Could Acquire Many Millions of Dollars**
22 **To Improve Its Bus Service And To Lower Its Bus Fares**

23 523. By concentrating its efforts on obtaining major federal investment
24 grants for rail projects, the MTA has foregone the opportunity to apply for and
25 acquire such funds for non-rail projects, particularly for busways, HOV lanes, and
26 bus preference lanes. This could be changed. *Testimony of Tom Rubin and Martin*
27 *Wachs.*

28 524. In a federal report titled "*Report on Funding Levels and Allocation of*
Funds -- *Report of the Secretary of Transportation to the United States Congress*
Pursuant to Section 3(j) of the Federal Transit Act)," Table 2, "*Summary of FY 1995*
New Starts Ratings," at 13-14, there are five busway projects elsewhere in the country
that are rated very highly. In fact, if the 27 projects where Cost/New Trip had been
calculated as a cost-effectiveness measure, busway projects ranked first (Houston),
tied for second (Pittsburgh East Busway Extension), tied for fifth (Pittsburgh Airport

1 Busway Phase I), and ranked fifteenth (South Boston Piers Transitway) (the fifth
2 busway project, the Orange County Transitway, did not report Cost/New Trip). The
3 cost per new trip on Los Angeles County busways and other non-rail guideway or
4 transit preference projects would be extremely competitive on a national basis -- and
5 far less costly than the comparable statistic for rail new start projects in Los Angeles.
6 *Response to Peskin Report by Tom Rubin, at 7-15 (Jan. 1, 1996), E100061.*

7 525. In Los Angeles County, the El Monte Busway/HOV Lane is by far the
8 most successful transit guideway project in Southern California, providing
9 approximately ten times the carrying capacity of the Long Beach - Los Angeles Blue
10 Line, and at a construction cost of under \$40 million dollars (1972-1975 dollars),
11 compared to an MTA-admitted cost of \$877 million for the Long Beach - Los Angeles
12 Blue Line. *Testimony of Tom Rubin.*

13 526. Apart from acquiring federal funds for bus projects, MTA has
14 numerous sources of funds under its control that it can utilize for purposes of funding
15 MTA bus operations. These include the following:

16 a. MTA could choose to charge Metrolink more for transfers made by rail
17 passengers from Metrolink to MTA buses. Metrolink currently pays MTA a
18 fee for such commuter rail transfer passengers, but the amount currently paid
19 is only a small fraction of MTA's costs to transport such passengers. Since
20 MTA pays approximately 60% of the Metrolink operating expenses and has
21 the power to dictate how its subsidy payments will be spent, this is a practical
22 and effective way of utilizing Proposition C 10 Percent Commuter Rail funds
23 to pay the related costs of MTA bus and rail operations. The amounts that
24 could be transferred would be in the millions of dollars per year. *Rubin First
25 Supl. Dec. ¶¶ 79-83, included in Amended Expert Report and Response to Report
26 of Robert L. Peskin by Thomas A. Rubin (Jan. 1, 1996), E100061 at E100204.*

27 b. The MTA could elect to "buy" Proposition A Local Return funds from
28 Los Angeles cities that would prefer to exchange such funds for a smaller
amount (generally approximately 60%) of unrestricted funds. This could

1 potentially provide the MTA new net revenues in the low- to mid-seven figures
2 per year. *Id. at* ¶¶ 84-91.

3 c. The MTA could charge a fee for the Freeway Service Patrol services
4 which are currently provided to the public at no charge. If the MTA chose to
5 charge only third-party providers such as the American Automobile
6 Association, fees in the low- to mid-seven figures per year are realistic. *Id. at*
7 ¶¶ 92-98.

8 d. The MTA could utilize Proposition C 25 Percent Freeway/Highway
9 Improvement funds either to fund directly the capital and/or operating
10 expenses of freeway bus services, or to use such funds for Red Line segments 2
11 and 3 construction costs, thereby freeing up Proposition C 40 Percent
12 Discretionary funds for bus operations. This could generate millions of dollars
13 per year for bus operations. *Id. at* ¶¶ 99-100.

14 e. The MTA could cease operations of the Red Line MOS-1 and the
15 Green Line as nonproductive transportation expenses. This would generate
16 tens of millions of dollars per year for bus operations. If the MTA were as
17 creative in promoting this course of action as it has been in promoting rail
18 construction, there is a significant likelihood that any obstacles would be
19 overcome. *Id. at* ¶ 101(a)&(b).

20 f. The MTA is attempting to remove itself and its employees from Social
21 Security, Old Age, Survivors, and Disability Insurance (OASDI). If it is
22 successful in this endeavor, the MTA may generate recurring savings as high
23 as \$25 million per year plus one-time savings of \$50 million. Approximately
24 half of these savings may be accruable to MTA (the rest accruing to the benefit
25 of individual MTA employees). As the vast majority of MTA employees deal
26 with bus operations, the vast majority of the savings from departing OASDI
27 would be usable for bus operations. *Id. at* ¶ 101(c).

28 g. If the MTA enters into "Japanese Cross-Boarder Lease" transactions,
the MTA could potentially realize almost \$6 million in additional revenues

1 over the period ending March, 1998. These revenues could be utilized for bus
2 operations. *Id. at ¶ 101(e).*

3 h. The MTA could reduce its spending on rail security by more than \$10
4 million per year without any significant impact on the security of rail
5 passengers, employees, and property. The monies saved could be utilized to
6 increase bus security and/or to subsidize a higher level of bus operations. *Id. at*
7 *¶ 101(e).*

8 i. The MTA could improve its investment returns on its bond reserve
9 funds by half a million dollars per year or more, and utilize the additional
10 revenues for bus operations. *Id. at ¶ 101(g).*

11 j. The MTA is charging the bus operating funding sources for the office
12 space utilized by rail construction, rail operations, planning and programming,
13 and general administration by using bus farebox revenues to secure and pay
14 for general revenue bonds to finance its new headquarters building. The MTA
15 could pay for these rail programs from dedicated rail sources instead, freeing
16 up the bus farebox revenues for bus purposes. Approximately one year ago,
17 MTA issued \$169.5 million of general revenue bonds to finance its new
18 headquarters building. *\$169,500,000 -- Los Angeles County Metropolitan*
19 *Transportation Authority [California] General Revenue Bonds [Union Station*
20 *Gateway Project] Series 1995-A, Official Statement (Jan. 18, 1995), 956540* The
21 actual structure of the transaction is a complex floating rate instrument with a
22 swap agreement and no annual debt service is shown in the Official Statement.
23 However, for a \$169.5 million fixed rate, semi-annual 30-year bond at a 5.5%
24 annual interest (which would have been below market rate at the time these
25 bonds were issued), the annual debt service would be approximately \$11.6
26 million.

27 k. The primary security for these bonds is farebox revenue, advertising
28 revenue, and certain other minor MTA operating revenue sources (*id. at 21*),
with secondary backing from MTA sales tax revenues. From this structure, it

1 is reasonable to assume that the MTA intends to make the debt service
2 payments on these bonds from farebox revenues. Since, at present, farebox
3 revenues are utilized for bus and rail revenue service operations, and since bus
4 and rail operations require far less than 100% of the space in the MTA
5 headquarters building, this bond issue is a way for the MTA to utilize bus fare
6 revenues to pay a portion of MTA rail construction and operations, planning
7 and programming, and general administration costs. There are dedicated
8 funding sources for at least some of these purposes. The MTA is charging the
9 bus operating funding sources for the space utilized by rail construction, rail
10 operations, planning and programming, and general administration. It does
11 not need to.

12 527. Finally, the funds that MTA is borrowing, backed by Proposition A 35
13 Percent Rail Construction and Operation funds, could be used for bus operations (as
14 well as for virtually any other transportation purpose).

15 PART TWO

16 SUMMARY OF THE LEGAL ISSUES

17 I. OVERVIEW

18 528. The District Court reviewed the factual and legal issues in the
19 preliminary injunction and summary judgment proceedings. As noted above, the
20 District Court held that, on the abbreviated preliminary injunction record, plaintiffs
21 had presented "more than sufficient evidence" to support their disparate impact
22 claims for preliminary relief and had "raised serious questions going to the merits" on
23 the claims of intentional discrimination. The MTA reiterated its defenses in a
24 summary judgment motion submitted after the close of discovery. The District Court
25 denied the MTA's summary judgment motion.

26 529. MTA raises the general defense as to both the disparate impact and the
27 intentional discrimination claims that it acted in good faith even if its policies and
28 practices had an adverse disparate impact on minority MTA bus riders. These
protestations are unavailing under the disparate impact standard. As the Supreme

1 Court held in the seminal case of *Griggs v. Duke Power Co.*, 401 U.S. 424, 431-32, 91 S.
2 Ct. 849, 28 L. Ed. 2d 158 (1971), in the employment discrimination context: "Good
3 intent or absence of discriminatory intent does not redeem employment procedures . .
4 . that operate as 'built-in headwinds' for minority groups and are unrelated to
5 measuring job capability." The same is true in the present Title VI context involving
6 provision of transit service.

7 530. MTA's protestations are also unavailing under the intentional
8 discrimination standard. The Court of Appeals for the Ninth Circuit made this clear
9 in an intentional discrimination voting rights case, *Garza v. County of Los Angeles*, 918
10 F.2d 763, 771 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028, 111 S. Ct. 681, 112 L. Ed. 2d
11 673 (1991), when it rejected the defense that County supervisors drew discriminatory
12 district lines that adversely affected Latino residents in order to preserve incumbency,
13 not out of ethnic animus. As the Ninth Circuit held: "The supervisors intended to
14 create the very discriminatory result that occurred. That intent was coupled with the
15 intent to preserve incumbencies, but the discrimination need not be the sole goal in
16 order to be unlawful." 918 F.2d at 771. Judge Kozinski, concurring on liability, noted
17 that the intentional discrimination ruling did not rest on any finding of racial or
18 ethnic animus, but on the finding that "elected officials engaged in the single-minded
19 pursuit of [an innocent policy] can run roughshod over the rights of protected
20 minorities." 918 F.2d at 778 (Kozinski, J., concurring and dissenting in part). In
21 providing transit services, MTA intended to create the very discriminatory
22 consequences that ensued.

23 II. THE DISPARATE IMPACT CLAIM

24 A. The Title VI Regulations Prohibit Disparate Impact Discrimination

25 531. Title VI provides that "[n]o person in the United States shall on the
26 ground of race, color, or national origin, be excluded from participation in, be denied
27 the benefits of, or be subjected to discrimination under any program or activity
28 receiving Federal financial assistance." 42 U.S.C. § 2000d. Each federal department
and agency empowered to extend federal financial assistance was "authorized and

1 directed to effectuate the provisions of section 2000d of this title with respect to such
2 program or activity by issuing rules, regulations, or orders of general applicability."
3 42 U.S.C. § 2000d-1.

4 532. An important purpose of the Title VI remedial scheme was to assure
5 that recipients of federal funds not maintain policies or practices that result in racial
6 discrimination. President Kennedy's June 19, 1963, message to Congress, proposing
7 Title VI, declared as follows: "Simple justice requires that public funds, to which all
8 taxpayers of all races contribute, not be spent in any fashion which encourages,
9 entrenches, subsidizes, or results in racial discrimination." 110 Cong. Rec. 6543 (1964)
10 (Sen. Humphrey, the Senate floor manager for Title VI, quoting the President's
11 message); *Lau v. Nichols*, 414 U.S. 563, 569 n.4, 94 S. Ct. 786, 39 L. Ed. 2d 1 (1974).

12 533. The United State Department of Transportation, which provides
13 federal funds to defendant MTA, has promulgated regulations that bar disparate
14 impact discrimination by recipients of federal funds.

15 A recipient, in determining the types of services,
16 financial aid, or other benefits, or facilities which will be
17 provided under any such program, or the class of
18 persons to be afforded an opportunity to participate in
19 any such program; may not, directly or through
20 contractual or other arrangements, utilize criteria or
21 methods of administration which give the effect of
22 subjecting persons to discrimination because of their
23 race, color, or national origin, or have the effect of
24 defeating or substantially impairing accomplishment of
25 the objectives of the program with respect to individuals
26 of a particular race, color, or national origin.

27 49 C.F.R. § 21.5(b)(2).

28 534. On July 14, 1994, the 30th anniversary of the passage of Title VI,
Attorney General Janet Reno issued a memorandum to the heads of departments and

1 agencies that provide federal financial assistance to local government agencies
2 reiterating that "administrative regulations implementing Title VI apply not only to
3 intentional discrimination but also to policies and practices that have a discriminatory
4 effect." According to the Attorney General:

5 Individuals continue to be denied, on the basis of their
6 race, color, or national origin, the full and equal
7 opportunity to participate in or receive the benefits of
8 programs from policies and practices that are neutral on
9 their face but have the effect of discriminating. Those
10 policies and practices must be eliminated unless they are
11 shown to be necessary to the program's operation and
12 there is no less discriminatory alternative.

13 *Memorandum from Attorney General Janet Reno to Heads of Departments and Agencies*
14 *that Provide Federal Financial Assistance, Use of the Disparate Impact in Administrative*
15 *Regulations Under Title VI of the Civil Rights Act of 1964 (July 14, 1994), 800186. (The*
16 *Attorney General leads and coordinates the federal government's Title VI*
17 *enforcement efforts. Executive Order 12250, 45 Fed. Reg. 72995 (November 2, 1980)).*

18 535. All agencies such as the MTA that receive federal funding enter into
19 standard agreements that require certification that the recipient will comply with the
20 implementing regulations under Title VI. *Guardians Ass'n v. Civil Service*
21 *Commission*, 463 U.S. 582, 642 n.13, 103 S. Ct. 3221, 77 L. Ed. 2d 866 (1983) (Stevens,
22 J., joined by Brennan and Blackmun, JJ., dissenting on other grounds). As Justice
23 Marshall stressed in *Guardians*:

24 Every application for federal financial assistance must,
25 "as a condition to its approval and the extension of any
26 Federal financial assistance," contain assurances that
27 the program will comply with Title VI and with all
28 requirements imposed pursuant to the executive
regulations issued under Title VI. In fact, applicants for

1 federal assistance literally sign contracts in which they
2 agree to comply with Title VI and to "immediately take
3 any measures necessary" to do so. This assurance is
4 given "in consideration of" federal aid, and the Federal
5 Government extends assistance "in reliance on" the
6 assurance of compliance.

7 *Guardians*, 463 U.S. at 629 (Marshall, J., concurring in part and dissenting in part).

8 "[T]he grant agreements under Title VI specifically mention compliance with the
9 executive regulations, which unambiguously incorporate an effects standard." *Id.* at
10 631 n.27. MTA has declared its commitment to comply with the Title VI regulations
11 in its grant applications, in the terms of its grants, and in its contracts for federal
12 funds. *See, e.g., MTA, Federal Transit Administration Assistance Programs,*
13 *Certifications and Assurances for FY 95 Appendix (Nov. 9, 1994), M700754; Federal*
14 *Transit Administration Civil Rights Assurance and the Assurance of Compliance with*
15 *Title VI (March 24, 1993), M328439-40; Master Agreement (Oct. 1, 1994), D129176;*
16 *Dep. of MTA Title VI official Frank Flores at 28, 30-43 (Oct. 31, 1995).*

17 **B. The Disparate Impact Standard**

18 536. The elements of proof for a Title VI regulatory disparate impact case
19 are undisputed. *See Amended Pretrial Conference Order at 13 (January 4, 1996).* The
20 District Court has articulated the elements of proof.

To establish a Title VI disparate impact claim, plaintiffs have the initial burden of demonstrating that the challenged conduct has a discriminatory impact on the protected class. *Larry P. v. Riles*, 793 F.2d 969, 982 (9th Cir. 1984). Once the plaintiffs have made this showing, the burden shifts to the defendants to prove that the conduct causing the disproportionate impact was justified by business necessity. *Larry P.*, 793 F.2d at 983. Plaintiffs may, then, rebut the claim of necessity by demonstrating the existence of other nondiscriminatory alternatives. *Larry P.*, 793 F.2d at 983.

Findings of Fact at 4; accord, Amended Pretrial Conference Order at 13 (Jan. 4, 1996).

Under Title VI regulations, "once plaintiffs have shown that a facially neutral practice has a disparate impact, the defendant may still prevail by proving a . . . necessity for the practice." *Jeldness v. Pearce*, 30 F.3d. 1220, 1229 (9th Cir. 1994). "Once a plaintiff has established a prima facie case, the burden then shifts to the defendant to demonstrate that the requirement which caused the disproportionate impact was required by . . . necessity." *Larry P.*, 793 F.2d at 982.

537. Courts have found adverse disparate impact in Title VI and other civil rights cases where, as here, plaintiffs received services or benefits less than or otherwise inferior to those received by others served by federally-funded agencies. *See, e.g., Jeldness*, 30 F.3d at 1229 (disparate provision of prison education programs to women) (Title IX); *Larry P.*, 793 F.2d at 982 (disparate placement of black school children in mentally retarded classes) (Title VI); *Latimore v. Contra Costa County*, No. C-94-1257-SBA (N.D. Cal.) (Aug. 1, 1994) (disparate provision of hospital care) (Title VI); *Meek v. Martinez*, 724 F. Supp. 888 (S.D. Fla. 1987) (disparate distribution of aid among the elderly) (Title VI); *Campaign for Fiscal Equity, Inc. v. State of New York*, 86 N.Y.2d 307, 1995 N.Y. LEXIS 1145 (New York Ct. App. June 15, 1995) (disparate distribution of educational funds) (Title VI).

1 538. MTA speculates that the disparate impact analysis will not survive
2 renewed appellate scrutiny because it was first articulated in *Guardians Ass'n v. Civil*
3 *Service Commission*, 463 U.S. 582, 103 S. Ct 3221, 77 L. Ed. 2d 866 (1983), in a
4 plurality opinion. The disparate impact standard of the Title VI regulations, however,
5 was subsequently unanimously affirmed by the Supreme Court in *Alexander v.*
6 *Choate*, 469 U.S. 287, 292-94, 105 S. Ct. 712, 83 L. Ed. 2d 661 (1985), adopted by the
7 Ninth Circuit in *Larry P. v. Riles*, applied by the Ninth Circuit as recently as two years
8 ago in *Jeldness v. Pearce*, 30 F.3d at 1229 (Title VI disparate impact standard applied
9 in Title IX cases), and reaffirmed by the Attorney General of the United States in
10 1994, *Memorandum from Attorney General Janet Reno to Heads of Departments and*
11 *Agencies that Provide Federal Financial Assistance, Use of the Disparate Impact in*
12 *Administrative Regulations Under Title VI of the Civil Rights Act of 1964 (July 14,*
13 *1994), 800186.*

14 C. **Plaintiffs Have Overwhelmingly Established a**
15 **Prima Facie Case of Adverse Disparate Impact**

16 1. **Numerical Disparities Are Statistically Significant To Establish**
17 **The Prima Facie Case Under The Castaneda Standard**

18 539. Defendants maintain that the numerical disparities documented by the
19 record in this case do not amount to a Title VI violation because the disparities are not
20 statistically significant. Defendants are wrong.

21 540. The Supreme Court addressed the issue of whether statistical evidence
22 of adverse disparate impact is statistically significant for purposes of the civil rights
23 laws in *Castaneda v. Partida*, 430 U.S. 482, 496 n.17, 97 S. Ct. 1272, 51 L. Ed. 2d 498
24 (1977), an equal protection jury discrimination case. *Castaneda* concerned a challenge
25 to grand jury selection procedures of Hidalgo County, Texas, procedures that resulted
26 in grand juries that ranged between 39 and 50 percent Hispanic, although the pool of
27 eligible grand jurors was fully 79 percent Hispanic.

28 541. If ethnicity were not a factor, one would expect the actual selection rate
of Hispanic jurors to be within two or three standard deviations from the expected
79% selection rate. The *Castaneda* Court held that a difference between an actual

1 selection rate and an expected selection rate in a binomial distribution greater than
2 two or three “standard deviations” was “suspect,” meaning it was highly improbable
3 that the actual selection rate was the result of chance. (The Court defined a standard
4 deviation, the measure of the predicated fluctuation from the expected value, as the
5 square root of the product of the total number in the sample times the probability of
6 selecting a minority group member times the probability of selecting a majority group
7 member).

8 542. After determining that the variance between the actual and expected
9 rates of selection was greater than two or three standard deviations, 430 U.S. at 496
10 n.17, the *Castaneda* Court ruled that the statistical proof was “enough to establish a
11 *prima facie* use of discrimination against the Mexican-Americans in the Hidalgo
12 County grand jury selection.” 430 U.S. at 496. Under the facts of *Castaneda*, see 430
13 U.S. at 496 n.17, a hypothetical minority jury selection rate as high as 74 percent
14 would have met the greater than two or three standard deviations test, given the 79
15 percent minority pool of eligible persons and the particular sample size of actual
16 selections. (Given the 79 percent jury pool, the expected number of Hispanic jurors
17 among the 970 persons summoned for jury duty was 688. The hypothetical selection
18 of 640 Hispanic jurors, constituting a 74 percent selection rate, would be four
19 standard deviations from the expected number.)

20 543. The Ninth Circuit has ratified the use of the *Castaneda* approach to
21 determine statistical significance in Title VI cases. *Larry P. v. Riles*, 793 F.2d at 782-
22 83, *aff’g* 495 F. Supp. 926, 942-45 (N.D. Cal. 1979) (reciting chance improbability
23 statistics). See *Hazelwood School District v. United States*, 433 U.S. at 299, 308 n.14, 97
24 S. Ct. 2736, 53 L. Ed. 2d 768 (1977); *Bouman v. Block*, 940 F.2d at 1211, 1225, 1238
25 (statistical table) (9th Cir.), *cert. denied*, 502 U.S. 1005, 112 S. Ct. 640, 116 L. Ed. 2d
26 658 (1991) (Title VII employment discrimination cases).

27 2. **Plaintiffs' Showing of Adverse Disparate Impact**
28 **Is Statistically Significant**

a. **Ridership Disparities Are**
Statistically Significant

1 544. Plaintiffs present largely undisputed evidence of ridership disparities in
2 service between MTA bus riders and riders on other modes of MTA-operated or
3 funded transit. Given the 80% minority ridership on MTA generally, one would
4 expect an 80% minority ridership on other modes of transit in the absence of any
5 racial or ethnic headwinds. This is not the case. For example, the ridership of the
6 approximately 18,000 daily riders of Metrolink is 28 percent minority. The actual
7 minority ridership on Metrolink varies by *173 standard deviations* from the expected
8 80% minority ridership. The likelihood that such a substantial departure from the
9 expected value would occur by chance is infinitesimal. The comparisons between the
10 contemporaneous 80 percent minority MTA bus system and the majority white
11 Metrolink and LADOT Commuter Express and 47 percent white Foothill Transit
12 lines are statistically significant. These comparisons are greater than two or three
13 standard deviations, thereby satisfying the standard for significance under *Castaneda*.

14 545. As to MTA-operated rail lines, MTA has presented projections for the
15 ethnic origin of riders on rail lines at the end of the 20-Year Plan, based on 1990
16 census data, prepared by their hired expert Professor Stopher of Louisiana State
17 University. These projections show substantial differences from the MTA systemwide
18 80 percent minority ridership: the Long Beach Blue Line ridership would be 71
19 percent minority, the Green Line 72 percent minority, the Red Line 66 percent
20 minority, and the Pasadena Line 63 percent minority. *Peter Stopher, Report on*
21 *Methodology for Ethnicity Calculations at 29 (1995), E00001, E000030*. If these
22 percentages are applied to contemporaneous daily ridership levels of 38,000 Long
23 Beach Line riders, 12,000 Green Line riders, and 18,000 Red Line riders, and to the
24 35,000 Pasadena Line riders that MTA anticipates, the following are the results under
25 the *Castaneda* analysis of deviations from the expected 80 percent minority ridership.

| <u>Rail Line</u> | <u>Numbe of Standard Deviations</u> |
|------------------|-------------------------------------|
| Long Beach | 43 |
| Green Line | 22 |

Red Line 47

Pasadena Line 79

The adverse disparity showing well exceeds the two or three standard deviations test of *Castaneda*. The likelihood that such departures from the expected value would occur by chance is infinitesimal.

546. These calculations, in fact, are exceedingly conservative because the pre-existing bus ridership in the rail corridors is likely to be higher than the systemwide minority percentage. MTA admits in a document, for instance, that the pre-existing bus ridership in the Long Beach corridor was fully 95 percent minority before the Blue Line began service. Compared to the expected 95 percent minority ridership, the 71 percent minority ridership that MTA projects yields a difference of 128 standard deviations under the *Castaneda* analysis. The likelihood that such a substantial difference could have occurred by chance is, for all practical purposes, zero.

b. Subsidy Disparities Are
Statistically Significant

547. Since 1984 MTA and its predecessors have embarked on a massive program of rail development, and the expansion of Foothill Transit and LADOT bus lines, which have impoverished one of the nation's largest bus systems. As a result, the MTA's minority bus ridership has been subjected to severe adverse disparate impact in the subsidies and services provided in contrast to the well-funded quality services provided to the disproportionately white ridership on Metrolink, on MTA rail lines, and on the municipal bus operators.

548. While 94 percent of its ridership are bus riders, MTA customarily spends 70 percent of its budget on the six percent of its ridership that are rail passengers. MTA has spent or plans on spending almost nine billion dollars on its rail program. It has spent hundreds of millions of dollars on Metrolink. In contrast, MTA has reduced its peak hour bus fleet from 2200 to 1750 buses in the last decade in spite of increasing demand.

1 549. MTA documents show that the total subsidy per boarding in 1992,
2 including both capital and operating expenses, for an MTA bus rider was \$1.17, while
3 the comparable subsidy for a Metrolink rider was 18 times higher (\$21.02), for a Blue
4 Line passenger it was more than nine times higher (\$11.34), and for a Red Line
5 passenger it was two-and-a-half times higher (\$2.92). These inter-modal comparisons
6 understate the disparity because rail lines are usually located only in the most heavily-
7 traveled transit corridors. The comparison with the \$0.34 subsidy on the heavily-
8 traveled Vermont Avenue MTA bus line shows that the Metrolink subsidy is 62 times
9 higher, the Blue Line subsidy 33 times higher and the Red Line subsidy nine times
10 higher. Controlling for distance traveled, large bus-rail disparities continue to exist.

11 550. The record shows that the subsidy levels for MTA bus riders are only
12 two-thirds of the average of the other municipal operators with local bus service,
13 although the cash fare was more than twice the average fare of the other municipal
14 operators.

15 551. Although MTA buses carry 85 percent of the County's bus passengers
16 and account for 86 percent of passenger-miles, MTA receives only 80 percent of
17 operating funds under MTA's allocation formula. More startling, MTA's funding
18 allocation formula for capital funds resulted in allocations to MTA of only 66 percent
19 to 77 percent in any year from 1989-95. As a result, in 1994, MTA buses had the
20 highest mileage (338,830 miles) while the average mileage of the rest of the County
21 was only 54 percent as high (185,331). LADOT buses had one fifth the mileage of
22 MTA buses, and Foothill Transit buses just over a third the mileage. Using the
23 Federal Transit Administration standard that buses should be replaced that have a
24 mileage of 500,000 miles, MTA in 1994 had 93 percent of the buses in the County with
25 more than 500,000 mileage.

26 c. **Disparities In Overcrowding, Security And**
27 **Service Are Statistically Significant**

28 552. With respect to overcrowding, the District Court previously found that
the MTA and its predecessors customarily tolerated overcrowding levels of 140

percent of capacity on its buses. *Findings of Fact and Conclusions of Law re: Preliminary Injunction at 2 (Sept. 21, 1994).* Overcrowding on MTA buses is a designed defect in the service provided. MTA has acknowledged the problem in numerous documents, but has done little to alleviate it. Supervisor Burke initiated a demonstration project that successfully eased overcrowding and security problems on the Vermont Avenue bus line (which at the time carried eight percent of MTA's bus ridership) for several months in 1993 at an annualized cost of \$5.8 million, but MTA failed to follow through with any remedial program of that scale, devoting only pitifully small sums to large numbers of overcrowded lines. In contrast, there is no overcrowding of riders on Metrolink, MTA-operated rail, and commuter lines such as Foothill Transit, LADOT Commuter Express, Antelope Valley and Santa Clarita. The riders of these modes enjoy excellent service.

553. MTA documents show huge disparities in spending by MTA for the personal security of its riders. While only three cents was spent by MTA for the security of each bus passenger in fiscal year 1993, 43 times as much was spent for the security of each passenger of Metrolink and the Long Beach Blue Line (\$1.29) and 19 times as much for each passenger on the Red Line. These disparities remain.

554. Plaintiffs' experts Professor Wachs of the University of California at Berkeley and Professor Taylor of UCLA confirm MTA's own studies showing that even among MTA bus riders, minority riders on local lines receive lower subsidies and receive lower quality service than the disproportionately white riders of express buses.

An MTA study of downtown riders in 1990-93 showed that minority riders accounted for 87 percent of local bus riders but only 64 percent of express buses. The study showed that the great majority of local riders (63 percent) had household incomes less than \$15,000 while only 29 percent of express riders had such a low income. The 1993 Inner City Transit Needs Assessment Study found as well that the subsidy levels were lowest in poor, minority areas and the farebox recovery ratios highest, indicating that the highest levels of crowding were in South Central, Hollywood and other poor, minority areas. The 1995 update to the Assessment submitted by MTA expert

Williams confirms the persistence of these disparities. As the District Court found, in reliance on the Inner City Transit Needs Assessment Study, “service delivery problems have more severe impact in the Inner City than in most other areas of the County” because “inner city residents are extremely dependent on public transit, and suffer from significantly more limited access to transportation alternatives.” *Findings of Fact and Conclusions of Law re: Preliminary Injunction, at 2 (Sept. 21, 1994).*

3. **MTA Invokes Invalid Population Comparisons To
Circumvent the Showing of Adverse Disparate Impact**

555. MTA raises a number of interrelated claims based on invalid population comparisons to contend that, irrespective of any analysis of ridership statistics or actual usage, there can be no adverse disparate impact under Title VI. The District Court rejected these defenses in both the preliminary injunction and summary judgment proceedings. MTA raises the following claims:

(a) While the population of Los Angeles County as a whole is 60 percent minority, the ridership of MTA rail lines is more than 60 percent minority.

(b) DOT guidelines classify a transportation line as a "minority line" based on the racial composition of the census tracts that the line traverses.

(c) The ridership of MTA-operated rail lines consists of a majority of minorities. None of these claims insulates MTA from liability for the disparate impact of its actions.

a. **General Population Comparisons
Are Invalid**

556. By invoking general population statistics, MTA attempts to side-step the showing that MTA’s policies and practices have an unmistakable adverse disparate impact on minority bus riders. The general population of Los Angeles County is not the relevant comparison pool for purposes of assessing the disparate impact claims in this litigation. The "[i]dentification of the appropriate candidate pool [of actual transit riders] and its racial makeup is usually the starting point for impact analysis." *Moore v. Hughes Helicopter*, 708 F.2d 475, 482 (9th Cir. 1983)

(citation omitted). Courts have consistently rejected the use of general population statistics as a proxy for the relevant target population to analyze disparate impact claims in Title VII employment discrimination cases. The Ninth Circuit looks to Title VII cases for guidance in Title VI disparate impact cases. *See, e.g., Larry P.*, 793 F.2d at 982 n.9, *Robinson v. Adams*, 847 F.2d 1315, 1318 (9th Cir. 1987), *cert. denied*, 490 U.S. 1105, 109 S. Ct. 3155, 104 L. Ed. 2d 1018 (1989); *Moore v. Hughes Helicopter*, 708 F.2d 475, 482 n.5 (9th Cir. 1983) (*Moore* cited by *Larry P.*, 793 F.2d at 982 n.9).

557. In *Latimore v. Contra Costa County*, No. C-94-1257 SBA (N.D. Cal. Aug. 1, 1994), the District Court rejected an effort to use general population statistics to obscure the fact that the location of a hospital for the poor had an adverse disparate impact on the minority poor. "[D]efendants' statistics are deceptive because the [agency] inappropriately relied on a sample population comprised of all County residents, as opposed to the target population of County residents who are eligible to use [the County hospital for the poor]. In conducting a disparate impact analysis, the appropriate sample population should consist of those most likely affected by the action at issue." *Latimore*, slip op. at 23.

558. MTA, moreover, erroneously ignores the fact that the plaintiff class certified by the District Court consists of minority MTA bus riders, not minority residents generally, and that plaintiffs' claims concern discrimination against minority bus riders. *See Order Certifying the Class (March 7, 1995); Amended Pretrial Conference Order at 3 (Jan. 4, 1996)*.

559. In any event, while the minority ridership of MTA-operated rail lines apparently may exceed the minority population of the County as a whole, it falls far short of the expected 80 percent minority MTA ridership, the legally relevant comparison. While only 11 percent of the County's general population has no access to a car, fully half of MTA's ridership is transit dependent. Fully 80 percent of transit dependent bus riders, the great bulk of MTA's ridership, are minority. While 40 percent of the County's population is white, only 20 percent of MTA's total ridership is white.

**b. Transit Corridor Populations Do Not
Reflect Who Rides The Trains**

560. MTA notes that United States Department of Transportation guidelines classify a transportation line as a "minority line" based on the racial composition of the census tracts that the line traverses. The guidelines, which do not have the force of law or regulation, are not entitled to deference, see *Latimore*, slip op. at 23 (rejecting federal agency use of general population statistics in Title VI case). They are not intended to blind the decision maker to evidence of who is actually riding MTA operated or funded public transit.

561. Census tracts do not ride lines. The racial composition of a transit corridor simply does not indicate actual ridership. For example, the "whitest" line in the entire MTA system is 80% white but MTA classifies it as a "minority line" because it passes through minority census tracts:

[T]he "whitest" line in the entire MTA system during the [1991-93] study period was the 457 freeway express, which circulated through the predominantly white neighborhoods in Seal Beach and southeastern Long Beach before connecting to express freeway service up the Long Beach Freeway (I-710) and into downtown Los Angeles. MTA survey data showed that four out of five riders on the 457 express were white, which was the highest level of white ridership in the MTA system. But, because the 457 passed through predominantly minority census tracts in Compton, Lynwood, South Gate, Bell Gardens, Commerce, and East Los Angeles on its freeway run into downtown LA, the 457 was classified as a minority line by MTA for Title VI purposes.

Brian Taylor & Martin Wachs, Variations in Fare Payment and Public Subsidy by Race and Ethnicity: An Examination of the L.A. MTA, at 11 (Nov. 5, 1995) (based on analysis

1 of MTA on-board survey data). MTA officials concede that the demographics of a
2 community does not determine the demographics of the ridership of a line through
3 that community. "Q. [T]he fact that a line passes through a community tells you
4 nothing of significance about the demographic characteristics of the riders on that
5 line; is that correct? A. That's correct." *Dep. of Keith Killough at 52 (Oct. 3, 1995)*
6 (Vol. 2). *Accord, id. at 32-35, 39-40.*

7 c. **MTA Discriminates Against Minorities
8 Even Though The Majority Of Its**

9 **Ridership Consists Of Minorities**

10 562. MTA erroneously asserts that it cannot be guilty of discriminating
11 against minority riders because a majority of the ridership on MTA-operated rail
12 lines is minority. MTA's position is wrong and runs contrary to Supreme Court law.
13 The white government of South Africa discriminated against the majority black
14 population under apartheid.

15 563. The *Castaneda* ruling makes clear that protected groups in the majority
16 can be subject to discrimination. The facts in *Castaneda* involved a majority 79
17 percent minority pool, which is comparable to the 80% MTA ridership in the instant
18 case. The Supreme Court recognized that even a 74% selection rate would have been
19 impermissible given the 79% pool of eligible Hispanic jurors, because that rate was
20 more than two or three standard deviations from the expected rate. *Castaneda*, 430
21 U.S. at 496 at n.17.

22 564. Similarly, the Supreme Court held that splitting a majority 66%
23 African American school district undergoing desegregation into a majority 52% black
24 district and a majority 72% black district impeded desegregation in violation of the
25 Fourteenth Amendment where white students benefitted from the split. *Wright v.*
26 *Council of City of Emporia*, 407 U.S. 451, 464-66, 92 S. Ct. 2196, 33 L. Ed. 2d 51
(1972).

27 565. The Supreme Court rejected a defense analogous to MTA's in its very
28 first case construing Title VII, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542, 91 S. Ct.
496, 27 L. Ed. 2d 613 (1971) (*per curiam*). The defendant argued that there was "no

1 question of bias against women” because 70 to 75% of the applicants and 75 to 80% of
2 those hired were women. 400 U.S. at 543. In response to the undisputed claim that
3 the company denied employment to women with pre-school-age children while
4 employing men with such children, the company argued that there could be no
5 discrimination against plaintiff women applicants with pre-school-age children
6 because the overall group of all women applicants was not subject to discrimination.
7 The Court rejected the defense, ruling that Title VII prohibited “one hiring policy for
8 women and another for
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

men -- each having pre-school-age children” in spite of the fact that a majority of the persons hired were women like plaintiffs. 400 U.S. at 544. Similarly, the MTA cannot insulate from judicial scrutiny its decisions to build and operate rail lines on the grounds that the ridership consists of a majority of minorities or exceeds the County’s minority population.

566. Disproportionate representation in the affected group establishes adverse disparate impact, not the presence of a minority group in the majority in a particular situation. In *Larry P.*, the Ninth Circuit found adverse disparate impact based on the "*disproportionate*" placement of black children" and the "*disproportionate* number of black children" in educationally mentally retarded classes compared to the representation of black children in classes generally. 793 F.2d at 983 (emphasis added). See *Campaign for Fiscal Equity*, at *27-*28; *Meek*, 724 F. Supp. at 895-96; *Coalition of Concerned Citizens v. Damian*, 608 F. Supp. 110, 127 (C.D. Ohio 1984) (same).

567. MTA also ignores that plaintiffs’ proof of adverse disparate impact includes not only comparisons with MTA-operated rail lines but also comparisons with the riderships of majority or predominantly white Metrolink, LADOT Commuter Express, Foothill Transit and other municipal operator bus lines.

d. MTA Is Liable For The Disparate

Impact Of Actions By Agencies It Funds

568. MTA has argued that it bears no liability under Title VI or its regulations for its vast funding of Metrolink and the municipal operators.

569. Title VI and its regulations, however, extend to any "program or activity," which the statute specifies as including "the entity of such state or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government." 42 U.S.C. § 2000d-4a. Moreover, the Title VI regulations extend to the activities of a recipient which "directly or through contractual or other arrangements" have a disparate impact. 49 CFR §

21.5(b)(2).

570. MTA receives federal funds, and MTA has funded and continues to fund Metrolink and the municipal bus operators. That is all that is necessary to make Title VI and its regulations applicable as a matter of law.

571. Although MTA "control" of these MTA-funded entities is not relevant to the applicability of Title VI and its regulations, MTA in fact does have a high degree of control over the entities it funds, particularly Metrolink, and also Foothill Transit, and LADOT Commuter Express. MTA created Metrolink, created Foothill Transit, and vastly expanded LADOT Commuter Express service; MTA has provided hundreds of millions of dollars to Metrolink, and tens of millions of dollars to Foothill Transit and LADOT; and MTA documents reveal MTA's belief that its power-of-the-purse spending equals substantial influence, if not also control.

572. MTA, in any event, has absolute control over Metrolink/SCRRRA with regard to what does -- or does not -- go on in Los Angeles County. According to Metrolink Executive Director Richard Stanger: "I mean, an MTA representative tells me they [sic] don't want me to work in Los Angeles County, then I don't do work in Los Angeles County." *Dep. of Richard Stanger at 39 (July 27, 1995) (Vol. 1)*.

573. MTA decides what it wants to spend or not to spend, and how much it is willing to contribute to Metrolink/SCRRRA, the same as every other member agency of Metrolink/SCRRRA. *Joint Powers Agreement at 3, § 4.4, Exh. 1 to Dec. of Richard Stanger (Sept. 20, 1994)*. "Ultimate control comes with each member agency's ability to decide the level of operation it wants on its lines and the level of subsidy it is willing to contribute." *Memo from Richard Stanger & Judith Wilson to Planning and Programming Committee re "MTA's Relationship with the SCRRRA" at 5 (Jan. 25, 1995), M323405 at M323409*.

e. The Urban League Case Provides
Defendants No Support

574. The MTA relies on a recent Second Circuit case, *New York Urban League, Inc. v. State of New York*, 71 F.3d 1031 (2d Cir. 1995), *rev'g* 905 F. Supp. 1266

1 (S.D.N.Y. 1995), which vacated a preliminary injunction issued to restrain a fare
2 increase by New York's Metropolitan Transit Authority. The Second Circuit
3 confirmed the applicability of the disparate impact standard, 71 F.3d at 1036, but
4 found that the district court erroneously relied on a slender record of farebox
5 recovery ratio comparisons between the New York City subway and bus system and a
6 suburban commuter rail system as an indirect measure of differential subsidy levels.
7 The Second Circuit held that the lower court had failed to make the threshold finding
8 that "this ratio would be a reliable indicator of a disparate impact" in subsidization.
9 71 F.3d at 1038. In contrast, the record in the instant case is voluminous and replete
10 with direct evidence of differences in spending allocations and various subsidies
11 absent in *Urban League*.

12 **D. Lack of Business Necessity**

13 **1. MTA Bears The Burden of Proving Business Necessity**

14 **575.** Once plaintiffs demonstrate adverse disparate impact, "the burden
15 shifts to the defendants to prove that the conduct causing the disproportionate impact
16 was justified by business necessity." *Findings of Fact and Conclusions of Law 4;*
17 *accord, Amended Pretrial Conference Order at 13 (Jan. 4, 1996). See Griggs v. Duke*
18 *Power*, 401 U.S. at 431; *Jeldness*, 30 F.3d at 1229; *Larry P.*, 793 F.2d at 982. A
19 defendants' burden includes the burden of production and the burden of persuasion.
20 *See 42 U.S.C. § 2000e (m), 42 U.S.C. § 2000e-2 (k)(1)(A).*

21 **576.** Notwithstanding the rigorous requirements of the business necessity
22 standard, MTA has merely produced evidence that its funding of Metrolink and
23 municipal transit operators and its operation of the MTA's bus and rail lines allegedly
24 is not motivated by racial animus but by rational policy considerations. While
25 intentional discrimination cases may turn on evidence of a discriminatory motive,
26 "[p]roof of discriminatory motive, we have held, is not required under a disparate
27 impact theory." *International Brotherhood of Teamsters v. United States*, 431 U.S. 324,
28 n.15, 97 S. Ct. 1843, 52 L. Ed. 2d 396 (1977).

577. The point that the business necessity test requires "a more probing

1 judicial review of, and less deference to, the seemingly reasonable acts of
2 administrators," was also made by the Supreme Court in *Washington v. Davis*, 426
3 U.S. 229, 248, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976), an intentional discrimination
4 case:

5 Under Title VII, Congress provided that when
6 hiring and promotion practices disqualifying
7 substantially disproportionate numbers of blacks are
8 challenged, discriminatory purpose need not be proved,
9 and that it is an insufficient response to demonstrate
10 some rational bases for the challenged practices. It is
11 necessary, in addition, that they be "validated" in terms
12 of job performance . . . However this process proceeds, it
13 involves a more probing judicial review of, and less
14 deference to, the seemingly reasonable acts of
15 administrators and executives than is appropriate under
16 the Constitution . . . We are not disposed to adopt this
17 more rigorous standard for the purposes of applying the
18 . . . Fourteenth Amendment[]. . . .

19 426 U.S. at 246-48.

20 578. In *Griggs*, the Supreme Court rejected the use of high school
21 graduation requirements and general intelligence tests that screen out black
22 employees for desirable jobs. The defendant there sought to justify the job
23 requirements, arguing that they "would improve the overall quality of the work
24 force." 401 U.S. at 431. According to *Griggs*, the necessity demonstration required
25 expert industrial psychological proof that the test "bear[s] a demonstrable
26 relationship to successful performance of jobs for which it [is] used." 401 U.S. at 431,
27 433; see also *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 430-36, 95 S. Ct. 2362, 45 L.
28 Ed. 2d 280 (1975) (discussing validation criteria).

579. In *Larry P.*, the Court of Appeals held that the *Griggs* standard

1 provides guidance to Title VI challenges. The Ninth Circuit conducted a searching
2 scrutiny of the record to find that education authorities had failed to meet their
3 burden of demonstrating "educational necessity" in response to plaintiff's showing of
4 disproportionate placement of black schoolchildren to classes for the educationally
5 mentally retarded. 793 F.2d at 980-83, *aff'g* 495 F. Supp. at 954-60, 968-73. The
6 Court of Appeals rejected the claim that such classes were beneficial to black children,
7 noting that improper placement of non-mentally retarded children in classes for the
8 educationally mentally retarded has a definite adverse effect. 793 F.2d at 983. The
9 Court rejected defendant's expert evidence that tests were validated, because the
10 validation studies were conducted on white but not black school children. 793 F.2d at
11 980-981. The Court also rejected defendant's claim that blacks had a higher
12 percentage of mental retardation than whites on the basis of an analysis of mental
13 retardation data and expert testimony. 793 F.2d at 983.

14 580. The Supreme Court adopted the "educational necessity" standard as
15 analogous to the *Griggs* business necessity standard for cases brought under a civil
16 rights statute similar to the Title VI regulations. *Board of Education v. Harris*, 444
17 U.S. 130, 151, 100 S. Ct. 363, 62 L. Ed. 2d 275 (1979) (Emergency School Aid Act).

18 581. The utility of the business necessity standard was confirmed, although
19 not applied, by the Second Circuit in the *Urban League* case. 71 F.3d at 1036
20 (following *Larry P.* and several cases which phrase the business necessity standard as
21 "substantial legitimate justification," *Elston v. Talladega County Board of Education*,
22 997 F.2d 1394, 1412 (11th Cir. 1993); *Georgia State Conference of Branches of NAACP*
23 *v. State of Georgia*, 775 F.2d 1403, 1417-18 (11th Cir. 1985)).

24 582. In the context of this case, the parties agree that the business necessity
25 standard entails public transit necessity. *Amended Pretrial Conference Order at 13*
26 *(Jan. 4, 1996)*. Public transit necessity requires at a minimum that MTA's actions
27 serve mobility goals and be justified in terms of equality, efficiency and cost
28 effectiveness, and equity. Mobility goals include the provision of rider, fiscal,
environmental, economic development or other benefits in compliance with federal,

1 state and local law requirements. *See MTA Mission Statement (MTA's mission is to*
2 *provide a "transportation system that increases mobility, relieves congestion and*
3 *improves air quality")*, *Amended Pretrial Conference Order at 13 (Jan. 4, 1996)*.
4 Equality under Title VI and its regulations means no disparate impact discrimination
5 and no intentional discrimination based on race, color or national origin. Efficiency
6 and cost effectiveness measure the performance of one system relative to another.
7 Both are measures of getting the most bang for the buck for transit dollars spent. *See*
8 *MTA Mission Statement (MTA's mission is to provide an "affordable and efficient*
9 *transportation system")*, *Amended Pretrial Conference Order at 13 (Jan. 4, 1996)*;
10 *Deloitte & Touche, Cost Reduction Project LACMTA at 4-2 (efficiency refers to the cost*
11 *of a unit of output, typically cost per hour of service; cost effectiveness refers to the cost*
12 *of a unit of consumption, typically cost per passenger) (Feb. 9, 1994)*; *Dep. of Terry*
13 *Matsumoto, MTA Comptroller, at 163-65 (Sept. 19, 1995) (Vol. 2)*; *Michael Cameron,*
14 *Efficiency and Fairness on the Road at 3 (1994) ("[t]ransportation efficiency -- meeting*
15 *mobility goals with the fewest resources possible")*. Equity entails serving the needs of
16 all MTA riders. *MTA Mission Statement (MTA's mission is to provide a transit system*
17 *that "meets the needs of all Los Angeles County residents")*, *Amended Pretrial*
18 *Conference Order at 13 (Jan. 4, 1996)*; *Michael Cameron, Efficiency and Fairness on*
19 *the Road at 3 (1994) ("[t]ransportation equity -- meeting the mobility requirements of all*
20 *people")*.

21 **2. MTA Has Failed To Prove Business Necessity**

22 **583.** MTA's allocation of resources to the disadvantage of its bus riders is
23 not justified by public transit necessity. For example, according to MTA's own
24 measures of combined cost-effectiveness, mobility and air quality for all projects
25 considered in the planning process for the 20-Year Plan, all the rail projects
26 performed significantly worse than every other transportation project (with the
27 possible exception of bike lanes in some regards). *MTA 20-Year Plan Technical*
28 *Appendices at 20-21 (March 5, 1995), M302623 at M302643-44)*.

584. MTA's historic contraction of existing bus operations used by the great

1 bulk of minority riders in order to develop new rail lines and to create and expand
2 suburban bus operators that serve a small, disproportionately white ridership is at
3 odds with applicable governmental guidelines. The federal Intermodal
4 Transportation and Efficiency Act of 1991, 49 U.S.C. App. § 1601 *et seq.* ("ISTEA"),
5 which enacted existing transportation planning principles, specifically commands that
6 federal recipients initially seek "preservation of existing transportation facilities and,
7 when practical, ways to meet transportation needs by using existing transportation
8 facilities more efficiently." 49 U.S.C. App. § 1607 (f)(1). An UMTA guideline
9 prohibits rail development that diminishes existing bus service. A recently enacted
10 state proposition declares that MTA shall not receive certain state funds unless MTA
11 restores affordable bus service and reduces its debt. The MTA Board itself has
12 adopted the provision of adequate bus service as its first priority.

13 585. MTA has produced no independent validation studies that it was
14 necessary for MTA to maintain a dual system of public transit or to promulgate the
15 July 1994 fare restructuring.

16 586. MTA's 20-Year Plan is not an independent study, nor a validation
17 study as it accepted as a given the necessity for all the transportation projects funded
18 or approved by the MTA, as well as the July 1994 fare restructuring. The expert
19 reports MTA has commissioned for the trial updating the Inner City Transit Needs
20 Assessment Study and projecting the future ridership of MTA-operated rail lines are
21 not validation studies. They, in any event, support liability. The original draft of the
22 Needs Assessment called for using funds slated for rail projects for bus improvements
23 and documented subsidy disparities in service in the Inner City. The update shows
24 such disparities continue unabated. The Stopher study projects minority
25 representation on MTA-operated rail lines that constitute significant adverse
26 disparities. MTA's expert report by Jeffrey Zupan, which argues that building rail
27 lines is desirable public policy, does not address business or transit necessity or the
28 adverse racial impact of rail development in Los Angeles in reducing bus service to
plaintiff class. The litany of departures from substantive public transit norms

1 summarized in the intentional discrimination section below further undercuts any
2 claim of business necessity.

3 587. MTA, in short, has failed to produce evidence of business or public
4 transit necessity. As Chief Justice Rehnquist put it, "since there was no proof of any
5 business necessity adduced with respect to the policies in question, [the district] court
6 was entitled to assume 'no justification exists.'" *Nashville Gas Co. v. Satty*, 434 U.S.
7 136, 143, 98 S. Ct. 347, 54 L.Ed. 2d 356 (1977) (citation omitted). "If the defendant
8 offers no proof to justify the practice or policy, the court is entitled to 'assume no
9 justification exists.'" *Wambheim v. J.C. Penney Co., Inc.*, 642 F.2d 362, 365 (9th Cir.
10 1988).

11 3. MTA's Claims Are Wholly Insufficient

12 Under the Business Necessity Standard

13 588. The generalized "legitimate" interests MTA asserts -- the need to build
14 rail lines, the need to balance budgets, the need to attract white, middle class riders --
15 are nothing more than variants of the rejected assertion of good faith in *Griggs*, 401
16 U.S. at 431. They are not backed by any independent validation studies. MTA has
17 made no proper showing that the means chosen are justified by public transit
18 necessity. *See Albermarle Paper Co. v. Moody*, 422 U.S. 405, 430-36, 95 S. Ct. 2362, 45
19 L. Ed. 2d 280 (1975); *Griggs*, 401 U.S. at 431, 433; *Larry P.*, 793 F.2d at 980-82.
20 MTA's own studies, such as the Inner City Transit Needs Assessment Study, Fare
21 Attitude Survey, and the Blue Line environmental impact report, establish that rail
22 and other decisions made by MTA are neither reasonable nor legitimate, much less
23 necessary.

24 589. MTA relies upon *Committee for a Better North Philadelphia v.*
25 *Southeastern Pennsylvania Transportation Authority*, 1990 Lexis 10895 (E.D. Pa.
26 1990), *aff'd*, 935 F.2d 1280 (3d Cir. 1991) ("SEPTA"), which held that the allocation
27 of subsidies to rail riders and an increase in fares that had a discriminatory adverse
28 impace on minority bus riders were justified by the legitimate business purpose of
increasing rail ridership. SEPTA's rejection of the business necessity standard in

1 favor of a legitimate business purpose test is at odds with controlling Ninth Circuit's
2 case law in *Jeldness* and *Larry P.* The *SEPTA* legitimacy purpose test, moreover, is
3 based on *Wards Cove Packing Co., Inc. v. Atonio*, 490 U.S. 642, 109 S. Ct. 2115, 104 L.
4 Ed. 2d. 733 (1989), which Congress overruled in amending Title VII in 1991 to add 42
5 U.S.C. § 2000e-2 (k)(1)(A). *Atonio v. Wards Cove Packing Co., Inc.*, 10 F.3d 1485, 1491
6 (9th Cir. 1993) (The 1991 amendments "reinstate[] the business necessity defense and
7 place on the employer the burden of proving that a practice causing a disparate
8 impact is 'job related for the position in question and consistent with business
9 necessity'" (quoting 42 U.S.C. § 2000e-2(k)(1)(A)(I))). See 2 *Wilcox, California*
10 *Employment Law* § 41.03[2][d] ("[U]nder the Civil Rights Act of 1991, the *Wards Cove*
11 standard for justifying an employment practice will instead be governed by *Griggs*
12 and other pre-*Wards Cove* decisions."). In addition, according to MTA official Steve
13 Brown, one of the main arguments that the plaintiffs in the *SEPTA* case made "was
14 that tokens, which were sold only in 10-packs, were too expensive for the poor inner-
15 city rider to purchase, thus they were not able to take advantage of the discount
16 [I]n the end, [SEPTA] began providing tokens in 2-packs and 5-packs, which were
17 then cheaper to purchase and seemed to address most of the citizen groups concerns."
18 *Steve Brown, SEPTA Fare Challenge 1989 (Sept. 6, 1994), M1010080.*

19 590. MTA's reliance on *NAACP v. Wilmington Medical Center, Inc.*, 491 F.
20 Supp. 290 (D. Del. 1980), *aff'd*, 657 F.2d 1322 (3d Cir. 1981), a hospital location case,
21 is flawed for similar reasons. The later *Latimore* hospital location case correctly
22 applies Supreme Court law and the law of the Circuit, *e.g.*, *Larry P.*, 793 F.2d at 892,
23 to require a business necessity showing.

24 E. Plaintiffs Have Demonstrated Less Discriminatory Alternatives

25 1. Plaintiffs' Proof of Less Discriminatory Alternatives

26 591. The third stage of the disparate impact analysis is the plaintiffs'
27 demonstration of a less discriminatory alternative that the defendant has refused to
28 adopt. See 42 U.S.C. § 2000e-2 (k)(1)(A)(ii). In employment discrimination disparate
impact cases:

1 If an employer does then meet the burden of proving
2 that its tests are "job related," it remains open to the
3 complaining party to show that other tests or selection
4 devices, without a similarly undesirable racial effect,
5 would also serve the employer's legitimate interest in
6 "efficient and trustworthy workmanship."

7 *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 425, 95 S. Ct. 2362, 45 L. Ed. 2d 280
8 (1975).

9 592. Although plaintiffs need not address this issue in light of MTA's failure
10 to demonstrate business necessity, the record discloses that MTA declined to
11 implement nondiscriminatory alternatives of restructuring or delaying rail and other
12 non-MTA bus projects or eliminating the adverse impact of allocation procedures
13 among County municipal operators in order to provide funds for enhanced bus
14 service for the minority poor. Such alternatives were proposed by plaintiff
15 Labor/Community Strategy Center as well as MTA's own Board members and, in the
16 case of the Inner City Transit Needs Assessment Study, MTA's own consultants.

17 593. MTA CEO Franklin White repeatedly stated that the MTA has
18 available discretionary funds that it could allocate to serve the needs of the transit
19 dependent, pleading "guilty" to failing to devote adequate discretionary funds for bus
20 improvements, and referring to MTA spending discretionary funds for the Pasadena
21 and Green Lines as "idiocy." As the District Court found, the MTA Board voted to
22 spend over \$150 million in discretionary funds on the Pasadena Line at the same time
23 the Board raised bus fares in 1994. Less than a year after approving the fare
24 restructuring, MTA agreed to transfer \$50 million of discretionary funds to the
25 County of Los Angeles for its budget shortfall, an action one MTA Board member
26 called "ridiculous."

27 594. After voting to raise fares and eliminate passes, MTA identified
28 hundreds of millions of dollars through cost savings on various projects and
 programs, including the Pasadena Line and other rail construction projects that the

1 MTA could have used to avoid any fare restructuring. For example, MTA explicitly
2 refused to consider cost-saving possibilities regarding rail operations and construction
3 when it did a cost study on bus operations in 1994. MTA subsequently commissioned
4 the cost study of the rail program by Arthur Andersen in 1995, which condemned the
5 lack of cost controls, cost effectiveness, and cost efficiency at the MTA.

6 595. The budget for the Pasadena Blue Line illustrates the runaway cost of
7 MTA's rail projects: "The current budget for the Pasadena Line project is \$67
8 million to \$71 million per mile. This is without precedent in the industry and does not
9 appear to be warranted by the complexity of the project." *Peer Review Report for the*
10 *Los Angeles County Metropolitan Transportation Authority: Pasadena Blue Line (April*
11 *25, 1995) M323040, M323047.*

12 596. MTA asserts that the less discriminatory alternative test is not "a
13 license to second guess" a defendant's policy choices. In the instant case, the
14 alternatives are not hypothetical, but actual budgetary alternatives proposed by
15 MTA's Board members, plaintiff Labor Community Strategy Center and others or
16 were readily apparent alternatives.

17 597. MTA's actions are inconsistent with its policy statement that the
18 MTA's highest priority is improving bus service, inconsistent with federal
19 requirements that new rail construction not diminish preexisting service, and
20 inconsistent with state requirements that affordable bus service be safeguarded. The
21 less discriminatory alternatives available to MTA, in contrast, are entirely consistent
22 with its mission.

23 2. The Less Discriminatory Alternative Standard
24 Properly Applies To Public Transit

25 598. MTA contends that the less discriminatory alternative inquiry is
26 inappropriate for cases other than employment selection cases under Title VII.
27 MTA's underlying premise that Title VII cases do not involve funding allocation
28 matters is erroneous. *See, e.g., Los Angeles Dept. of Water and Power v. Manhart*, 435
U.S. 702, 98 S. Ct. 1370, 55 L. Ed. 2d 657 (1978) (illegality of gender-based pension

fund contributions).

599. MTA suggests that fare restructuring cannot be analyzed under the disparate impact analysis because "it would not be good policy," citing no authority. There is no such immunity, express or implied, under Title VI or its regulations. It is self-evident that if a federally-subsidized defendant distributes benefits or charges for services by race or ethnicity, the prohibition of Title VI and its regulations is implicated that "[n]o person in the United States shall . . . be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. *See Bazemore v. Friday*, 478 U.S. 385, 106 S. Ct. 3000, 92 L. Ed. 2d 315 (1986) (Title VII bars separate pay scales); *Meek v. Martinez*, 724 F. Supp. 888 (S.D. Fla. 1987) (adverse disparate impact of formula for distribution of benefits for the elderly violates Title VI); *Campaign for Fiscal Equity* at *27-*28 (adverse disparate impact of educational funding on New York City with its higher minority population, violates Title VI). MTA states that the federal regulations do not list fare restructuring as an illustrative example of acts prohibited by Title VI. The regulations, however, state that the examples are not exhaustive. *See* 49 CFR Part 21 Appendix C.

600. Moreover, in the instant case, the July 1994 fare increase and elimination of the regular bus pass is discriminatory because it widened preexisting, adverse subsidy disparities between the minority MTA bus ridership and the disproportionately white riders of other modes of MTA-funded or operated transportation and even MTA express bus riders.

601. MTA relies on *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 578, 57 L. Ed. 2d 957, 98 S. Ct. 2943 (1978), but concedes that *Furnco* is an intentional discrimination case rather than a disparate impact case. MTA also relies on *Wilmington Medical Center*, 491 F. Supp. at 293, and *Bryan v. Koch*, 627 F.2d 612, 619 (2d Cir. 1980), two hospital cases, which questioned the utility of the less discriminatory alternative inquiry. They, however, do not follow the law of the Circuit on the use of Title VII disparate impact standards. *See Albermarle; Jeldness*;

Larry P.; Latimore.

III. THE INTENTIONAL DISCRIMINATION CLAIM

A. The Arlington Heights Standard

602. The Supreme Court has recognized that "[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 266, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977); *Federal Deposit Ins. Corp. v. Henderson*, 940 F.2d 465, 471 (9th Cir. 1991).

The Court in *Arlington Heights* listed the following evidence that should be considered in determining if discriminatory purpose exists: "(1) the impact of the official action, whether it bears more heavily on one race than another, may provide an important starting point; (2) the historical background of the decision, particularly if a series of official actions was taken for invidious purposes; (3) departures from the normal sequence; and (4) substantive departures, particularly if the factors usually considered important by the decision maker strongly favor a decision contrary to the one reached." 429 U.S. at 266-67. In addition, it is appropriate to consider evidence of MTA's extensive and specific knowledge of the harm its decision caused and would continue to cause. *See Columbus Board of Education v. Penick*, 443 U.S. 449, 465, 99 S. Ct. 2941, 61 L. Ed. 2d 666 (1979); *Washington v. Davis*, 426 U.S. at 242 (courts should consider totality of relevant facts).

B. Proof of Intentional Discrimination

603. Contrary to the Court's finding in its preliminary injunction order that plaintiffs had raised serious questions on the merits as to their intentional discrimination claim under *Arlington Heights*, *Findings of Fact and Conclusions of Law at 5*, MTA has declared that it knows of no facts that support the intentional discrimination claim. The complete record amply confirms the District Court's initial assessment of the state of the record on intentional discrimination on MTA's development and maintenance of a dual transportation system and the July 1994 restructuring.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Adverse Disparate Impact

604. The showing of unjustified adverse disparate impact described above establishes that MTA's official actions bear "more heavily" on minority MTA bus riders than the passengers of other modes of transportation operated or funded by MTA. The record establishes that these disparities are long-standing, with report after report since the 1965 McCone Commission report documenting that the actions of MTA and its predecessors historically have disadvantaged minority bus riders, failing to provide them adequate and affordable service.

605. Moreover, the disparity showing alone ignores the aggravating circumstance that MTA actions in developing rail lines and creating municipal bus lines to serve former MTA bus routes with disproportionately high white riders were deliberate, purposeful actions taken to benefit a tiny portion of its ridership at the expense of minority bus riders. *See Washington v. Davis*, 426 U.S. at 242; *Penick*, 443 U.S. at 465. MTA built the Long Beach Blue Line, for instance, not for the benefit of the pre-existing minority bus ridership, but for white commuters who account for the incremental change from the 5% white ridership on pre-existing buses to the 29% white ridership MTA projects. Initially, MTA's predecessors planned no stops in the heavily minority middle section of the Long Beach Line. MTA, moreover, has built no rail line to serve minority communities, although the Inner City Crenshaw Line has been proposed for many years. MTA and its predecessors set up and funded Foothill Transit and LADOT to serve majority or disproportionately high white portions of its bus ridership while taking no such actions on behalf of poor, minority bus riders, as documented by the Inner City Transit Needs Assessment Study and reports prepared in its aftermath. As an RTD document put it, "the [Foothill Transit] experiment is beginning to turn Los Angeles into a two-class transit County" with new, comfortable buses serving suburban areas and older, overcrowded buses serving the central city.

2. Historical Background

606. In 1965, the McCone Commission determined that the "inadequate" and "prohibitively expensive" bus service provided by MTA's predecessors in South

1 Central Los Angeles contributed to the social conditions leading to the Watts Riots of
2 1964. Although the Commission called for a more affordable fare, MTA's
3 predecessors essentially maintained in constant dollars the fare decreed as too costly
4 for the next three decades, except for the 1982-85 period when Proposition A
5 mandated funds be used to cut the fare. The 1994 increase from \$1.10 to \$1.35 that
6 the District Court initially enjoined pushed the bus fare above the level in constant
7 dollars that the McCone Commission condemned as prohibitively expensive.

8 607. With respect to service, MTA responded with great recalcitrance in
9 implementing the Commission recommendations, eventually initiating only one new
10 east-west bus line. The MTA and its predecessors ultimately failed to provide
11 adequate service for minority areas, as reported in the Inner City Transit Needs
12 Assessment Study and other MTA documents, devoted billions of funds for rail
13 projects without any commensurate effort on behalf of minority bus riders over the
14 last decade, and split off suburban lines with heavy white ridership for Foothill
15 Transit and LADOT Commuter Express. Ironically, the 1993 Inner City Transit
16 Needs Assessment Study echoes the findings of the earlier McCone Commission
17 Report.

18 3. Departures from Regularity

19 608. The record shows that MTA in the last decade departed from
20 substantive public transit norms by proceeding with rail and commuter bus programs
21 that had marginal or no rider, fiscal, environmental, economic development or other
22 benefit. The departures from regularity also demonstrates the lack of business or
23 public transit necessity to justify the MTA's actions. MTA's allocation of resources to
24 the disadvantage of its bus riders is inconsistent with its policy statement that the
25 MTA's highest priority is improving bus service, inconsistent with federal
26 requirements that new rail construction not diminish preexisting service, and
27 inconsistent with state requirements that affordable bus service be safeguarded.

28 609. In 1980 and 1990, Los Angeles County voters approved MTA-
sponsored ballot propositions that made sales tax revenues available for public transit,

1 including lowered bus fares, freeway improvements, and rail development. For the
2 fiscal year 1995-96, sales tax revenues available from these propositions totaled \$782
3 million. As required by law, MTA initially lowered its bus fare. In the wake of the
4 reduction, MTA bus ridership skyrocketed to the highest levels since World War II.
5 After the legally mandated period of low bus fares ended, however, MTA began using
6 sales tax revenues and other funds principally for rail construction, including
7 discretionary funds designed for bus and freeway improvements. The rail
8 construction program has consumed huge resources, but it has produced little benefit
9 for most MTA riders.

10 610. For example, over two-thirds of the riders on the light rail Long Beach
11 Blue Line that runs between Long Beach and downtown Los Angeles are former local
12 and express bus riders. While the bus lines that the Long Beach Line replaced were
13 only 5% white, MTA projects that the ridership of the Long Beach Line will be 29%
14 white. The Long Beach Line and the buses it replaced take approximately the same
15 time to travel between Long Beach and downtown Los Angeles, but the Blue Line cost
16 approximately \$1 billion. MTA considered and rejected a \$6 million bus alternative
17 presented in the environmental impact statement prepared for the Long Beach Line.
18 The bus alternative provided comparable environmental and regional transportation
19 benefits. According to comments submitted by the City of Los Angeles in 1985, “[the]
20 bus alternative seems to negate the necessity of a fixed rail system in this location.”

21 611. MTA designed the Long Beach Blue Line with an at-grade roadbed
22 along its congested, and overwhelmingly minority, middle section. Trains run through
23 the middle section at speeds of 55 miles per hour at street level. Although the
24 environmental impact report predicted safety problems in the middle section, MTA
25 went ahead as planned. As a result, the Long Beach Line is the most dangerous and
26 deadly light rail line in the nation.

27 612. Although the Long Beach Line runs through minority communities, it
28 was not planned to achieve, nor has it resulted in, economic development along its
route. The Long Beach Line secures its ridership by charging the least per passenger

1 mile of any light rail line in the nation. The fare on the Long Beach Line, indeed, is
2 lower than on parallel MTA express bus lines. While imposing distance-based pricing
3 on express buses, including those with parallel routes, MTA never has imposed
4 distance-based fares on the Long Beach Line. MTA has also forced local bus riders
5 onto the Long Beach Line by canceling and rerouting bus lines, replacing conveniently
6 spaced local bus stops with Long Beach Line stops that average a mile apart.

7 613. MTA opened the Green Line, which runs from Norwalk to El Segundo
8 in the central median of the Imperial Freeway, I-105, for service in 1995. The Green
9 Line is unusual for a rail line because it is not located in a heavily-traveled corridor.
10 The Green Line, unlike the Long Beach Line, did not replace any pre-existing express
11 bus line. In order to obtain ridership, MTA modified many surrounding bus lines to
12 divert riders. The Green Line terminates within sight of -- but does not reach -- the
13 Los Angeles International Airport. The *Los Angeles Times* has appropriately referred
14 to the Green Line as “the train to nowhere.” The Green Line, which cost
15 approximately one billion dollars, was finished only with the infusion by MTA of \$300
16 million in discretionary highway improvement funds that could have been used for
17 high occupancy vehicle and busways. According to former MTA CEO White, these
18 “activities . . . are more desirable than the Green Line today” because they provide
19 greater congestion relief for the region than rail construction.

20 614. MTA is currently proposing another light rail line, the Pasadena Line,
21 from downtown Los Angeles to Pasadena. As noted above, MTA projects that the
22 Pasadena Line will have the highest white ridership, 37%, and the lowest minority
23 ridership, 63%, of any MTA-operated rail line. In planning the Pasadena Line, the
24 MTA did not consider any bus alternative. The budget for the Pasadena Line was
25 found in 1995 to be “without precedent in the industry and does not appear to be
26 warranted by the complexity of the project.”

27 615. At the same time that the MTA Board voted to raise fares and
28 eliminate the monthly bus pass in 1994 purportedly for lack of funds, the Board voted
to use discretionary highway improvement funds for the Pasadena Line. Former

1 MTA CEO Franklin White, in fact, has characterized the Board's decision to proceed
2 with the Pasadena Line under such circumstances as "idiocy." MTA has spent
3 approximately \$153 million on the Pasadena Line since 1994. In February, the Board
4 voted to proceed with the Pasadena Line, at a further cost of \$832 million with a
5 substantial portion to be financed through the issuance of bonds using discretionary
6 sales tax revenues as collateral.

7 616. Instead of expanding the use of cost effective commuter buses, MTA
8 developed Metrolink, a suburban commuter rail system. RTD studies showed that the
9 travel time on commuter buses was shorter and the fares lower than on Metrolink.
10 Metrolink currently carries 18,000 riders a day. Any one of the MTA's 20 busiest bus
11 lines carries more than that number.

12 617. The construction of the Red Line, which is currently projected by MTA
13 to cost \$5.8 billion dollars, has been marked by cost overruns, incompetent
14 management and route changes that cannot be justified on any grounds but political
15 exigency.

16 618. The record also indicates that the MTA Board has been repeatedly
17 criticized for its management of public transit. Former MTA CEO White called the
18 MTA a "money train" run for political considerations. He called the MTA's original
19 30-Year Long Range Plan "junk" with a rail line in practically every district of every
20 member who voted for it. City of Los Angeles Mayor Richard Riordan has called for
21 the replacement of elected officials on the Board, stating that it is "impossible" both to
22 develop rail projects and operate the bus system and that the present structure had
23 "inherent conflicts faced by politicians as they juggle the interests of multiple
24 constituencies."

25 619. The record also shows that the downtown business district, with only
26 6% of the region's jobs, no longer justifies a radial, fixed commuter rail system.
27 Commuter buses better serve regional transportation needs at lower cost than rail.
28 Bus operations have a greater impact on regional economic development than rail
projects.

620. The record also shows that the 1994 fare restructuring was not, as MTA contends, justified by a budgetary shortfall. The District Court has found that the MTA Board concurrently allocated what eventually proved to be over \$150 million in discretionary funds. MTA has since modified the rail construction program to eliminate hundreds of millions of dollars in avoided costs. The Board had available to it discretionary funds to avoid any fare restructuring. The MTA Board committees that studied fare restructuring did not in fact recommend it. The Board was presented with no option other than to restructure fares. There was massive public opposition to the fare increase.

CONCLUSION

621. Defendant MTA has engaged in a systemic violation of the rights of minority MTA bus riders in violation of Title VI and its regulations, 42 U.S.C. §§ 1981 and 1983, and the Fourteenth Amendment. A remedy of broad scope is required.

Dated: October 24, 1996

Respectfully submitted,

Elaine R. Jones
Director Counsel
Theodore M. Shaw
Robert García
Bill Lann Lee
Constance L. Rice
NAACP Legal Defense and
Educational Fund, Inc.

E. Richard Larson
Mark D. Rosenbaum
ACLU Foundation of
Southern California

Paul L. Hoffman
Gary L. Bostwick

By:

Robert García