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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 13, 2016

Mr. Thomas Prendergast
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
2 Broadway
New York, NY 10004

Re: Access-A-Ride Accident Claims
Report 2015-F-27

Dear Mr. Prendergast:

Pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, we have followed up on the actions taken by officials of the Metropolitan Transportation Authority to implement the recommendations contained in our prior audit report, *Access-A-Ride Accident Claims* (2012-S-12).

Background, Scope, and Objective

The Metropolitan Transportation Authority (MTA) is a public benefit corporation providing transportation services in and around the New York City metropolitan area. It is governed by a 23-member Board of Directors, whose members are appointed by the Governor with the advice and consent of the State Senate. The MTA has six constituent agencies, two of which operate fixed-route services within New York City. The MTA Bus Company provides fixed-route bus service, and New York City Transit (Transit) provides fixed-route bus and subway service. The MTA also has a wholly-owned subsidiary, First Mutual Transportation Assurance Company (FMTAC), which is a captive insurance company. (A captive insurance company can only insure related entities.)

The Americans with Disabilities Act of 1990 (ADA) and related regulations require public entities that operate a fixed-route transit system, such as the MTA, to provide paratransit or other special services to individuals with disabilities comparable to services provided to persons without disabilities. Pursuant to an agreement between New York City and the MTA, beginning in 1993, Transit assumed operating responsibility for all ADA-required paratransit services within the City. Transit's Department of Buses has a Paratransit Division, which administers the paratransit services.

Transit has branded its paratransit service "Access-A-Ride" (AAR). Transit contracts with 14

carriers to provide paratransit services using lift-equipped minibuses and passenger cars leased from Transit (as of February 26, 2016). In addition, service is provided by private taxis, livery and black car services. Transit has contracts with four “black car” livery service companies (black car service), and two broker services. If a client’s AAR vehicle has not arrived after 30 minutes and there is no AAR vehicle in the vicinity that can pick up the client within a reasonable period of time a taxi or car service can be authorized for use.

Paratransit service represents a significant expense to Transit. Paratransit Division costs were \$455 million in calendar year 2014 and \$462 million in calendar year 2015 reported as of March 3, 2016. To receive services, eligible clients contact the Paratransit Division call center. Based on available services the trip is scheduled with a carrier or other service providers. For 2014, MTA provided 4.5 million trips by carriers and 1.8 million trips via other providers. There were 4.6 million trips by carriers in 2015 with an additional 1.5 million trips via other providers through November 2015. Each carrier’s contract with Transit is substantially the same.

The carrier contract defines an “accident” as an event with bodily injury and/or property damage exceeding \$1,000, and defines an “incident” as an occurrence with only property damage of \$1,000 or less. Accidents reported by the MTA increased in 2012 and 2013, from 888 to 993, and then decreased in 2014 to 662. Incidents increased from 1,215 in 2012 to 2,153 in 2014. For 2015, as of September, there were 489 accidents and 1,829 incidents.

The contract requires the carriers to verbally notify Paratransit’s Command Center of reportable accidents/incidents within one hour of the occurrence and to provide completed Daily Accident/Incident Reports (Reports) to Paratransit’s Command Center within 24 hours of the occurrence. In the case of black car service providers, the contract requires them to immediately notify Transit of any accidents involving a customer that is reported by a driver. Further, the Vehicle and Traffic Law (VTL) requires drivers or their representatives to report all accidents with injuries and/or property damage of \$1,001 or more to the Department of Motor Vehicles (DMV) within 10 days. In addition, Paratransit’s Contract Unit monitors the carriers for compliance with the contract requirements for drug and alcohol testing to meet Federal regulations (49 CFR 40) and New York State VTL Article 19-A, which requires that bus drivers meet certain requirements to obtain and retain the ability to operate a bus carrying passengers.

Insurance coverage is handled differently for each type of service provider. The carriers are required by contract to wholly indemnify Transit from liability and loss. Liability insurance coverage for personal injury and property damage to others is arranged through the MTA’s Department of Risk and Insurance Management (RIM) and FMTAC. The charge for this insurance was \$17,681 per vehicle for the 12 months ended February 29, 2016. For the 12 months ending February 28, 2017 the amount charged to the carriers is \$21,035 per vehicle. Other types of insurance, such as coverage for collision damage to the Paratransit vehicles, is not provided by contract and can be purchased by the carriers on the open market. Paratransit relies on its insurance claim administrator, the Claims Service Bureau (CSB), to provide claims management services for the AAR program. Black car service companies and taxis that provide service to both MTA clients and the general public must carry their own insurance. FMTAC reported that it paid \$17.8 million for 1,588 claims for 2014 and, as of January 19, 2016, \$8.9 million for 1,566 claims for 2015.

Our prior audit determined that between 2008 and 2012 the overall demand for AAR service increased, but the portion of the service provided by traditional carriers decreased and reliance on the black car services and taxis increased. The number of reported accidents also initially increased, but decreased between 2010 and 2012. In regard to actions by the Paratransit Division and carriers, we found that for the most part Paratransit and the carriers were in compliance with federal motor carrier standards for such things as Commercial Driver's Licensing, drug and alcohol testing, and training. However, our audit noted that there was an unquantified liability risk associated with black car services and taxis that was expanding and was not being tracked.

We issued our initial audit report on April 24, 2014. The objective of our follow-up review was to assess the extent of implementation, as of March 21, 2016, of the 11 recommendations included in the initial report.

Summary Conclusions and Status of Audit Recommendations

We found that the MTA made some progress in implementing the recommendations contained in our prior report. Of the 11 prior audit recommendations, two were implemented, eight were partially implemented, and one was no longer applicable.

Follow-Up Observations

Recommendation 1

Meet with black car service providers to remind them of their responsibility to report accidents to the Paratransit Division in accordance with their contract and ensure they have a corrective action plan for drivers involved in accidents.

Status - Partially Implemented

Agency Action - Paratransit sent a letter to all black car services providers on April 10, 2014 reminding them of their reporting responsibilities. However, Paratransit has not monitored the black cars to ensure there are corrective action plans for drivers involved in accidents.

Recommendation 2

Maintain records of black car service accidents reported to the Paratransit Division and advise CSB to notify Paratransit of black car service accidents it receives.

Status - Implemented

Agency Action - Paratransit maintains a listing of black car service accidents along with monthly accident/incident log sheets. Also, because CSB is not responsible for any claims against black car service providers, it does not receive notification of black car service accidents.

Recommendation 3

Ensure all carriers are in compliance with contract accident-reporting requirements.

Status - Partially implemented

Agency Action - Paratransit instituted the Paratransit Accident and Incident/Road Calls System (PAIRS) in 2014. Carriers were informed on March 31, 2014 that starting April 1, 2014, they were required to use this system for accident reporting. The letter also reminded carriers to call in no later than an hour after an occurrence. However, we found that 157 out of 710 accidents and incidents reported to Paratransit were not reported within an hour as required. While the majority of the 157 incidents were reported within two hours, one was reported over 67 hours late; two were reported 44 hours late; and 24 were reported between 2 and 16 hours late. An additional 38 events were listed on the Paratransit incident/accident report, but not on the call log.

Similarly, our review of compliance with the 24-hour reporting requirements at two carriers found that seven out of 43 reports were e-mailed after the 24-hour period, and ranged from 28 minutes to 3 hours late.

Moreover, our review also found that documentation could also be improved. Fourteen of the 54 incidents examined were missing at least one of the required documents, and five of the 17 accidents examined did not contain all the required reporting documents.

Recommendation 4

Reconcile CSB and Paratransit listings of reported accidents/incidents on a weekly basis.

Status - No Longer Applicable

Agency Action - Paratransit implemented PAIRS on April 1, 2014. Paratransit, CSB, and the carriers now share the information that is entered into PAIRS, so data reconciliation is no longer necessary.

Recommendation 5

Require carrier Road Supervisors to complete the property damage assessment and record the results in the carrier's records, including evidence that the accident has been reported to DMV where required.

Status - Partially Implemented

Agency Action - Paratransit instituted the PAIRS system and informed the carriers they will begin using this system to report accidents on April 1, 2014. Carriers were reminded to supply Transit with an MV-104 form (Report of Motor Vehicle Accident) and file it with NYS DMV,

but did not require the carriers to retain evidence that the accident was reported or mention the need for property damage assessments.

We reviewed a sample of 17 accidents. We found that for 16, a Supervisor accident report was submitted and for 14 an MV-104 was submitted to Paratransit. Only two of these accidents had dollar estimates reported. We also reviewed DMV records and for nine accidents, only two were on the drivers' records. Two carriers stated that the MV-104s are sent to DMV via mail, but they did not retain any evidence to support that the accident had been reported. The third carrier stated that no MV-104s are submitted to DMV.

Recommendation 6

Issue accident reporting and damage estimating guidance to carriers and to other service providers to promote consistency and uniformity of approach.

Status - Partially Implemented

Agency Action - Paratransit provided a mandatory two-day training class to all carrier supervisors responsible for responding to accidents and incidents. This training covered PAIRS and the requirements for accident reporting. Additionally, according to Paratransit, the training also included damage estimation guidance, but they did not provide any documentary support.

Recommendation 7

Investigate why the records of one carrier indicate untimely review of license abstracts, and require corrective action.

Status - Implemented

Agency Action - Based on a review of this carrier's records, Paratransit assessed a Performance Deficiency offset against the carrier's April 2014 service billing.

Recommendation 8

Ensure that carriers' drug and alcohol coordinators maintain the appropriate records, as required by the contract and federal regulations, including records that document the randomness of the selection process.

Status - Partially Implemented

Agency Action - Paratransit sent a letter to the carriers on April 28, 2014 stating that drug and alcohol coordinators must be adequately trained and maintain accurate and complete records which pertain to drug and alcohol, as required by contract and Federal Transit Administration regulations. Additionally, Paratransit Contract Managers perform field

reviews of the Drug and Alcohol Program at the carriers. However, the reviews do not include any indication that the randomness of the selection process was examined. We visited three carriers and found that each had files with drug test details in folders by date; however, there was no documentation related to the randomness of the employee selection process.

Recommendation 9

Ensure that carriers' drug and alcohol coordinators are fully aware of the standards and consequences of positive test results, including the standard that requires employees with test results registering between 0.02 and 0.039 b.a.c. [blood alcohol content] be relieved of their duties for 24 hours.

Status - Partially Implemented

Agency Action - As previously mentioned, Paratransit sent a letter to the carriers on April 28, 2014 stating that drug and alcohol coordinators must be adequately trained and maintain accurate and complete records which pertain to drug and alcohol, as required by contract and Federal Transit Administration regulations. However, the letter did not specifically mention the standards and consequences of positive test results. Also, we visited three carriers and spoke to the drug and alcohol coordinators present at two of them. Both coordinators were aware of the standards and consequences of any positive test results.

Recommendation 10

Require carrier quality control officials to ensure that drivers are conducting their pre- and post-trip inspections and that drivers sign the reports as required by New York State Department of Transportation (NYSDOT) regulations. Where required by contract or practice, quality control officials should indicate their review by signing the report.

Status - Partially Implemented

Agency Action - Paratransit's letter to the carriers on April 28, 2014 stated that carriers must continue to monitor drivers' pre- and post-vehicle inspections and require signatures of drivers and inspectors on all Operator Vehicle Condition Reports (OVCR) and that spot checks should be performed to ensure compliance to NYSDOT inspection practices.

We visited three carriers and observed 15 pre- and 11 post-inspections. We found that during one of the pre-inspections a driver also signed off on the post-inspection. For the 11 post inspections, we observed 10 drivers did not appear to do the inspection. Five of these claimed to have done it at another location prior to returning the vehicle.

We also noted that only one carrier had any indication of a secondary review. After the driver inspects the vehicle and signs the OVCR, a supervisor places a stamp next to the driver's signature. This occurred for six inspections observed.

We also reviewed 63 OVCRs for trips prior to our visit and found that all 63 had both pre- and post-inspection signatures. However, only 15 had any indication that there was secondary acknowledgement of the review indicated by a stamp next to the driver's signature.

Recommendation 11

Require Paratransit officials to test compliance by spot checking the pre-trip and post-trip inspection practices of their carriers.

Status - Partially Implemented

Agency Action - The Standards and Compliance Unit visits each carrier monthly and reviews OVCRs to determine if the carrier's file contain all the documents and if each form is legible and complete. This is recorded on an OVCR survey form and is forwarded to the Paratransit Contract Unit for liquidated damages against carriers when warranted. A 19A Pre-Trip & Pull out Survey form is also completed during the visit. The driver is observed while the pre-trip inspection is done, and any deficiencies are noted. However, there is no review of post-trip inspections.

Contributors to this report were Robert C. Mehrhoff, Erica Zawrotniak, and Jasbinder Singh.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank MTA management and staff for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Carmen Maldonado
Audit Director

cc: M. Fucilli, MTA, AG
D. Jurgens, MTA, Audit Services
State Division of the Budget