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Inspector General

Office of the Inspector General

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March 24, 2011

Mr. Thomas Prendergast
President, MTA New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

Re: VTL 19-A Audit/Investigation
MTA/OIG #2011-01

Dear Mr. Prendergast:

This letter serves to formally transmit our findings and recommendation on work done by the Office of the MTA Inspector General (OIG) in 2010 regarding criminal background checks for new Access-A-Ride drivers. Promptly following our discussion in September 2010 with officials from MTA New York City Transit's Paratransit Division (Paratransit), the agency implemented a new policy regarding these background checks. This policy, which exceeds the existing statutory and regulatory provisions in New York State, requires that such checks be completed before drivers will be permitted to operate Access-A-Ride (or AAR) vehicles. We appreciate the swift action and believe, as you do, that this further safeguards customers.

Scope of Review

OIG reviewed practices that Paratransit utilizes to assure compliance with Article 19-A of the New York State Vehicle and Traffic Law¹ by the 17 private entities that transport passengers in the Access-A-Ride program². Specifically, we focused on the particular aspects of the law and regulations that are designed to prevent individuals with certain serious criminal convictions from transporting the vulnerable population that uses Access-A-Ride.

Although our review determined that Paratransit was compliant with all relevant laws and regulations, we also determined that the rules themselves effectively permit operators with statutorily disqualifying criminal records to operate AAR vehicles for a significant period while background checks of the operators are performed. Additionally, our review revealed that some AAR carriers did not submit necessary driver documentation to DMV for vetting within the

¹ As used here, "Article 19-A" refers to both those provisions of New York State Vehicle and Traffic Law Article 19-A (Special Requirements for Bus Drivers) (VTL §509-a *et seq*) and the implementing regulations of the Commissioner of the Department of Motor Vehicles (DMV) (15 NYCRR Part 6).

² The Access-A-Ride program provides transportation for people with disabilities who are unable to use public bus or subway service for some or all of their trips.

prescribed time period, and that Paratransit had inadequate procedures for confirming the timeliness of these submissions.

Overview of Article 19-A

Article 19-A establishes “special requirements” for all bus drivers. However, the rules for “school bus drivers,” a classification applicable to Access-A-Ride operators, are even more stringent. Perhaps the most significant difference is that this class of driver is subject to criminal background checks utilizing the drivers’ fingerprints as part of a mandated DMV driver qualification review.

In accordance with review procedures, the carrier must submit a proper Article 19-A Driver Application along with the requisite fingerprints to DMV within ten days of hiring the operator. Applicants with certain serious prior criminal convictions (*e.g.* homicides, assaults, sex, drug and weapons offenses, and drunk driving) are disqualified by law (VTL §509-cc) either permanently or for a prescribed period of time. Pending criminal history clearance, the motor carrier must classify each new AAR operator as conditionally hired for a period not to exceed 90 days from the date of hiring, subject to extension by DMV. Filing the necessary documentation with DMV is an important part of this conditional hiring process because by definition a conditional driver is one who has been “reported to the Department of Motor Vehicles, Bus Driver Certification Unit and is undergoing a driver qualification review.” (15 NYCRR 6.2r.)

Since at least March 1, 2010, driver fingerprints are submitted electronically through a DMV vendor to the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI). The results of the fingerprint checks are sent to DMV, which then analyzes the results to determine if a prospective driver should be disqualified.

OIG Findings

Operators with Serious Disqualifying Criminal Records Are Driving

In an effort to determine whether any Access-A-Ride drivers placed in service before completion of the qualification process actually had disqualifying criminal records, OIG examined Paratransit’s hiring records of all 17 Access-A-Ride vendors for the period March 1, 2010 to June 15, 2010. We then compared those records with the corresponding records on file with DMV.

Of 1,027 Access-A-Ride operators hired since March 1, 2010, OIG discovered that eighteen were driving with previous (though as yet undetected) convictions for serious crimes including homicide, sexual abuse, weapons possession, and drug trafficking. Even more troubling is that at least two of those 18 operators had been allowed by their carriers to transport Access-A-Ride passengers for more than ten days without the carrier submitting the fingerprints to DMV -- a clear violation of Article 19-A.

Some Carriers Use Improper Practices Regarding Information Submission

OIG discovered that in some instances, unbeknownst to Paratransit, Access-A-Ride carriers employed improper practices regarding the submission of certain significant information. One such practice involved putting hiring dates on the forms filed with Paratransit that were different from those dates filed with DMV. Another, as evidenced above, involved delaying submission to DMV of the driver application form and fingerprints beyond the allowable ten days. OIG found one or both of these practices in 170 of the 1,027 drivers (17%) we sampled.

Carriers May Adopt a Higher Standard Regarding Placing Operators in Service

Despite the legality of allowing conditional drivers to operate AAR vehicles before completion of the qualification review process, OIG found it inadvisable to expose the vulnerable population that uses Access-A-Ride to the risk that AAR operators had serious criminal records. Further, Article 19-A itself makes clear that a motor carrier may impose more stringent qualifications for hiring or continuing the employment of drivers than those contained in that Article. Indeed, in February 2010, the New York City Department of Education Office of Pupil Transportation (DOE) implemented a policy requiring that before its operators would be placed in service, they had to be “school bus qualified” by DMV. Compliance was verified by requiring the carriers to timely provide DOE with a final DMV qualification letter.

OIG Recommendation

Paratransit Should Adopt a Higher Standard

On September 9, 2010, OIG communicated its findings to Paratransit managers including the Vice President, the Director of Transportation, the Director of Contract Management Audit, and the Contract Management Officer, and recommended that Paratransit demand a higher standard on the part of its carriers. Specifically, OIG recommended to Paratransit officials that they go beyond existing legal requirements and require confirmation of no disqualifying convictions before allowing an individual to operate an Access-A-Ride vehicle. Such a rule would prevent operators with disqualifying criminal records from driving AAR vehicles while their backgrounds were being vetted, and would also eliminate the risk associated with AAR carriers delaying the submission of fingerprints to DMV beyond the statutory period.

Paratransit agreed with our recommendation. Promptly following the September meeting, and citing our review, Paratransit directed carriers to comply with our recommendation effective October 1, 2010. We have confirmed implementation of this recommendation and will monitor ongoing compliance as appropriate.

As to the delayed submission of fingerprints, Paratransit officials investigated the 31 instances where an Access-A-Ride carrier delayed filing the fingerprints for more than 10 days after a driver’s hiring date and the driver was assigned a route in the interim. Upon completion

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of that investigation, Paratransit exercised its contractual rights regarding performance deficiencies against the offending carriers for such violations.

I would like to thank Paratransit for its assistance and responsiveness to our recommendation. If you or anyone on your staff has any questions or needs additional information, please contact me or Frank Lanzo, Special Investigative Counsel/Director of Training, at (212) 878-0012.

Very truly yours,

Barry L. Kluger

Cc: Charlie Monheim
Tom Charles