

Memorandum



Metropolitan Transportation Authority

State of New York

November 21, 2012

Ms. Carmen Maldonado
Audit Director
The Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, NY 10038

Re: Report #2012-F-17 (Follow-Up to MTA NYC Transit Access-A-Ride Safety Issues)

Dear Ms. Maldonado:

This is in reply to your letter requesting a response to the above-referenced audit report.

I have attached for your information with comments of Thomas F. Prendergast, President, MTA NYC Transit, which address this report.

Sincerely,

A handwritten signature in blue ink that reads "Joseph J. Lhota".

Joseph J. Lhota
MTA Chairman and Chief Executive Officer

Attachment

Memorandum



New York City Transit

Date October 25, 2012

To Joseph J. Lhota, Chairman and Chief Executive Officer, MTA

From Thomas F. Prendergast, President, MTA New York City Transit

Re NYS Comptroller Audit Report 2012-F-17

We have reviewed the September 27, 2012, New York State Comptroller Report 2012-F-17, which evaluated the implementation status of the eleven audit recommendations from report 2007-S-127, entitled "Access-A-Ride Safety Issues". On September 4, NYC Transit management discussed the preliminary findings with the State Auditors. During the meeting, NYC Transit management advised the audit team that we disagreed with a number of their conclusions, and requested documentation to support their findings. Additionally, we provided the audit team with documentation to address conclusions which were incorrect.

Overall, Report 2012-F-17 determined that of the eleven recommendations, three were implemented, three were partially implemented, and five were not implemented. We agreed with the auditors' conclusions concerning the three implemented recommendations (Recommendations 2, 4, and 7). We also agreed with the report's conclusions concerning Recommendations 3 and 11, which were deemed not implemented and partially implemented, respectively. We disagree with the report's conclusions on the remaining six recommendations. Our specific comments on each recommendation are set forth below. We believe the audit team generally did not consider this additional information, and, in many cases, reached erroneous conclusions which grossly misrepresented Paratransit operations. We further believe that the State Comptroller should rescind this report, and issue a revised report. It is also worth noting that the audit team which performed this follow-up is currently performing a separate audit at Paratransit.

Recommendation 1: *"Periodically evaluate each carrier's compliance with pre and post trip inspection requirements, recommend specific corrective actions for noncompliant carriers, monitor these carriers implementation of their corrective actions, and follow up with the carriers when the corrective actions are not effectively implemented."*

Reported Status: Partially Implemented

Findings: The report indicated, "We found that their reviews are not in-depth" and referenced a February 16, 2012, steering defect reported on the Operator Vehicle Condition Report (OVCR) for Premier Paratransit vehicle #4671. The audit indicated

the defect was not addressed timely. The auditors also indicated that the conversation with Premier Paratransit maintenance staff was not documented for follow up.

Response: We disagree with the reported status. We believe the recommendation is fully implemented. We also disagree with the findings, as follows: As documented by maintenance records, appropriate and timely corrective action was initiated. On the referenced OVCR, the driver indicated the steering column was bent, the steering was off, and a check engine light was on. The maintenance manager inspected the vehicle and determined that the steering column was not bent and that the underlying condition was not safety-related. On March 8, as part of a survey of the February OVCRs, Paratransit supervision evaluated the February 16 OVCR for vehicle #4671. The Paratransit supervisor discussed the defect with Premier Paratransit maintenance staff and determined that the condition was appropriately addressed.

Further, Paratransit supervision documents their reviews of vendor sites on Field Site Checklists. These checklists include various maintenance evaluations. Paratransit staff provided the State Auditors with copies of the August 2012 Field Site Checklists for each carrier as evidence of this process. (Further information about these site reviews and Field Site Checklists is provided in the response to Recommendation 5, below.)

We therefore fundamentally disagree with the auditors' conclusion that the reviews are not in-depth. Paratransit staff's monthly visits to carriers are highly effective. It is notable that from 2009 to 2011, carriers achieved a 33 percent increase in MDBF. We also disagree with the implication that conversations with vendor personnel are not appropriately documented and followed up. Paratransit personnel do document conversations and actions when warranted. To document each and every conversation, regardless of its purpose, would not be economical or efficient, and would not produce a business benefit. To the contrary, needless documentation of ancillary conversations would preclude Paratransit staff from performing essential business functions.

Recommendation 2: *"Remind the carriers of their responsibility to provide a written confirmation of safety for vehicles before they are returned to service after the identification of potential safety defects in pre or post trip inspections, and periodically review the carriers' files to ensure that they are complying with this requirement."*

Reported Status: Implemented

Response: We agree with the reported status.

Recommendation 3: *"Ensure that all the carriers have instituted the required procedure for providing drivers with a copy of the prior driver's inspection report."*

Reported Status: Not Implemented

Findings: The auditors indicated that the previous driver's OVCR is reviewed by the driver only upon request, and that this practice contradicts New York State regulations.

Response: We agree with the reported status. Paratransit management will research available technologies to determine how this objective may be accomplished. It should be noted that the OVCRs for vehicles are available at each carrier upon request.

Recommendation 4: *"Require the carriers to provide a written confirmation of safety for vehicles before they are returned to service after road calls, and periodically review the carriers' files to ensure that they are complying with this requirement."*

Reported Status: Implemented

Response: We agree with the reported status.

Recommendation 5: *"Meet with the primary carriers on a monthly basis, as is stated in the contracts. Meet with the regional carriers at least every two months, especially if problems are identified in the carriers' operations."*

Reported Status: Not implemented.

Findings: The auditors indicated that Paratransit management formally meets with carriers an average of twice annually. The auditors indicated, *"Transit officials stated that they do not plan monthly meetings because the work effort is too much for the staff to manage."*

Response: We disagree with the reported status and the findings. The periodic meeting clause in the prior Carrier contracts (which had a five-year term of 2001 through 2006, with two single year options, which were exercised in 2007 and 2008), indicated, *"The Contractor shall be required to meet monthly or as otherwise required with NYC Transit to discuss operations and Contract management issues. The Contractor's Project Manager shall be required to make monthly presentations on the month's activities to the Vice President, Paratransit Division, NYC Transit, or his/her designee."* In 2008, a ten-year carrier contract (with a ten-year option) was issued. The contract provision in the new contract states, *"The Contractor shall be required to meet monthly or as otherwise required with the Authority to discuss operations and Contract management issues."* To give Paratransit the latitude to schedule carrier meetings as warranted, and to address audit concerns, the requirement for monthly presentations was eliminated from the new contract. The State Auditors were previously provided with the new contract requirement and the rationale; however, they made a determination not to disclose it.

The State Auditors also did not disclose Paratransit's monthly oversight program, which is performed at each carrier. This program achieves effective oversight in an efficient manner, and provides the flexibility to direct attention when and where it is

needed most. Specifically, each month, Paratransit supervision makes multiple visits to each carrier to monitor and evaluate all aspects of operations. This is far in excess of the auditor's reported average of twice annually. Further, these visits are documented on the "Field Site Checklists" previously referenced in this memorandum. Paratransit management provided the State Auditors with the completed August 2012 Field Site Checklists for each carrier.

The scope of the monthly visits includes:

- Fuel Management
- Drug & Alcohol Program
- In-Service Check-Logs
- Vehicle Wash Records
- Canceled Checks
- Maintenance performed/Supplies Usage
- Pre/Post Inspection Reports
- Driver Training Class Observations
- Customer Complaints Follow-Up

In addition to these visits, Paratransit management has numerous telephone and e-mail discussions with carriers to address issues. Paratransit management also documented this by providing the auditors with examples of the type and volume of e-mail correspondence. These visits also have financial implications for carriers. For example, if Preventative Maintenance Inspections are not performed timely, liquidated damages are imposed.

Paratransit management further advised the auditors that as their business model has evolved, they have found this active, on-site monitoring program to be highly successful. For example, from 2009 to 2011, customer complaints dropped by 31 percent and No-Shows dropped by 30 percent. Additionally, on time performance has risen to 95 percent. Moreover, planning and holding formal meetings with each of the fourteen carriers each month would not be an efficient use of limited resources.

For these reasons, we reject the auditors' conclusions.

Recommendation 6: *"When matters requiring further action are discussed at meetings with the carriers, follow up with the carriers on the status of this action."*

Reported Status: Not Implemented.

Findings: The auditors repeated the false assertion that Transit officials meet with carriers on average only twice a year and incorrectly concluded that follow-ups would therefore occur at least six months after an issue is raised.

Response: We reject the auditors' finding that this is not done, as well as the underlying assertion regarding frequency of monitoring. Please refer to our comments regarding Recommendation #5, above.

Recommendation 7: *"Maintain documentation explaining why carriers are penalized, or not penalized, for maintenance and repair deficiencies."*

Reported Status: Implemented

Response: We agree with the reported status.

Recommendation 8: *"Follow the complaint investigation process specified in the contract with the carriers."*

Reported Status: Partially Implemented.

Findings: The auditors repeated the false assertion that meetings with the carriers occur only every six months on average, and opined that such meetings are too far apart to effectively address complaints. The auditors indicated that complaint resolution should be addressed at monthly meetings with the carriers.

Response: We disagree with the reported status and the findings. As indicated in our response to Recommendation 5, Paratransit supervision performs detailed monthly evaluations at each carrier, which include follow-up on customer complaints. As documentation, the August 2012 Field Site Checklists for the fourteen carriers were provided to the auditors, and as indicated above in our response to Recommendation 5, this checklist contains a section entitled "Customer Complaints Follow-Up".

It appears that the State Auditors disregarded the documentation provided, which contained evidence that customer complaints are reviewed monthly by Paratransit supervision. Moreover, the auditors' discussion of this finding created the blatantly false impression that customer complaints are discussed with carriers only semi-annually. Accordingly, we consider this recommendation to be fully implemented and reject the auditors' conclusion.

Recommendation 9: *"Require the carriers to document the reasons for all ending/beginning mileage discrepancies on Paratransit vehicles above a certain minimum threshold."*

Reported Status: Not Implemented.

Findings: The audit stated, "Transit officials claim that they do not require carriers to address and reconcile all ending/beginning mileage discrepancies because there are many valid activities that create valid discrepancies. They added that reconciling mileage discrepancies would be arduous and time consuming."

Response: We disagree with the reported status. All Paratransit carrier vehicles are equipped with an AVL/GPS system which can identify the vehicle's previous utilization by location. Carriers' knowledge that vehicles are equipped with this

device is a preventive control against misuse of the vehicle. Carriers are also required to inventory their fleet daily. Lastly, carriers are required to account for vehicle mileage that exceeds the monthly 4,000 mile inspection interval (+/-500 miles). There are many activities that generate non-revenue vehicle mileage not reflected on the OVCR, such as repairs performed on-site or at a vendor's facility, or off-site fueling. Carriers also provide daily vehicle out-of-service logs, which identify if the vehicle is out of service for repairs, NYSDOT inspections, or other maintenance activities.

Further, the State Auditors did not disclose that they sampled the opening and closing vehicle mileage on approximately 50 vehicles. Of the 50 vehicles, the auditors found that only one vehicle had a variance (133 miles). It should be also noted that the vehicle in question was out of service for maintenance, which, as Paratransit officials had advised the auditors, is the type of activity that can create a discrepancy. We believe that the State Auditors' decision not to disclose the scope of their analysis, as well as the isolated nature of the finding, improperly created the appearance of a lack of controls.

Recommendation 10: *"Clarify the expectations for mechanics' trade certifications and modify the carrier contracts accordingly. Require the same certification from the regional carriers that are required from the primary carriers."*

Reported Status: Not Implemented.

Findings: The auditors indicated that Transit officials have not clarified their expectations for the contractual requirements for mechanic's trade certifications.

Response: The actual contract provision states, *"All Contractor mechanics (maintenance personnel) shall be trade certified and thoroughly trained and retrained to complete the maintenance tasks required by this Contract."* We believe the contract provision, as written, provides carriers with sufficient guidelines to hire competent mechanics. Carriers are also required to provide appropriate ongoing training to mechanics. If a mechanic's performance is not satisfactory, carriers may initiate further corrective actions as deemed appropriate. The positive maintenance performance indicators in Paratransit validate this hiring approach. Accordingly, we believe this recommendation is not applicable.

Recommendation 11: *"Require the carriers to maintain documentation of their mechanics' trade certification in their personnel files. Also require that relevant training and retraining be documented."*

Reported Status: Partially Implemented.

Findings: One carrier claimed that Paratransit does not enforce the requirement that carriers hire mechanics that are trade certified. The audit opined that Paratransit has no assurance that these certifications achieve industry proficiency.

Response: We agree with the reported status.

If you require further clarification of these issues, please contact Robert Picarelli at (646) 252-5892.

cc: D. Irick
T. Charles
R. Picarelli