IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUZANNE B. BACAL, et al., individually and on behalf of similarly situated individuals,	:	**CIVIL ACTION**
Plaintiffs,	:	
v.	:	
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY and LOUIS J. GAMBACCINI,	:	
Defendant.	:	**NO. 94-6497**

ADJUDICATION ON MOTION FOR CONTEMPT INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

Reed, J. **May 28, 1998**

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Plaintiff Suzanne B. Bacal et al. (hereinafter "plaintiff class") filed a motion for civil contempt against defendant Southeastern Pennsylvania Transportation Authority and defendant Louis J. Gambaccini (hereinafter collectively referred to as "SEPTA") alleging violations of the Consent Decree agreed to by the parties and entered by this Court on October 4, 1995. (Document No. 38). After consideration of the pleadings, the stipulation of uncontested facts, the evidence, including exhibits and testimony presented at the contempt hearing, the arguments of the parties presented at the hearing, and the pre-hearing and post-hearing submissions, I make the following findings of fact and conclusions of law:

Interpretation of Consent Decree - Trip Denial

As a preliminary matter, I must determine what constitutes a "Trip Denial" within the meaning of the Consent Decree. Defining "Trip Denial" is fundamental to my later

factual analysis of the evidentiary record, and thus I deal with this issue from the outset;

Prior to July 1996, a paratransit rider would contact SEPTA directly to make a reservation for a ride and SEPTA would schedule a ride with one of its three carriers. After July 1996, SEPTA decentralized the system so that a rider had to telephone a specific carrier directly to schedule a ride. The ability of the rider to choose from which carrier to get a ride is called "rider's choice." (2/11/98 Tr. at 48-49, 50-52); (Stipulation of Uncontested Facts at ¶ 21). Decentralization was, in part, in response to complaints of the disabled community. (Dep. of Hague at 47-48); (2/9/98 Tr. at 154-55);

Under the decentralized system, the parties disagree as to what constitutes a "Trip Denial" under the Consent Decree. Plaintiff class argues that a "Trip Denial" occurs when a rider requests a ride from *one* carrier and is denied the trip.[1] SEPTA argues that a "trip denial" occurs only when a rider requests a ride from *all* carriers and is denied by all;

I find that a "Trip Denial," as defined by the Consent Decree, occurs when a rider is unable to obtain a ride after calling *all* available carriers. While the Court does not intend to trivialize the maddening frustration and lengthy time endured by riders in their efforts to call and obtain a ride from carrier after carrier, I read the plain language of the

[1] Plaintiff class points to the testimony of Cheryl Spicer, Chief Operating Officer for SEPTA's Paratransit Operations and Cynthia Hayes, SEPTA's manager of customer services for the paratransit division, to support the argument that a trip denial occurs when a paratransit rider requests a demand service from a carrier and is denied the trip. Spicer testified that her understanding of the Consent Degree was that a trip denial occurs whenever an eligible paratransit rider requests a ride from only one of the SEPTA carriers and that carrier cannot provide a ride, even if the rider does not request the ride from any other carrier. Spicer also testified that SEPTA reported trip denials based on this understanding. (See 2/10/98 Tr. at 55-56); (2/11/98 Tr. at 42-43; 2/12/98 Tr. at 100-02). The interpretation of the Consent Decree is a question of law to be determined by the Court. The subjective understandings of SEPTA employees of the Consent Decree is not relevant in making this determination.

Consent Decree as not affording "Trip Denial" status unless *all* carriers are unable to provide a ride;[2]

Findings of Fact[3]

A. Relevant Procedural History and Factual Background

1. Plaintiff class filed this action against SEPTA claiming that SEPTA was not meetings its obligation to provide paratransit service in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12143 ("ADA"). On May 15, 1995, the Court certified this case to proceed as a class action on behalf of a class consisting of all persons eligible for paratransit services under the ADA. On October 4, 1995, the Court entered a Consent Decree approving a class-wide settlement;

2. On January 22, 1997, plaintiff class filed a motion for contempt alleging that, *inter alia*, SEPTA failed to comply with the Consent Decree for (1) failing to provide eligible riders next-day rides in violation of paragraph II(B)(1)(a) of the Consent Decree; (2) failing to provide eligible riders rides during peak hours on a next-day basis or several days in advance in violation of paragraph II(B)(1)(b) of the Consent Decree; and (3) failing to record ride request information and failure to acquire and install Mobile Data Terminals ("MDTs") and Scanner Card Readers ("SCRs") on all paratransit vehicles in violation of paragraphs II(A)(2), (4), and (5) of the Consent Decree;

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[2] The express definition of "Trip Denial" in the Consent Decree is "SEPTA's . . . inability to schedule a trip . . . ."; it is not the inability of carrier "Freedom" to provide a ride, or carrier "Metro" to provide a ride, or carrier "Triage" to provide a ride, but the inability of SEPTA.

To state my ruling hypothetically, if there are three available carriers, and a rider requests a ride from all three, and is denied by all three, then, for purposes of the Consent Decree, there is *one* Trip Denial, not three.

[3] To the extent that these conclusions of law include findings of fact or mixed findings of fact and conclusions of law, those findings and conclusions are hereby adopted by this Court.

3. On December 16, 1997, the Court held a final pre-hearing conference in preparation for the civil contempt hearing then scheduled for December 18 and 19, 1997. As a result of the pre-hearing conference, the Court, with agreement of the parties, recognized the need for additional briefing by the parties as to the interpretation of the provisions set forth in paragraphs II(B)(1)(a) and (b), and in paragraph III(D) of the Consent Decree. Following the submissions of memoranda of law by the parties, the Court issued an Order dated February 2, 1998 which declared that the Consent Decree "clearly mandates that SEPTA should provide next-day service." (2/2/98 Order at ¶ 3);

4. This Court held an evidentiary hearing, spanning four days, beginning on February 9, 1998, in connection with the motion of plaintiff class for contempt;

5. Since 1985, SEPTA has provided paratransit services to ADA eligible patrons by contracting with three outside carriers. (2/11/98 Tr. at 45-47). Between August 1996 and February 1998, SEPTA contracted with its carriers for 377 paratransit vehicles to provide paratransit services to eligible riders. (2/11/98 Tr. at 87, 114); (2/12/98 Tr. at 57-60). There are approximately 23,000 registered ADA eligible patrons, of which about 8,000 are active riders. (2/12/98 Tr. at 57-58). In addition to paratransit services to ADA eligible patrons, SEPTA provides paratransit services to senior citizens through the "Shared Ride Program." SEPTA provides these services in the five-county region, consisting of Philadelphia, Bucks, Montgomery, Chester and Delaware Counties. (2/12/98 Tr. at 58).

The motion for contempt filed by plaintiffs is limited to paratransit services for ADA eligible patrons in Philadelphia County, and thus I refer only to this group in my

disposition herein;

6. Paragraph I(8) of the Consent Decree defines "Next Day Scheduling" as "SEPTA's scheduling of a ride request for any ADA paratransit riders at the time requested by the rider (within the two hour window) on a particular day in response to a request for service made the previous day during business hours as herein established." (Consent Decree ¶ I(8));

7. Paragraph I(13) of the Consent Decree defines "Trip Denial" as "SEPTA's refusal or inability to schedule a trip within the two hour window and/or in accordance with next day scheduling." (Consent Decree ¶ I(13)). Paragraph II(B)(2) of the Consent Decree is a remedial provision requiring SEPTA to provide a free paratransit ride if "SEPTA cannot provide the rider's requested trip within the two-hour window . . . ." (Consent Decree ¶ II(B)(2));

B. Consent Decree ¶ II(B)(1)(a) & (b) - Demand Service

8. Plaintiff class asserts that SEPTA has violated "Demand Service" related provisions set forth in paragraphs II(B)(1)(a) & (b) of the Consent Decree. "Demand Service" is the umbrella term used to describe rides that are requested by an eligible paratransit rider.[4] It includes rides requested twenty-fours hours in advance, known as "Next-Day" rides, or rides requested up to seven days in advance. (See 2/9/98 Tr. at 13). The Consent Decree mandates both types of paratransit services in paragraphs II(B)(1)(a) & (b);

[4] In contrast to "Demand Service" is a "standing order" which occurs when an eligible rider receives a paratransit ride at the same time to travel to the same place on a weekly or daily basis, and the rider does not have to make a reservation for each ride in advance. (2/9/98 Tr. at 9-10).

9. Paragraphs II(B)(1)(a) & (b) provide as follows:

> a. Within fifteen (15) days of the effective date of the Consent Decree, SEPTA shall implement a system of next day scheduling and shall provide timely paratransit services to riders requesting a next day trip if the request is made during regular business hours . . . of the previous day.
> b. Within fifteen (15) days of the effective date of the Consent Decree, SEPTA shall comply with the Federal Transit Administration regulation which requires SEPTA to schedule any paratransit trip for the pickup time requested by the rider. However, under this regulations, if SEPTA cannot schedule the ride at the requested time, SEPTA shall not require that the paratransit trip be outside of a two-hour window of the rider's requested pickup time.

(Consent Decree at ¶¶ II(B)(1)(a) & (b));

10. During the contempt hearing, survey data from the PASS[5] system, survey data undertaken by SEPTA customer service representatives, surveys undertaken at Liberty Resources, Inc. ("Liberty Resources"),[6] and anecdotal information were used to describe the level of performance of SEPTA's paratransit service;

11. The Court notes that no professional statistical analysis was presented along with the data contained in the exhibits analyzed below. The Court approaches the exhibits, along with the accompanying testimony, in a logical and plain fashion as that of a reasonable fact finder. While the methodology used for the data collection appears to be less than precise, inevitably plaguing the results with statistical quagmires, I find that the data is sufficiently clear for purposes of a determining a contempt motion;

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[5] PASS is an acronym "Paratransit Automated Scheduling System," which is a computerized system designed to schedule rides according to pick-up/drop-off times and geographic location and record related ride information.

[6] Liberty Resources is a center located in Philadelphia, Pennsylvania that assists people with disabilities to live independently in the community. (2/9/98 Tr. at 8).

12. I analyze, seriatim, three pieces of evidence: (a) Plaintiffs' Exhibit 18 and 18(a); (b) Plaintiffs' Exhibit 5/ Defendant's Exhibit 24; and (c) the "'Next-Day' Paratransit Reservation Study by Liberty Resources Employees";

a. Plaintiffs' Exhibits 18 and 18(a) "SEPTA Paratransit Demand Service Trip Denials"

13. Plaintiffs Exhibits 18 and 18(a) are based on information contained in SEPTA's own "Paratransit Performance Reports - ADA Program." According to these exhibits and the accompanying testimony, the percentage of "Total Reported ADA 'Demand Service' Trip Denials" is: December 1996 (10.6% denial); January 1997 (9.7% denial); February 1997 (8.7% denial); March 1997 (7.4% denial); April 1997 (9.6% denial); May 1997 (9.8% denial); September 1997 (26.8% denial); October 1997 (32.0% denial); and November 1997 (22.0% denial). (Pl. Exs. 18 and 18(a)); (2/11/98 Tr. at 66-71);

14. While Plaintiffs' Exhibits 18 and 18(a) show that significant rides were unavailable by individual carriers on in certain months, I lament that the exhibits are grossly unreliable for determining the percentage of Trip Denials within the meaning of the Consent Decree. As I found earlier, all carriers must be unable to provide a ride to constitute a Trip Denial within the meaning of the Consent Decree. Because neither Plaintiffs' Exhibits 18 and 18(a) nor the accompanying testimony indicate whether all carriers were contacted, I find this evidence lacks persuasiveness on the factual issue of Trip Denials;[7]

[7] In fact, Cheryl Spicer testified that "[i]f a customer calls a carrier and requests a trip and the trip is not within the two-hour window, . . . that is still considered a trip denial and that's put into the PASS system." (2/11/98 Tr. at 63). Thus, I find that the total "Demand Service" trip denials in Exhibits 18 and 18(a) calculate "Trip Denials" in a manner that is inconsistent with my interpretation of the Consent Decree, and therefore not reliable evidence of "Trip Denials" upon which this Court can determine whether the Consent Decree has been violated.

b. Plaintiffs' Exhibit 5 / Defendant's Exhibit 24 - SEPTA's "Reservation Random Call Report"

15. The data contained in these exhibits are the result of SEPTA's internal monitoring, whereby SEPTA customer service representatives tested whether its carriers were providing requested rides.[8] Cynthia Hayes testified that each SEPTA customer service representative was instructed to call all three carriers -- "Freedom," "Metro" and "Triage" -- and to make a reservation for a two-way ride.[9] (2/9/98 Tr. at 209; 2/10/98 Tr. at 15-17, 21). The customer service representatives were instructed to make "Demand Service" ride requests in the following categories: (i) "Next-Day"; (ii) after 1:00 a.m.; (iii) inter-county; (iv) distance; and (v) weekend. (See 2/9/98 Tr. at 191-94; 2/10/98 Tr. at 21, 58-62);[10]

16. In accordance with my interpretation of the Consent Decree, I find that, for every ride request reported in the "Reservation Random Call Report," each of the three carriers

[8] SEPTA employees "anonymously" posed as deceased ADA eligible paratransit riders when attempting to reserve rides from SEPTA's carriers. (2/9/98 Tr. at 188-91).

[9] During the hearing, counsel for SEPTA represented that only the data relating to "Next-Day" rides in the "Reservation Random Call Report" was relevant. (2/10/98 Tr. at 17 ("We're here today to talk about . . . next day rides . . . ."); at 42 ("[T]he issues here was [sic] next day rides.")). I find that this representation is a mischaracterization. Instead, in fairness and fidelity to the entire record and the issues before the Court which include "Demand Service," I will consider the data from all the ride requests (including for after 1:00 a.m., distance, inter-county, and weekend rides) contained in the "Reservation Random Call Report," and not just limit the analysis to "Next-Day" rides.

[10] SEPTA had no protocol for the "Demand Service" ride requests in terms of whether the request for a ride within 24 hours, for 3 days in advance, or for 7 days in advance. (See 2/10/98 Tr. at 61-62). For example, an "inter-county" ride could have also been a "Next-Day" ride. For purposes of analysis, I must then consider all the specifically designated "Next-Day" rides in one group, and I must collect together all the other "Demand Service" rides, that are not specifically designated "Next-Day," in a separate group.

-- "Freedom," "Metro" and "Triage" -- must have been unable to provide a ride in order to constitute a Trip Denial. Based on the testimony presented and my analysis of the data presented in Plaintiffs' Exhibit 5/ Defendant's Exhibit 24, I make underlying findings regarding ride requests for various "Demand Services," summarized in charts contained in the appendices following this memorandum opinion. (See infra Appendices A, B, C, D, and E);

17. In accordance with my analysis of the underlying findings set forth in the appendices, I make the following ultimate findings:

(i) Next-Day (see infra Appendix A)

18. The evidence shows that not all carriers were called on 5/16/97, 8/5/97 and 8/11/97. I find that there were no Trip Denials on these dates, and thus the evidence pertaining to these dates is not relevant and is discounted;

19. I next find that "Next-Day" rides were available, within the meaning of the Consent Decree, on 3/4/97, 3/25/97, 4/2/97, 4/21/97, 4/25/97, 4/28/97[11], 5/2/97[12], 5/5/97[13], 5/23/97, 5/30/97, 8/6/97 and 8/12/97, totaling twelve (12) available two-way rides;

20. On 4/23/97 and 6/17/97, a "Next-Day" ride was available one-way (pick-up) and

[11] It is likely that there were two sets of calls made by the customer service representative on 4/28/97. Assuming that the calls were made for separate and distinct ride requests, it would follow that there would actually be 2 available two-way rides for this date. However, because the testimony did not sufficiently persuade the Court that the ride requests were made for different pick-up times, and to err on the side of caution, I will infer only 1 available two-way ride for this date.

[12] The reasoning and analysis set forth in supra footnote 11 is equally applicable here.

[13] The reasoning and analysis set forth in supra footnote 11 is equally applicable here.

not available one-way (return trip). From this evidence, I infer that the trip availability/denial status for these dates is, at best, neutral. This finding is consistent with the definition of "Next Day Scheduling" under the Consent Decree, which does not require a scheduled ride to be two-way;

21. And, finally, I find that there was one (1) "Trip Denial" on 6/20/97;

22. In sum, I find that, out of thirteen (13) two-way ride requests for "Next-Day" rides made from March 1997 to August 1997, there was one (1) Trip Denial;

(ii) After 1:00 a.m. (see infra Appendix B)

23. The evidence shows that not all carriers were called on 2/28/97, 2/28/97 and 6/17/97. I therefore find that there could be no Trip Denials on these dates, and thus the evidence pertaining to these dates is not relevant and is discounted;

24. I find that "after 1:00 a.m." two-way rides were available on 2/26/97, 2/28/97, 3/3/97, 3/4/97, 3/5/97, 3/5/97, 3/7/97, 4/24/97, 6/17/97, 8/6/97, 8/11/97, 8/15/97, 8/15/97 and 10/14/97, totaling fourteen (14) available two-way "after 1:00 a.m." rides;

25. On 3/25/97 and 4/25/97, a ride was available one way only and not available one way. I infer that trip availability/denial is neutral. And, finally, I find that there was a total of three (3) Trip Denials occurring on 2/26/97, 5/16/97 and 5/23/97;

26. In sum, I find that out of seventeen (17) two-way ride requests for "after 1:00 a.m." made between February 1997 to October 1997, there were three (3) Trip Denials;

(iii) Inter-County (see infra Appendix C)

27. The evidence shows that not all carriers were called on 2/26/97, 3/5/97, 3/5/97 and 3/31/97. I therefore find that there could be no Trip Denials on these dates, and thus

the evidence pertaining to these dates is not relevant and is discounted;

28. I find that "inter-county" two-way rides were available on 2/26/97, 2/26/97, 2/26/97, 2/28/97, 3/4/97, 3/25/97, 4/10/97 and 5/23/97, totaling eight (8) available two-way "inter-county" rides;

29. I find that there was one (1) Trip Denial on 5/16/97;

30. In sum, I find that out of nine (9) two-way "inter-county" ride requests made between February 1997 and May 1997, there was one (1) Trip Denial;

(iv) Distance (see infra Appendix D)

31. The evidence shows that not all carriers were called on 3/6/97, 3/7/97, 6/17/97, 8/6/97, 8/15/97, 9/5/97 and 3/7/98. I therefore find that there could be no Trip Denials on these dates, and thus the evidence pertaining to these dates is not relevant and is discounted;

32. I find that "distance" two-way rides were available on 3/6/97, 3/6/97, 5/2/97, 5/2/97, 7/4/97, 8/8/97, 8/28/97 and 10/6/97, totaling eight (8) available two-way "distance" rides;

33. I find that there were two (2) Trip Denials occurring on 3/10/97 and 4/16/97. Because a "distance" ride was available one way and not available one way on 9/2/97, I will discount this evidence;

34. In sum, I find that out of ten (10) two-way "distance" ride requests made between March 1997 and March 1998, there were two (2) Trip Denials;

(v) Weekend (see infra Appendix E)

35. The evidence shows that not all carriers were called on 3/7/97. I therefore find

that there could be no Trip Denials on this date, and thus the evidence pertaining to this date is not relevant and is discounted;

36. I find that "weekend" two-way rides were available on 3/5/97, 3/6/97, 3/6/97, 3/10/97 and 4/28/97, totaling five (5) available two-way "weekend" rides;

37. I find that there was one (1) Trip Denial on 4/21/97;

38. In sum, I find that out of six (6) two-way "weekend" ride requests made between March 1997 and April 1997, there was one (1) Trip Denial;

c. "Next-Day" Paratransit Reservation Study by Liberty Resources Employees

39. Several employees of Liberty Resources, all of whom are class members in the instant action, participated in a paratransit survey. I find that the results of the testing are as follows:

(i) Plaintiffs' Exhibit 7(a) - Bacal

40. In December 1996, plaintiff Suzanne Bacal ("Bacal") attempted to reserve a "Next-Day" ride on seven occasions (12/9/96, 12/10/96, 12/11/96, 12/13/96, 12/17/96, 12/18/96 and 12/20/96), and was denied a ride in all instances.[14] Thus, I find that Bacal received seven Trip Denials out of seven requests (7/7) in December 1996;[15]

(ii) Plaintiffs' Exhibit 9 - Bacal

41. For June 1997, plaintiff class argues that the results of Bacal's testing attempts

[14] On 12/9/96 and 12/20/96, Bacal called "Access" at least 4 times, and received a busy signal each time. For limited purposes of determining the persuasiveness of this evidence, I will construe these busy signals as unavailable rides from "Access" on these dates. Along these lines, I will construe the evidence that Bacal called "Access" on 12/18/96 and was placed on hold for 12 minutes as an unavailable ride.

[15] The evidence indicates that there were three carriers available in December 1996 -- Metro, Access, and Triage. Bacal contacted all three carriers when making a ride request. (2/9/98 Tr. at 27). My conclusion that Bacal was denied rides on 7 occasions is based on the finding that Bacal attempted to reserve a ride with *all* available carriers.

were sixteen (16) "Next-Day" trip denials out of twenty-two (22) ride requests. I find this evidence to be inconclusive, and ultimately not persuasive, because three carriers were operating in June 1997, but Bacal only called one to reserve a ride. (2/9/98 Tr. at 51-52). For example, on 6/17/97, Bacal called "Triage" for a ride, but no other carrier. Similarly, on 6/18/97, Bacal called "Freedom" for a ride, but no other carrier. Therefore, Bacal cannot prove factually that there were Trip Denials within the meaning of the Consent Decree during her testing in June 1997;

(iii) Plaintiffs' Exhibit 10 - Bacal

42. In November 1997, Bacal attempted to reserve a "Next-Day" ride on nine (9) occasions (11/11/97, 11/12/97, 11/13/97, 11/16/97, 11/17/97, 11/18/97, 11/20/97, 11/24/97[16] and 11/25/97). I find that Bacal received six Trip Denials out of nine requests (6/9) in November 1997;[17]

(iv) Plaintiffs' Exhibit 7(b) - Shaw

43. In December 1996, class member Pamela Shaw also participated in the testing of the availability of paratransit "Next-Day" rides. Shaw attempted to reserve a "Next-Day" ride on fourteen (14) occasions (12/6/97, 12/7/97, 12/8/97, 12/9/97, 12/10/97, 12/11/97, 12/12/97, 12/13/97, 12/14/97, 12/15/97, 12/16/97, 12/17/97, 12/18/97 and 12/19/97). I find that Shaw received thirteen Trip Denials out of fourteen requests (13/14) in

[16] I will construe the fifteen minutes Bacal was on hold for "Access" as an unavailable ride.

[17] My conclusion that Bacal received 6 Trip Denials is based on the finding that Bacal attempted to reserve a ride with *all* available carriers.

December 1996;[18]

(v) Plaintiffs' Exhibit 7(c) - Fulton

44. In December 1996, plaintiff Fran Fulton also participated in the testing and attempted to reserve a next-day ride on seven (7) occasions (12/5/96, 12/6/96, 12/8/96, 12/9/96, 12/12/96, 12/16/96 and 12/24/96).[19] I find that Fulton received four Trip Denials out of seven requests (4/7) in December 1996;[20]

(vi) Plaintiffs' Exhibit 8 - Robinson

45. In June 1997, Thaddeus Robinson also attempted to reserve "Next-Day" rides on several occasions. For the same reasons articulated above regarding Plaintiffs' Exhibit 9, I find the testing performed by Robinson to be inconclusive, and ultimately not persuasive, because Robinson attempted to call one carrier, and not all three carriers. (2/9/98 Tr. at 155-56);

46. Bacal also testified that she requested approximately twenty (20) "Demand Service" rides, other than for testing purposes, since the Consent Decree went into effect,

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[18] I find that Shaw contacted all three carriers. (2/9/98 Tr. at 74-75; Pl. Ex. 7(b)). My conclusion that Shaw received 13 Trip Denials is based on the finding that Shaw attempted to reserve a ride with *all* available carriers.

[19] On December 5, 6, and 8, 1996, Fulton attempted to obtain next-day rides from all three carriers, all of which were booked. Fulton then called "Allstate." The evidence is unclear as to whether "Allstate" was a formal carrier of SEPTA, or whether it was a last resort for overflow rides. (2/9/98 Tr. at 110). Because of my uncertainty as to the actual status of "Allstate" and because Fulton was on hold for "Allstate" for fifteen minutes on two of these instances, I find, for limited purposes here, that "Allstate" was not a formal carrier.

[20] Fulton contacted all 3 carriers. (2/9/98 Tr. at 109-10); Pl. Ex. 7(c)). My conclusion that Fulton received 4 Trip Denials is based on the finding that Fulton attempted to reserve a ride with *all* available carriers.

and that she obtained probably less than one-third of the rides. (2/9/98 Tr. at 17, 19).[21] Shaw testified that there are times that she receives "Next-Day" rides, (2/9/98 Tr. at 64), and that out of the approximate 468 times per year she uses paratransit rides[22] to get to work, she was not able to get a ride on at least 10 occasions. (2/9/98 Tr. at 88). Fulton testified that she received "Demand Service" paratransit rides. (2/9/98 Tr. at 116-17). In sum, I find this testimony credible and that Bacal, Shaw, and Fulton received "Demand Service" and "Next-Day" paratransit rides on numerous occasions;

d. Summary of Exhibits

47. My ultimate finding with respect to the "Reservation Random Call Report" (Pl. Ex. 5; Def. Ex. 24) is: (i) for "Next-Day" rides, one ride request out of thirteen (1/13) was a Trip Denial; and (ii) for "Demand Services," *i.e.* the total of "after 1:00 a.m.," "inter-county," "distance," and "weekend" rides, seven out of forty-two (7/42) were Trip Denials;

48. In summary from Plaintiffs' Exhibits 7(a), 7(b), 7(c), 8, 9 and 10, I find the following: In November 1997, six ride requests out of nine (6/9) were "Trip Denials" based on test calls made by Bacal;

49. In December 1996, I find that seven out of seven (7/7) were "Trip Denials" based on test calls made by Bacal; that thirteen out of fourteen (13/14) were "Trip Denials" based on test calls made by Shaw; and that four out of seven (4/7) were "Trip Denials"

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[21] The testimony of Bacal does not specify how many of "Demand Service" rides received were "Next-Day" rides.

[22] These rides were "Demand Service," either next-day or days in advance, in light of Shaw's testimony that she did not have a standing order. (2/9/98 Tr. at 61).

based on test calls made by Fulton;

50. My findings are based on data compiled over approximately eleven months.[23] The Consent Decree has been in effect since January 1995 and the contempt hearing took place in February 1998; thus, the passage of time totals approximately thirty-six months;

51. Thus, in sum, I find that the persuasive evidence from the above exhibits show that there were ninety-two (92) trip requests made by a handful of individuals (including Bacal, Fulton, Shaw, and SEPTA customer service representatives) resulting in a total of thirty-eight (38) Trip Denials over a sporadic eleven-month period during the relevant thirty-six month period;

52. This Court bemoans the lack of solid and complete information representing the total number of "Demand Service" and "Next-Day" rides actually provided by SEPTA throughout the time since the effective date of the Consent Decree (*i.e.*, thirty-six months). The evidence in this regard is limited to the (i) Defendant's Exhibit 19, (ii) the Stipulation of Uncontested Facts ¶ 22, and (iii) Plaintiffs' Exhibit 18(a), discussed as follows:

(i) Defendant's Exhibit 19

53. Defendant's Exhibit 19 contains data from the PASS system, listing the names of numerous riders who received ten or more "Next-Day" rides per month from January 1997 to November 1997. (See Def. Ex. 19). Based on my review of Defendant's Exhibit 19, I find that at least 9662 "Next-Day" rides were given in 1997, broken down

[23] The months from which this data was collected are: December 1996, February 1997, March 1997, April 1997, May 1997, June 1997, July 1997, August 1997, September 1997, October 1997, and March 1998. I note that in many of these months there were as few as 1 to 2 Trip Denials.

approximately as follows: January (672), February (788), March (844), April (992), May (930), June (1031), July (1041), August (914), September (795), October (939), and November (716);

(ii) Stipulation of Uncontested Facts ¶ 22

54. The parties summarized data from the PASS system pertaining to the number of "Next-Day" rides provided by SEPTA for certain months in 1997 as follows: January (4386), February (3948), March (3873), April (4465), May (4213), and June (4255), for a total of 25,140 "Next-Day" rides provided over six months in 1997. And, for December 1996, 3948 "Next-Day" rides were provided by SEPTA;

(iii) Plaintiffs' Exhibit 18(a)

55. Exhibit 18(a) shows the following total ADA "Demand Service" trips were actually provided monthly in 1997: November (29,483), October (25,183), September (19,125), May (24,477), April (20,366), March (24,883), February (19,010), and January (16,912), for a total of 179,439 "Demand Service" rides over eight months in 1997. (Pl. Ex. 18(a)); (see also 2/11/98 Tr. at 70);[24]

56. Based on the evidence of Defendant's Exhibit 19, Stipulation of Uncontested Fact ¶ 22, and Plaintiffs' Exhibit 18(a), I find that, during the period targeted by plaintiff class, SEPTA provided hundreds, indeed thousands, of "Next-Day" rides per month to plaintiff class in 1997, and 179,439 "Demand Service" rides to plaintiff class over eight months in 1997;

57. The Court acknowledges that some members of plaintiff class have experienced

[24] It is unclear whether the data for "Demand Service" rides include "Next-Day" rides.

great frustration, inconvenience, and disappointment in their attempts to obtain "Demand Service" and "Next-Day" rides. Members of the plaintiff class have testified that they are unable to attend, altogether or in a timely fashion, employment related obligations, social events, medical appointments and other commitments. (2/9/98 Tr. at 22-23); (2/9/98 Tr. at 63-64, 88, 90-91);

C. Consent Decree ¶ ¶ II(A)(2), (4), (5) and ¶ II(B)(1)(c) - Record Ride Request Information, Installation of MDTs and SCRs

58. Plaintiff class asserts that SEPTA violated paragraphs II(A)(2), (4), (5) and II(B)(1)(c) of the Consent Decree;

59. Paragraph II(A)(2) of the Consent Decree provides:

> PASS shall include the installation of Scanner Card readers and Mobile Data Terminals ("MDT's") on all carrier vehicles to facilitate the communication of ride data between carrier vehicles and SEPTA;

60. Paragraph II(A)(4) of the Consent Decree provides:

> SEPTA shall immediately proceed to acquire and implement PASS (including MDT's, . . .), so that PASS shall be fully operational by June 30, 1996. The parties expect that the PASS will be fully operational by June 30, 1996. . . . If implementation is delayed beyond June 30, 1996 as a result of unforeseen technological problems, supplier problems, other problems not caused by SEPTA, the parties, including plaintiffs' class, agree, through their respective counsel, to establish an alternate date, as soon as possible after June 30, 1996 for such implementation, and all report dates and periods, established elsewhere in this Consent Decree for the period after full implementation of the PASS, shall be extended by the length of time of any postponement of the PASS implementation date. . . .;

61. Paragraph II(A)(5) of the Consent Decree provides:

> PASS shall be capable of providing detailed operational reports, include the following information:

i) the date on which the rider telephones for a ride;
ii) the date and time for which the ride is requested;
iii) the rider's requested pickup time;
iv) the actual date for which SEPTA schedules the ride;
v) the pickup time actually scheduled by SEPTA;
vi) the actual time SEPTA picks up the rider;
vii) the actual time the rider arrives at his/her destination; and,
viii) the number of missed trips by SEPTA.

Paragraph II(B)(1)(c) of the Consent Decree is a similar provision, and thus there is no need to repeat it here;

62. Plaintiffs' Exhibits 11 and 12, and the accompanying testimony by Jim Shilliday, show a comparison between the testing requests made by Bacal, Shaw and Fulton in December 1996 and made by Bacal and Robinson in June 1997, and SEPTA's computer records from the PASS system for these two months. The results for December 1996 were:

(i) of the 18 instances when a carrier was unable to provide a ride to Bacal, none were recorded in SEPTA's computer database;

(ii) of the 39 instances when a carrier was unable to provide a ride to Shaw, 1 was recorded and 38 were not recorded in SEPTA's computer database; and

(iii) of the 15 instances when a carrier was unable to provide a ride to Fulton, 2 were recorded and 13 were not recorded in SEPTA's computer database.

(Pl. Ex. 11). And, the results for June 1997 were:

(i) of the 16 instances when a carrier was unable to provide a ride to Bacal, only 5 were recorded; and

(ii) of the 5 instances when a carrier was unable to provide a ride to Robinson, only 3 were recorded.

(Pl. Ex. 12).

63. I find that Plaintiffs' Exhibits 11 and 12, as well as the accompanying testimony of Jim Shilliday, demonstrate that SEPTA's computer database has not recorded accurately and completely or is not functionally able to record the pertinent ride requests in December 1996 and June 1997;[25]

64. The parties agreed to extend the June 30, 1996 deadline set forth in paragraph II(A)(4) of the Consent Decree to March 31, 1997 upon learning that MDTs and SCRs could not be acquired simultaneously with PASS as a result of unforeseen technological reasons. (Stipulation of Uncontested Facts ¶ 9) (See Order dated July 18, 1996);

65. MDTs are communication devices which enable a nonverbal message to pass between a driver of a paratransit vehicle and central dispatcher. (2/10/98 Tr. at 148-49; 2/11/98 Tr. at 142). Scanner cards use a magnetic reader to record and transmit a message, such as a rider's name and identification number, over a transmission line; (2/11/98 Tr. at 142);

66. From November 1994 until his retirement from SEPTA in October 1996, George Hague served as the assistant general manger of SEPTA's paratransit operations. (Hague Dep. at 9). During the spring of 1996, Hague (i) held at least one, possibly two meetings with potential vendors of MDTs, and (ii) sent his assistant Brad Johnson to two or three cities which were using MDTs to observe and learn about the operation. (Hague Dep. at 32-33, 45, 54-55). Hague stated at his deposition that some time between August 1995 and April 1996, he "became educated as to the complexities of this system." (Hague

[25] SEPTA states that in August and September 1997, SEPTA sent supervisors out to the carriers to retrain and reinstruct carriers' reservationist about recording all denials.

Dep. at 29);[26]

67. Richard Krajewski became employed by SEPTA as a Special Projects Coordinator in September 1996, and is responsible for the MDTs and scanner card reader project. (2/11/98 Tr. at 7-8, 142). After assuming his duties, Krajewski did not find any internal documents describing the work which had been done by Johnson or Hague. (2/11/98 Tr. at 11). Nor had there been any preparation of either a procurement document or a request for proposal for the MDTs during Hague's employ. (2/11/98 Tr. at 10);

68. The testimony of Krajewski shows that, after several months as Special Projects Coordinator, he discovered that it would take between 18 and 24 months for the MDTs and SCRs to be fully installed and implemented, thus rendering the ability of SEPTA to meet the March 31, 1997 deadline impossible. (See 2/11/98 Tr. at 30-33);

69. Before specifications for the MDTs could be issued, Krajewski testified that he had to define the needs of the project, which took approximately ninety days, and to obtain approval for spending an additional $1.25 million for the project, which (2/11/98 Tr. at 14-17). Additional funds were secured some time in 1997. (2/11/98 Tr. at 17);

70. Although the technology for MDTs and SCRs had been available, SEPTA had neither acquired the MDTs and SCRs nor installed them in the carrier vehicles as of March 31, 1997. (2/10/98 Tr. at 195); (Uncontested Facts ¶ 16);

71. On June 27, 1997, SEPTA issued specifications for the MDTs project.

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[26] Other than this, SEPTA does not offer any reasons for the delay during Hague's term. In his deposition, Hague offers several technological reasons for the delay, including the problems with implementing the PASS system, and the inability to describe in detail the specification and software package needed by the MDTs. (Hague Dep. at 36-38).

On July 7, 1997, SEPTA issued an Invitation to Bid. (2/11/98 Tr. at 18). On October 2, 1997, SEPTA awarded the project to GMSI, Inc., and issued a notice to proceed letter to GMSI, Inc. on December 3, 1997. I note that this flurry of activity occurred after plaintiff class filed its motion for contempt in January 1997;

72. SEPTA estimates that the project will be completed by December 1999. (See Def. Ex. 5); (2/11/98 Tr. at 17-18). I remain in doubt whether this estimate is reasonable. I recognize the possibility of employing remedial efforts to ensure more prompt installation of MDTs;

73. SEPTA has plans to improve its no show policy by holding patrons accountable and making more space available on the carriers; to establish protocols for determining ADA eligibility; and to recentralize the system of reservations so that all of the reservation and scheduling functions will be performed at SEPTA (2/12/98 Tr. at 117-18). Through recentralization, SEPTA intends to accomplish greater accountability in the system, improve capacity in the system. (2/12/98 Tr. at 119). The Court has been informed by counsel that this transition from a decentralized system to a centralized should be completed by July 1998;

74. Based on my foregoing findings, I ultimately find that, prior to Krajewski's appointment as project manager, SEPTA took few, if any, steps to acquire and install MDTs and SCRs. I find that the efforts expended by and under the direction of Hague were, at most, *de minimis* preliminary initiatives. I further find that there is no evidence of follow-up or progress reports, or plans for future steps for installing MDTs and SCRs during Hague's term. (See 2/10/98 at 192);

75. Having had notice since the onset of the Consent Decree of the mandate to install MDTs and SCRs, and having left Krajewski to his own devices with no record of prior preliminary efforts expended by SEPTA on the MDTs and SCRs project, I find that SEPTA did not act reasonably to provide Krajewski the necessary tools to complete the project and that these inadequacies resulted in further delay of the project under Krajewski's term;

76. I also find that SEPTA, having agreed to the provisions set forth in the Consent Decree as well as the subsequent extension, is responsible for setting the very deadlines that it failed to meet;

77. I find that, only after the filing of the motion for contempt by plaintiff class, did SEPTA proceed forward with alacrity;

Conclusions of Law[27]

78. To prove a violation of the Consent Decree, plaintiff class has the burden of showing, by clear and convincing evidence, that SEPTA has disobeyed the Consent Decree. See Roe v. Operation Rescue, 54 F.3d 133, 137 (3d Cir. 1995);

79. "[S]ubstantial compliance with a court order is a defense to an action for civil contempt. . . . If a violating party has taken 'all reasonable steps' to comply with the court order, technical or inadvertent violations of the order will not support a finding of civil contempt." General Signal Corp. v. Donallco, Inc., 787 F.2d 1376, 1379 (9th Cir.1986); see United States Steel Corp. v. United Mine Workers, 598 F.2d 363, 368 (5th

[27] To the extent that these conclusions of law include findings of fact or mixed findings of fact and conclusions of law, those findings and conclusions are hereby adopted by this Court.

Cir.1979); Washington Metro. Area Transit Auth. v. Amalgamated Transit Union, 531 F.2d 617, 621 (D.C. Cir. 1976).[28] Whether substantial compliance is a defense to civil contempt has not been formally decided by the Court of Appeals for the Third Circuit. See Robin Woods Inc. v. Woods, 28 F.3d 396, 399 (3d Cir. 1994) ("Even if this court were to recognize substantial compliance as a defense to contempt, however, it would not apply [in this case]."); cf. Halderman v. Pennhurst State Sch. & Hosp., 901 F.2d 311, 324 (3d Cir. 1990) (applying substantial compliance standard and affirming district court's finding of substantial noncompliance), cert. denied, 498 U.S. 850 (1990). However, district courts in the Third Circuit have accepted substantial compliance as a defense. See Halderman v. Pennhurst State Sch. & Hosp., 154 F.R.D. 594, 608 (E.D. Pa. 1994); Merchant & Evans, Inc. v. Roosevelt Bldg. Prods. Co., Inc., No. 90-7973, 1991 WL 261654, at *1 (E.D. Pa. Dec. 6, 1991).

"There is general support for the proposition that a defendant may not be held in contempt as long as it took all reasonable steps to comply." Harris v. City of Philadelphia, 47 F.3d 1311, 1324 (3d Cir. 1995). The defendant must "show that it has made 'in good faith all reasonable efforts to comply.'" Id. (quoting Citronelle-Mobile Gathering, Inc. v. Watkins, 943 F.2d 1297, 1301 (11th Cir. 1991));

A. Consent Decree ¶¶ II(B)(1)(a) & (b) - Demand Service

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[28] In a footnote in their post-hearing brief, plaintiff class argues that "substantial compliance" is not an applicable defense where the Consent Decree incorporates specific provisions of the ADA paratransit regulations in ¶ II(B)(1)(b). (Pl. Mem. at 2 n.1 (citing United States v. Wheeling-Pittsburgh Steel Corp., 642 F. Supp. 468 (W.D. Pa. 1996))). I reject this argument. First, the decision in the Wheeling court is not binding here; nor did that opinion cite any case law in support of this proposition; and, nor has the Wheeling decision itself been cited, based on my research, by any other federal court for this proposition. Moreover, plaintiff class cites to no case law in support of the proposition that substantial compliance or inability or infeasibility is not a recognizable defense to violation of the ADA paratransit regulations.

80. Based on the evidence demonstrating a total of forty-two (42) Trip Denials, it is true that SEPTA failed to satisfy in those instances the express "Next-Day" service requirement set forth in the Consent Decree. However, plaintiff class has not shown to the satisfaction of the Court that these violations were more than isolated incidents and that SEPTA systematically and continually violated the Consent Decree with respect to paratransit performance of "Demand Services" and "Next-Day" services;

81. Having found that there are 8,000 active ADA eligible riders and that evidence presented by plaintiff class involves trip requests made by only a handful of individuals, I cannot conclude that plaintiff class has proved by clear and convincing evidence that SEPTA's violations of the Consent Decree were pervasive;

82. Having found that the Consent Decree has been in effect for thirty-six months and that the evidence presented by plaintiff class was taken sporadically during eleven months of that period, I do not conclude that the evidence is clearly and convincingly representative of any violation of the Consent Decree;

83. Having found that approximately 25,140 "Next-Day" rides were provided over six months in 1997 and that evidence presented by plaintiff class demonstrated an approximate total of thirty-eight (38) Trip Denials during this year, I cannot conclude that SEPTA's overall failure to provide rides was profound;

84. In sum, I conclude that plaintiff class has failed to present clear and convincing evidence that SEPTA violated paragraphs II(B)(1)(a) and (b) of the Consent Decree. I conclude that the evidence presented, including the testimony and the exhibits, do not show that SEPTA was in substantial noncompliance with providing demand paratransit

services, either "Next-Day" rides or days in advance;

85. Plaintiff class cites to the litigation spurred in the case Halderman v. Pennhurst State School and Hospital. In that litigation, a class of approximately 600 mentally retarded citizens sought to have the Commonwealth of Pennsylvania and the County of Philadelphia held in contempt for violation of the settlement agreement or court decree. The class brought a motion to enforce the settlement agreement in 1989 and a motion for contempt in 1994 against defendants. See Civ. No. 74-1345, 1989 WL 100207 (E.D. Pa. Aug. 28, 1989) (hereinafter referred to as "Pennhurst I"); see also 154 F.R.D. 594 (E.D. Pa. 1994) (hereinafter referred to as "Pennhurst II").

In both proceedings, defendants argued that they were in substantial compliance with the settlement agreement or court decree and the Pennhurst court rejected defendants' argument. The reason, most germane to the case at bar, underlying the court's decision centers around the notion that the obligations set forth in the court decree run to class members as individuals, and not as a group. In Pennhurst I, the court found that 68 of 191 class members from Delaware County were not receiving habilitation mandated by the settlement. Pennhurst I, 1989 WL 100207, at 3. Also, the court found only 6 of 200 class members from Montgomery County were denied habilitative services mandated by the settlement; nonetheless, the court held that Montgomery County was not in substantial compliance. Id. at *4. "As long as one member of the class is being denied the habilitative services to which he or she is entitled pursuant to the Settlement, there is not substantial compliance." Id.

The Court of Appeals for the Third Circuit, when deciding the appeal of

Pennhurst I, "agree[d] with the district court that substantial compliance must be measured with respect to the services each *individual* retarded class member is receiving and not with respect to the services received by the class as a whole." Halderman v. Pennhurst State Sch. & Hosp., 901 F.2d 311, 324 (3d Cir. 1990), aff'g Pennhurst I, 1989 WL 100207. In doing so, the Circuit Court emphasized that the thrust of the settlement agreement was to "treat class members as unique individuals with different needs and habilitative requirements. . . . It is the individual rights of retarded individuals the [settlement] seeks to protect not some class construct." Id.

Several years later in Pennhurst II, the district court again found that defendants violated the court decree by failing to: (i) move at least 33 class members into community living arrangements; (ii) provide an individual habilitation plan to 103 class members in 1992, 82 class members in 1993; (iii) review and update individual habilitation plans to approximately 76% of the class members in 1990, 67% of class members in 1991, 56% of class members in 1993; (iv) provide case managers to at least 22 class members in private agencies as of October 1993; (v) monitor and account for 103 to 176 class members; and (vi) provide appropriate medical and dental care. Pennhurst II, 154 F.R.D. at 600-04. Again, the district court rejected the substantial compliance argument asserted by defendants and stated:

> [I]t is no defense to a class action involving the individual rights and needs of mentally retarded people that defendants have complied with the Court Decree as to *some* class members. . . . [W]here the obligations imposed by a court order run to class members as individuals, compliance is measured with respect to each individual class member and not the class as a whole.

> The defendants undertook in the Court Decree to fulfill certain obligations with respect to the class members. These are mandated legal obligations that run from both defendants to *each individual* class member. The defendants cannot obviate their obligations to each individual class member by meeting their obligations to some class members.

Pennhurst II, 154 F.R.D. at 609 (emphasis original);

86. There are significant factual dissimilarities between the litigation in Pennhurst and our case here. Preliminarily, as the district and appellate courts pointed out, the settlement agreement in Pennhurst I, both in spirit as well as with specific language, centered fundamentally on the individualized treatment of class members and the individual rights of class members. The individualized nature of that agreement is not present, however, in the Consent Decree at issue here. The Consent Decree at bar does not contain specific language focusing on the individualized treatments of ADA eligible riders. To the contrary, the Consent Decree approaches paratransit performance in a more general manner. For example, the Consent Decree mandates that "SEPTA shall implement a *system* of next day scheduling and shall provide timely *paratransit services to riders* requesting a next day trip . . . ." (Consent Decree at ¶ II(B)(1)(a)) (emphasis added).[29]

Moreover, the extent of the class members' deprivation of services mandated by the court ordered agreements differs significantly between our case and the Pennhurst litigation. In Pennhurst I, six class members from Montgomery County had not been provided with the community living arrangements mandated by the settlement; rather they

[29] To the extent that my conclusion here is believed inconsistent with my Order dated February 2, 1998, this most recent conclusion governs. My decision today is grounded in a more developed evidentiary record and analysis and thus requires this outcome.

remained at institutional type facilities. Pennhurst I, 1989 WL 100207, at *4. Thus, six class members were *entirely* denied of all of the habilitative services ordered by the court pursuant to the settlement agreement. In Pennhurst II, class members had been denied *entirely* of all community living arrangements, individual habilitation plans, case managers, etc.

This is not the situation in the case at bar. The eight Trip Denials I found based on SEPTA's "Reservation Random Call Report," (Pl. Ex. 5; Def. Ex. 24), stemmed from *test* calls made by SEPTA's own customer service representatives, and not class members. As such, it is not cogent evidence of actual class members really being denied entirely of paratransit services. Additionally, while I found that Bacal, Shaw, and Fulton received Trip Denials when they performed testing in December 1996 and November 1997, I also found that Bacal, Shaw, and Fulton, based on their own testimony, had received "Next-Day" paratransit services on numerous occasions. Thus, unlike the class members in Pennhurst I and II, I conclude that plaintiff class has presented no evidence showing that any one class member had been denied entirely paratransit "Demand Service" or "Next-Day" services as mandated by the Consent Decree;

B. Consent Decree ¶¶ II(A)(2), (4), (5) and ¶ II(B)(1)(c) - Record Ride Request Information, Installation of MDTs and SCRs

87. Having found that SEPTA did not record the vast majority of trip requests made by Bacal, Shaw, Fulton, and Robinson in December 1996 and June 1997, I conclude that SEPTA is in violation of paragraph II(A)(5) of the Consent Decree. My disappointment in SEPTA for failing to keep reliable records is further compounded by the fact that this

failure in part prevents plaintiff class from efficiently collecting data and from accurately monitoring the paratransit "Demand Services" and "Next-Day" services;

88. Having found that SEPTA did not make any productive efforts, *i.e.*, no requests for bids or procurement documents, to install MDTs and SCRs until Krajewski's preliminary efforts began in the fall of 1996, I conclude that SEPTA violated paragraphs II(A)(2), (5) and II(B)(1)(c) of the Consent Decree;

89. The Court deplores the dispiriting, dilatory pace with which SEPTA has attempted to install MDTs and SCRs. The technological difficulties encountered by SEPTA may be reasons, at least facially, (but not legal defenses) for the delay; however, these do not excuse SEPTA from its obligation to assign the necessary personnel and follow-up or even preliminary planning to timely comply with the Consent Decree. Based on the present record, I conclude that SEPTA did not take all reasonable steps, in good faith, to comply with this provision of the Consent Decree;

90. While SEPTA's increased efforts to proceed with the installation of MDTs and scanner cards since the filing of the motion of contempt is commendable, it will not permit SEPTA to escape from the consequences of its previous indolent actions or the proposed delay until the end of 1999;

91. The proceedings have been divided into the contempt phase and the remedy phase, the latter of which has not yet occurred. Potential remedies and appropriate sanctions will be decided in a later proceeding. These remedies and sanctions may be in the nature of both backward looking, that is seeking to compensate the plaintiff class through payments of money damages caused by past acts of noncompliance, as well

forward looking, that is seeking to bring a defiant party into compliance by setting forth in advance penalties that will be imposed. See Latrobe Steel Co. v. United Steelworkers of Am., et al., 545 F.2d 1336, 1344 (3d Cir. 1976). I note that, past delays, along with any further delay until the end of 1999, may result in sanctions. The management of the remedial phase will be accomplished in a separate order;

Conclusion

92. Having concluded that plaintiff class has not established to the satisfaction of this Court, by clear and convincing evidence, that SEPTA violated paragraphs II(B)(1)(a) and (b) of the Consent Decree, I ultimately conclude that the motion of plaintiff class for contempt will fail in this regard; and

93. Having concluded that plaintiff class has established to the satisfaction of this Court, by clear and convincing evidence, that SEPTA violated paragraphs II(A)(2), (4), (5) and II(B)(1)(c) of the Consent Decree, I ultimately conclude that the motion of the plaintiff class will be granted in this regard.

Final Remarks

SEPTA should find little, if any, vindication, by the Court's decision today. The failure of plaintiff class to prove contempt by SEPTA with respect to paratransit "Demand Services" and "Next-Day" services is due to a shortage of factual proofs only; such an obstacle may be easily overcome with more efficient or detailed data collection by survey or otherwise.

I cannot overemphasize the importance of the civil rights of people with

disabilities at stake in this case. I am ardently aware that the Consent Decree at issue in this case represents a much-deserved opportunity for disabled persons to lead basic, independent lives in our community. I commend the plaintiff class for their vigilant and critical monitoring of SEPTA's paratransit services. I sympathize with the desire of plaintiff class to improve paratransit services owed to them under the law. While the legal precedent and factual proofs allowed SEPTA to squeak by this time, it is my hope that SEPTA will continue to take it upon itself to serve the disabled community in an improved manner.

An appropriate Order follows.

APPENDICES

KEY: "yes" = ride was available
"no" = ride was not available
"--" = no request made to carrier
"0" = discounted

NOTE: The number in parenthesis is an identification number used by the SEPTA customer service representative requesting the ride.

Appendix A - Next-Day

Date	Freedom	Metro	Triage	Available two-way rides
3/4/97	yes (28224)	yes (28224)	yes (28224)	**YES**
3/25/97	yes (28223)	yes (28223)	no (28223)	**YES**
4/2/97	yes (28223)	yes (one way) (28223)	no (28223)	**YES**
4/21/97	yes (27002)	yes (27002)	yes (27002)	**YES**
4/23/97	yes (one way) (28466)	no (28466)	no (28466)	**YES (one-way) NO (one way)**
4/25/97	yes (23429)	no (23429)	no (23429)	**YES**
4/28/97	no (27002) yes (27002)	no (27002)	yes (27002)	**YES**
5/2/97	yes (01572) yes (01572)	--	--	**YES**
5/5/97	yes (28466) yes (28466)	yes (28466) yes (28466)	no (28466) no (28466)	**YES**
5/16/97	--	--	no	**0**
5/23/97	yes (28466)	no (29466)	yes (29466)	**YES**
5/30/97	yes (28466)	no (28366)	no (28366)	**YES**
6/17/97	yes (one way) (27002)	no (27002)	no (27002)	**YES (one-way) NO (one-way)**
6/20/97	no (23812)	no (23812)	no (23812)	**NO**
8/5/97	--	--	no (27002)	**0**
8/6/97	yes (27002)	yes (one way) (27002)	--	**YES**
8/11/97	no (27002)	no (27002)	--	**0**
8/12/97	yes (27002)	yes (27002)	no (27002)	**YES**

Appendix B - After 1:00 a.m.

Date	Freedom	Metro	Triage	Available two-way rides
2/26/97	no (28223)	no (28223)	no (28223)	**NO**
2/26/97	yes (28225)	no (28225)	no	**YES**
2/28/97	yes (28223)	--	--	**YES**
2/28/97	--	--	no (28224)	**0**
2/28/97	--	no (28225)	--	**0**
3/3/97	yes (28223)	no (28223)	no (28223)	**YES**
3/4/97	yes (28225)	no (28225)	yes (one way) (28225) no (one way)	**YES**
3/5/97	--	yes (28225)	no (28225)	**YES**
3/5/97	--	yes (28227)	--	**YES**
3/7/97	yes (28225)	no (28225)	no	**YES**
3/25/97	yes (one way) (28225) no (one way)	no (28225)	no (28225)	**YES** **NO**
4/24/97	yes (16699)	no (16699)	no (16699)	**YES**
4/25/97	yes one way (28337) no one way	no (28337)	no (28337)	**YES** **NO**
5/16/97	no (21093)	no (21093)	no (21093)	**NO**
5/23/97	no (26286) (1:15)	no (26286)	no (26286)	**NO**
6/17/97	no (21093)	--	--	**0**
6/17/97	--	yes (28337)	--	**YES**
8/6/97	yes (16699)	--	--	**YES**
8/11/97	yes (16699)	yes (16699)	no (16699)	**YES**
8/15/97	no (16699)	yes (16699)	--	**YES**
8/15/97	yes (23150)	yes (23150)	no (23150)	**YES**
10/14/97	yes (16699)	yes (16699)	yes (16699)	**YES**

Appendix C - Inter-County

Date	Freedom	Metro	Triage	Available two-way Rides
2/26/97	yes (28224)	yes (one way) (28224)	no (28224)	**YES**
2/26/97	yes (28225)	no (28225)	no (28225)	**YES**
2/26/97	--	no (28226)	no (28226)	**0**
2/26/97	yes (28227)	no (28227)	yes (28227)	**YES**
2/28/97	yes (28223)	no (28223)	no (28223)	**YES**
3/4/97	yes (28223)	no (28223)	no (28223)	**YES**
3/5/97	no (28225)	--	--	**0**
3/5/97	--	--	no (28223) no (28223)	**0**
3/25/97	yes (28224)	no (28224)	yes (28224)	**YES**
3/31/97	no (28224)	--	yes (one way)(28224) no (one way)	**0**
4/10/97	yes (28224)	--	yes (28224)	**YES**
5/16/97	no (25048)	no (25048)	no (25048)	**NO**
5/23/97	yes (25048)	yes (25048)	no (25048)	**YES**

Appendix D - Distance

Date	Freedom	Metro	Triage	Available two-way rides
3/6/97	yes (28226)	no (28226)	--	**YES**
3/6/97	yes (28226)	--	--	**YES**
3/6/97	--	--	no (28225)	**0**
3/7/97	no (28226)	no (28226)	--	**0**
3/10/97	no (28226)	no (28226)	no (28226)	**NO**
4/16/97	no (28226)	no (28226)	no (28226)	**NO**
5/2/97	yes (23950)	no (23950)	yes (23950)	**YES**
5/2/97	yes (23950)	yes (one way)	yes (23950)	**YES**
6/17/97	--	--	no (22199)	**0**
7/4/97	yes (23950)	no (23950)	no (23950)	**YES**
8/6/97	--	--	no (22199)	**0**
8/8/97	no (22199)	yes (22199)	yes (22199)	**YES**
8/15/97	--	--	no (23950)	**0**
8/28/97	--	--	yes (23950)	**YES**
9/2/97	--	yes (one way) (23950)	--	**YES (one way**)
9/5/97	no (23950)	--	--	**0**
10/6/97	no (23950)	no (23950)	yes (23950)	**YES**
3/7/98	--	--	no (28226)	**0**

Appendix E -Weekend Rides

Date	Freedom	Metro	Triage	Available two-way rides
3/5/97	yes (28227)	--	no (28227)	**YES**
3/6/97	yes (28227)	no (28227)	no (28227)	**YES**
3/6/97	yes (28227)	--	no (28227)	**YES**
3/7/97	no (28227)	--	--	**0**
3/10/97	yes (28227)	no (28227)	yes (28227)	**YES**
4/21/97	no (21093)	no (21093)	no (21093)	**NO**
4/28/97	--	--	yes (21093)	**YES**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUZANNE B. BACAL, et al., individually and on behalf of similarly situated individuals,	:	**CIVIL ACTION**
Plaintiffs,	:	
v.	:	
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY and LOUIS J. GAMBACCINI,	:	
Defendant.	:	**NO. 94-6497**

O R D E R

AND NOW, on this 28th day of May, 1998, upon consideration of the motion for contempt filed by plaintiffs Suzanne B. Bacal, et al. (hereinafter "plaintiff class") against defendant Southeastern Pennsylvania Transportation Authority and defendant Louis J. Gambaccini (hereinafter "SEPTA") for violation of the Consent Decree (Document No. 38), and response of SEPTA thereto, and after a four-day evidentiary hearing on the contempt motion, and upon consideration of post-hearing submissions of the parties, and based upon the findings of fact and conclusions of law discussed in the foregoing memorandum, and the judgment contained therein, it is hereby **ORDERED** that the motion for contempt is **GRANTED IN PART AND DENIED IN PART** in accordance with the following:

(1) Plaintiff class has not established, by clear and convincing evidence, that defendant SEPTA is in violation of paragraphs II(B)(1)(a) and (b) of the Consent Decree; and

(2) Plaintiff class has established, by clear and convincing evidence, that defendant SEPTA is in violation of paragraphs II(A)(2), (4), and (5) and II(B)(1)(c) of the Consent Decree.

IT IS FURTHER ORDERED that the management of the remedy phase of this motion for contempt shall be accomplished in a separate Order.

LOWELL A. REED, JR., J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUZANNE B. BACAL, et al., individually and on behalf of similarly situated individuals,	:	**CIVIL ACTION**
Plaintiffs,	:	
v.	:	
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY and LOUIS J. GAMBACCINI,	:	
Defendant.	:	**NO. 94-6497**

O R D E R

AND NOW, on this 28th day of May, 1998, having ruled upon the motion for contempt on this same date, and having found that defendant Southeastern Pennsylvania Transportation Authority and defendant Louis J. Gambaccini were in violation of paragraphs II(A)(2), (4), and (5) and II(B)(1)(c) of the Consent Decree, and having found that the purpose of civil contempt is primarily remedial and to benefit the complainant, and having found that civil contempt sanctions are designed either to compensate the injured party or to coerce the defendant into complying with the court's order,[1] it is **ORDERED** that the parties shall:

1. Submit to this Court and serve each other briefs containing respective positions as to type and amount of contempt sanctions and remedies the Court should impose no later than **June xx, 1998**;

2. A conference shall be held in chambers on **July xx, 1998**;

3. A contempt sanction hearing will be held on **July xx, 1998**.

LOWELL A. REED, JR., J.

[1]See Roe v. Operation Rescue, 919 F.2d 857, 868 (3d Cir. 1990); Latrobe Steel Co. v. United Steelworkers of Am., 545 F.2d 1336, 1343 (3d Cir. 1976).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUZANNE B. BACAL, et al., individually and on behalf of similarly situated individuals,	:	**CIVIL ACTION**
Plaintiffs,	:	
v.	:	
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY and LOUIS J. GAMBACCINI,	:	
Defendant.	:	**NO. 94-6497**

O R D E R

AND NOW, on this 28th day of May 1998, having ruled upon the motion for contempt on this same date, and having found that defendant Southeastern Pennsylvania Transportation Authority ("SEPTA") and defendant Louis J. Gambaccini were in violation of paragraphs II(A)(2), (4), and (5) and II(B)(1)(c) of the Consent Decree, and for the reasons stated during the course of the contempt hearing held on February 9-12, 1998, it is **ORDERED** that the motion of SEPTA to prohibit the expert testimony of Larry Sparks (Document No. 54), is **DENIED as MOOT**.

LOWELL A. REED, JR., J.