



## MTA AND NYC TRANSIT HAVE NOT FULLY MANAGED THEIR RESPONSIBILITIES REGARDING PRIVATELY OWNED ELEVATORS, ESCALATORS, AND STAIRWAYS

**Barry L. Kluger**  
MTA Inspector General  
State of New York

### OVERVIEW

New York City Transit's (NYC Transit) vast subway system comprises 468 stations and hundreds of elevators, escalators, and stairways that allow access into and out of the stations. With thousands of riders, especially the elderly and those who suffer physical disabilities, relying upon NYC Transit's elevators and escalators for their daily commutes, ensuring that this equipment is well maintained and kept in service is a crucial management responsibility. Therefore, in July 2011, we issued a report to the Governor and Legislature regarding that equipment entitled "Ineffective Use of Remote Monitoring Technology for New York City Transit Elevators and Escalators" (MTA/OIG #2011-08).<sup>1</sup>

While most of these subway system access points are maintained by the NYC Transit Elevator and Escalator Department (E&E), there are 33 privately-owned and maintained elevators and escalators serving 13 stations throughout NYC Transit in Manhattan and at one location in Queens. The equipment – 23 escalators and 10 elevators – helps move passengers at some of the busiest stations, including Columbus Circle, Times Square, Union Square, and at Grand Central Terminal. In addition, there are approximately 200 stairways in the system at Rockefeller Center, Penn Station, and other heavily used stations that are also owned and maintained by private building owners.

The owners of this privately maintained equipment and stairways, referred to by NYC Transit as "out of system property," are contractually responsible to operate and maintain the equipment under "easement"<sup>2</sup> agreements with NYC Transit. In return, owners received special permits from New York City for additional building levels, increased floor space, or other benefits when their buildings were first constructed or renovated.

There have been widely publicized reports of lengthy outages of out of system property and Metropolitan Transportation Authority's (MTA) and NYC Transit's efforts to get the equipment back in service. For example, subway riders using the privately maintained escalator at 885

---

<sup>1</sup> That report is available on our website or by following this link: <http://mtaig.state.ny.us/assets/pdf/11-08.pdf>.

<sup>2</sup> An "easement" is a legal term meaning the right to use or control the land, or an area above or below it, for a specific limited purpose such as access to a public way.

Third Avenue, in the heavily-traveled 53rd Street and Lexington Avenue station,<sup>3</sup> have been inconvenienced because it has been out of commission for over three years, as the owner and various MTA and NYC Transit departments hold meetings and pursue negotiations regarding the costs, timelines, and standards for replacement of the equipment.

What many of these outages have in common is the long delay between the occurrence of problems with privately owned equipment or stairways and their resolution. During this period of delay, riders are significantly disadvantaged. To determine if NYC Transit and the MTA are doing all that is possible to shorten the duration and achieve resolution in these cases, the Office of the MTA Inspector General (OIG) reviewed how they manage out of system property, particularly with respect to its maintenance and repair.

### Summary of Findings

While private operators are contractually responsible under the easement agreements for maintaining out of system property, MTA and NYC Transit are responsible for ensuring compliance with these agreements. Several NYC Transit departments-- the Escalator and Elevator Department, Station Environment Department (Station Environment), and the NYC Transit Department of Law (Transit Legal) as well as the MTA Real Estate Department and MTA General Counsel (MTA Legal), all have roles regarding out of system property.

- No one individual or department within the MTA or NYC Transit has overall responsibility for ensuring compliance with easement agreements. Each seems to minimize its responsibility and role. This apparent void in leadership and oversight has led to inadequate agency practices and procedures.
- No easement enforcement process has been established. For example, there are no procedures that establish when and who should notify owners that they are in violation of their obligations to properly maintain their equipment – a legal requirement for enforcing the easement agreements.
- There is no single list of out of system property. NYC Transit's Station Environment and E&E departments have one list while MTA Real Estate maintains a separate and different list.
- The MTA website feature that informs the public of elevators and escalators that are not available to the public because of maintenance or construction work is not monitoring the status of seven privately maintained units because of the differing lists cited above. Further, OIG found that two other private, non-working units on E&E's list, an elevator

---

<sup>3</sup> The 53<sup>rd</sup> and Lexington Avenue station, which runs from Lexington Avenue to Third Avenue, contains three privately owned escalators. The two at the east end are identified as 885 Third Avenue and 875 Third Avenue; the one at the west end is identified as 599 Lexington Avenue.

at the 59<sup>th</sup> Street/Columbus Circle station and an escalator at the 53<sup>rd</sup> Street/Lexington Avenue station (885 Third Avenue), were omitted from the website, misleading riders as to accessibility at those stations.

- NYC Transit does not systematically track outages of out of system escalators, elevators, and stairways, and their quarterly performance statistics are still not reported to the MTA Board as recommended by a 2009 MTA Audit Services report agreed to by NYC Transit. Among other consequences of this lack of communication, MTA and NYC Transit executives and MTA Board members have not been utilized to help resolve the serious and often complicated issues involved.
- While recent easement agreements regarding new equipment contain clearer language, NYC Transit and MTA have not worked cooperatively and creatively to address what they believe are problems with existing contracts. For example, in our view the agencies have given too little consideration to having NYC Transit fix equipment and bill the private owner, even where such “self-help” is authorized by the easement.

### **Summary of Recommendations**

OIG has made a series of recommendations that will establish responsibility and a structure to help ensure that private owners adhere to their obligations and that customer interests are safeguarded. These essentially include the following:

- MTA should assign overall responsibility for privately maintained elevators, escalators, and other out of system property to one lead department.
- The lead department should take all appropriate measures to ensure that out of system property is better managed, including maintaining an accurate list of all such property, establishing appropriate written protocols, and better enforcing applicable easement agreements.
- NYC Transit must ensure that all elevator and escalator outages are displayed on the MTA website and that quarterly performance statistics are reported to the MTA Board.
- MTA and NYC Transit must work cooperatively and creatively to resolve out of system property issues expeditiously, utilizing all appropriate tools at their disposal, including self-help, and leveraging New York City partnerships and resources, for the benefit of the riders.

The public has been seriously disserved by the inordinate amount of time that privately-owned and maintained escalators, which help move passengers at some of the busiest stations in New York City, have been out of service. While this disservice is largely the result of private owners not meeting their obligations, a share of the fault belongs to the MTA and NYC Transit, which have not effectively managed their own responsibilities regarding this “out of system” equipment.

Unquestionably, owners must proactively comply with their obligation to keep this equipment in safe operating condition. Historically, when owners failed to comply, the agencies often acted as if their only recourse was negotiation – no matter how protracted. In our view, though, protracted negotiation is not necessarily the best way, and certainly not the only way, to get broken equipment in proper working order.

Indeed, we believe that by assigning a lead department, establishing written procedures, and improving reporting practices, the MTA and NYC Transit will be better equipped to manage their own responsibilities. We also believe that the agencies should work more closely with various New York City departments that can be helpful in this regard, such as the Department of Buildings and the Department of City Planning. Finally, we urge the agencies to give greater consideration to their legally-available remedy of self-help – fix the equipment themselves, send the owners the bill, and if the owners do not pay take them to court.

### **Summary of Agency Response**

The President of NYC Transit, responding on behalf of both that agency and the MTA, essentially agreed with all of our findings and recommendations, but the agencies stopped short of assigning overall responsibility for privately maintained escalators, elevators, and stairways to one lead department. MTA/NYC Transit agreed that they needed to utilize “every reasonable means” to ensure that out-of-system equipment failures are addressed “in a timely and effective manner.” Given the multiplicity of departments involved in the management of this equipment, the agencies also agreed that they needed “to more clearly delineate the responsibilities of each” and that there would be “appropriate coordination and consultation” among them.

Toward those ends, the agencies reported that they had basically completed a “more expansive interdepartmental protocol” that addresses the respective responsibilities associated with monitoring and enforcement of agreements with private owners. The details of these protocols are ongoing at the time of the agencies’ response to this report.

Going forward, the agencies have designated the MTA Real Estate Department as the central point for developing and maintaining a comprehensive inventory of all out-of-system elevators and escalators, and of stairways and passageways governed by easement agreements; formally notifying owners of outages; obtaining assurances as to the nature and speed of the restoration of service; and following up on actual compliance. The NYC Transit Stations Environment Division will inspect the condition of this property three times daily and report to various levels of NYC Transit management and to designated staff in the MTA Real Estate Department. While further specificity may be provided when the details of the relevant protocols are finalized, the MTA/NYC Transit response in this regard is presently left to a case-by-case approach. Thus, if the private owner’s actions are not “timely and satisfactory” after notice, the MTA Real Estate Department will “determine the most effective course of action” after “timely” consultation with various staff within both agencies, and/or with the NYC Department of Building. The NYC Transit Elevator and Escalator Division will report operational information to the MTA Board, and the operational status of the equipment will be reflected on the MTA website

MTA and NYC Transit expressed their continuing commitment “to work in a cooperative and creative manner” to resolve issues involving out-of-system equipment “as expeditiously as necessarily possible, utilizing available resources.”

While we remain concerned that without formally designating a single department or agency as the lead there may continue to be a vacuum in leadership and accountability, we are encouraged by the agencies’ ongoing efforts to better manage out-of-system escalators and other equipment, including its assignment of additional responsibilities to the MTA Real Estate Department.

In the last analysis, though, the organizational strategy by which the MTA and NYC Transit accomplish their joint responsibility to the riders is less important than the responsibility itself – to expeditiously utilize every reasonable means to ensure that out of service equipment and property is restored to service as quickly as possible. Importantly, the agencies agree. We will continue to monitor their progress toward fulfilling this commitment.

## BACKGROUND

The New York City Planning Commission will consider and at times grant special permits to owners allowing them to add floors to a new building in return for major improvements to an adjacent subway station, such as new stairways, elevators, or escalators. As a part of this process, easement agreements for the out of system properties are entered into between NYC Transit and individual owners and developers. To be eligible for the special permit, developers/property owners are generally required to comply with all applicable NYC Transit design standards.<sup>4</sup>

An easement is a legally enforceable instrument that establishes the obligations of the owner, developer, and any future owners. While each agreement is different and each may have different requirements for maintaining the property, they all provide that the owners are contractually bound to keep the equipment operating and the easement area maintained and available for use by transit passengers. For example, one agreement required the owner to keep

*...the easement area free from obstruction, in a proper state of repair, and in a reasonably clean, dry, neat, illuminated, safe and suitable condition for the use of passengers, prospective passengers, employees, contractors, agents, and licensees of the Authority.*

The easements have a requirement that elevators and escalators be repaired and returned to service. Many of these agreements also state that the property owner has responsibility to pay for and maintain signage at access points which inform the general public who owns the property and how to contact them.

Out of system equipment, once registered, is inspected by the New York City Department of Buildings (DOB). Amongst its enforcement powers are “DOB Violations” and “Criminal Court Summons.”<sup>5</sup>

---

<sup>4</sup> NYC Zoning Resolution, Article VII 74-634

<sup>5</sup> “Elevator Division Overview and Upcoming Changes” October 2007. The Elevator Inspection Unit also “ensures the operational safety, reliable service, and lawful use” of escalators.

## **NO DEPARTMENT ASSUMES RESPONSIBILITY FOR OUT OF SYSTEM PROPERTY**

Private owners are responsible for maintaining their equipment, but various MTA, NYC Transit, and New York City departments can be involved in monitoring the working status of the equipment and seeking action from the owners if equipment is not adequately maintained. When equipment needs to be replaced, other departments may also become involved in negotiations with private owners to protect MTA and NYC Transit's interests. However, none of the departments appear to oversee the easement agreements and none take overall responsibility for ensuring that out of system property is effectively managed, operating properly, and available to the riding public.

A brief description of their self-described roles and responsibilities follow:

*NYC Transit Elevator & Escalator Department* – The Assistant Chief Officer of E&E told us repeatedly that private escalators and elevators “are not his responsibility,” and that his department does not inspect, maintain, or repair private equipment. He did note that in 2010 E&E agreed to report the operational status of out of system escalators and elevators on the MTA website along with E&E's own equipment. The department also agreed to the recommendation by MTA Audit Services in 2009 that E&E provide quarterly performance statistics as an information item to the MTA Board as to whether private equipment is operating properly.

*NYC Transit Station Environment Department* – Station Environment identifies the daily operating condition of out of system property. The department's Station Supervisors conduct daily visual inspections that include noting the operational status of all public and private property within each station. Outages and defects are recorded in supervisory logs. While there is currently no procedure for resolving maintenance problems with private equipment, Station Environment officials explained that department staff understand that if they find defects with private property, they are responsible for promptly notifying owners. Staff are also told to inform MTA Real Estate of continuing defects and outages. However, Station Environment staff consider it the responsibility of MTA Real Estate to work with the owner to resolve the concern.

*MTA Real Estate Department* – MTA Real Estate maintains file copies of easement agreements for all out of system property and performs title searches. According to Real Estate staff, the department is a repository for easement agreements but does not enforce them. However, staff have met with and written to owners on occasion regarding the owners' obligation to maintain private equipment, though the department does not keep track of whether a defect has been resolved. When Real Estate is informed by NYC Transit that an owner of private equipment is not fulfilling its contractual responsibilities, Real Estate refers the matter to MTA General Counsel.

*MTA General Counsel* – MTA Legal is responsible for preparing and creating the terms of easement agreements. MTA Legal officials stated that while the NYC Transit Department of Law generally is in charge of enforcement, there is “no bright line allocation of responsibility.”

These officials assured OIG that whenever an issue of enforcement comes up the two departments are in constant communication. The officials noted that they are not normally involved in discussions with owners, but in some instances have met with private owners and assist the NYC Transit Department of Law in drafting notification letters.

*NYC Transit Department of Law* – Transit Legal officials assert that this department does not have the responsibility to enforce easement agreements; that responsibility, they maintain, belongs to MTA Legal and Real Estate. They explained that Transit Legal may become involved in a matter if contacted by the NYC Transit Office of Government & Community Relations. Transit Legal officials note that they have conducted negotiations with owners and prepared letters and notifications to owners informing them of their responsibility to repair/replace escalators and elevators.

*NYC Transit Office of Government & Community Relations* – Generally speaking, this office becomes involved in negotiations with private owners only when a complaint comes from a government official or entity. Department officials state that it has played a supportive role in encouraging owners to replace escalators with the more heavy duty commercial escalators, but deny any role in enforcing easement agreements.

Although officials from four of the six departments have actually met with owners to discuss and negotiate compliance with agreements, none of the departments OIG queried assumed overall responsibility for enforcing easement provisions or ensuring that equipment is in safe operating condition and expectations for service are met. Indeed, while the various department officials recognized the void in both leadership and oversight, none of them appeared willing or empowered to fill it.

### **There is No Accurate List Shared by All Departments of Out of System Equipment**

The departments of Station Environment, E&E, and MTA Real Estate have respective responsibilities for inspecting, reporting, and maintaining records of out of system escalators and elevators, though Station Environment maintains its own listing of this equipment. However, we found that the number and location of units on the lists maintained by Station Environment varied from the one maintained by MTA Real Estate, with no department actually having a complete and accurate list nor able to explain the discrepancies.

- Real Estate culled information for its list from files of easement agreements. The department initially provided the OIG with lists identifying only 31 elevators and escalators in July 2010 and then a corrected list with 34 in April 2011. In June 2011 the department made further corrections and provided us with a revised list of 33 privately maintained units.
- Station Environment created its list based on its staff inspections throughout the entire subway system. OIG found that the Station Environment list currently contains only 26 escalators and elevators – seven units on the Real Estate list are not shown.



- E&E reports outages of all equipment on the MTA website so that customers are aware of accessibility problems. The department uses the list provided by Station Environment, the same one that is missing seven units.

Because the Real Estate department has the originating documentation for each unit, it should have the official list of all out of system property. But Real Estate has revised its list multiple times and still shows seven more units than does Station Environment, which is actually responsible for the day-to-day work of checking the status of each unit of out of system equipment. As a result, OIG is concerned that Station Environment may not be reporting each unit's operational status to E&E, which in turn may be omitting outages on the MTA website.

Coordination is essential between the departments to ensure that all equipment is accounted for, that operational status is recorded, and that out of service equipment is accurately reported on the MTA website.

### **MTA and NYC Transit Must Create an Effective and Efficient Process to Correct Deficiencies**

OIG discussions with officials at both NYC Transit and MTA departments make clear that there is a troubling lack of written policies and procedures for identifying and correcting problems with privately maintained equipment and stairways. As noted above, when outages or defects occur, they are recorded by Station Environment personnel in supervisory logs. However, Station Environment officials informed us that there is no systematic process or set time frame for notifying MTA Real Estate or the MTA and NYC Transit legal departments of continuing problems with out of system equipment. Defect reports in supervisory logs are forwarded each month to NYC Transit's Legal Liaison Unit. This unit reviews the logs and stores them for up to five years in the event they are needed for any civil litigation. And yet, based on interviews with various officials, it appears that no one in NYC Transit utilizes these records to track outages – and their resolution – of out of system escalators, elevators, and stairways.

Further, both NYC Transit and MTA Legal officials informed us that they do not receive written notification promptly documenting the first observance of a defect with out of system equipment. This information is particularly important since most easement agreements require owners to commence work to correct defects promptly after they are formally notified about a non-working escalator or elevator. Station Environment staff that OIG contacted were unfamiliar with these time lines and also did not know to whom within NYC Transit and/or the MTA they should report outages and related problems.

Predictably, given the lack of procedures, we found that actions against owners were significantly delayed. As shown in Table 1 below, regarding three long term outages of privately maintained escalators and one out-of-service stairway, from four to 31 months elapsed before Transit Legal notified the property owners in writing of their failure to maintain the properties. OIG also found that Station Environment staff were not aware that the stairway was owned by a private entity, which added to the delay in repair.

**Table 1: Months Lapsed between Outage and Notification to Owner by Transit Legal**

Station Name	Equipment Type	Out of Service (OOS) Date	Initial Correspondence from Transit Legal to Owner	Total Months Lapsed from OOS Date to Legal Correspondence
Lexington Avenue-53rd Street (885 Third Avenue)	Escalator	Sep-08	Apr-11	31
Union Square	Escalator	Sep-07	May-08	8
33rd Street and 7th Avenue	Stairway	Oct-09	Feb-10	4
Lexington Avenue-53rd Street (875 Third Avenue)	Escalator	Jan-08	May-08	4

In sum, a lack of procedures governing the management of out of service private equipment and poor coordination amongst the various MTA and NYC Transit departments involved with it, have contributed to serious and unacceptable delays in getting this equipment back in service.

## IDENTIFYING OUTAGES OF PRIVATE EQUIPMENT

Long outages are not the only impact experienced by NYC Transit riders as a result of poor coordination and fractured responsibility overseeing privately maintained equipment and stairways. Currently, locations with defective equipment are not being adequately identified both for riders who are trying to plan their trips and for policymakers who may need to intervene to resolve some of the complex issues involved.

### Outage Information on MTA Website

E&E has been reporting the operational status of its escalators and elevators on the MTA website since late 2009 in an effort to provide subways riders with updated information on outages throughout the day. In 2010, E&E began posting outages involving private equipment. This information is obtained from Station Environment's daily outage report. However, as discussed earlier, seven private units were missing from both the Station Environment and E&E lists. As a result, any outages involving these seven units would not be posted on the website.

In addition, to determine whether information on equipment outages has been posted correctly, OIG checked outages on the Station Environment report against the MTA website. We found that the report contained information on two pieces of private equipment – the escalator at 885 Third Avenue in the 53<sup>rd</sup> Street/Lexington Avenue station, and an elevator at 59<sup>th</sup> Street/Columbus Circle – that have been unavailable to the public, but were not posted on MTA's website. After discussions, E&E staff admitted that this was a mistake and corrected the website.

### E&E Is Not Reporting to the MTA Board as Required

E&E has long been responsible for reporting quarterly to the MTA Board on the operating status of NYC Transit-owned escalators and elevators. The department provides the Board with statistics showing the percentage of hours in each quarter that equipment is working. This performance measure is known as the equipment "hours of availability."

In 2009, MTA Audit Services recommended that E&E "Develop a cost effective process for reporting availability of non-NYC Transit owned elevators and escalators to the NYC Transit Committee [of the MTA Board]." NYC Transit accepted the recommendation and agreed to implement it by the 3<sup>rd</sup> quarter of 2009, but as of May 2011, the operating status of out of system equipment has not been reported. E&E officials stated that they have not been able to report to the Board because they do not have hourly information on the working status of private equipment. OIG acknowledges that E&E does not yet have the electronic remote monitoring for out of system escalators and elevators that it has for its own equipment, but it does have data from Station Environment indicating the operational status at a point in time each day. This information should be summarized and reported to the Board. These reports would provide Board members and agency executives with a useful interim measure of the operational status of out of system equipment.

### **Signage Requirements Are Not Being Met**

According to MTA Legal, each easement contains boilerplate language that requires the owner to display a sign indicating the owner's name and phone number on each out of system escalator, elevator, or stairway. With such information, subway riders can call to notify owners of problems or complain about the delay in resolving maintenance issues. We found that some sites do not have the required signs. After attempts to get the owner to put up signage, NYC Transit has chosen to add it, at its own expense, to escalators at 14<sup>th</sup> Street/Union Square. It also added signage to the escalator at 599 Lexington Avenue in the 53<sup>rd</sup> Street and Lexington Avenue station.

## NYC TRANSIT OPTIONS REGARDING OLDER EASEMENT AGREEMENTS

Many of the easement agreements between NYC Transit and private developers were executed decades ago. Regarding newer agreements, MTA Legal told OIG that it now exacts much clearer language requiring owners to maintain escalators and elevators for the life of the buildings, and to replace escalators with comparable quality equipment once the originals are no longer operable. These commendably strengthened agreements should make it easier to account for owners who pay more attention to the price of repair or replacement than its quality.

An example of problems stemming from the language of older easements is the out of system escalator at 885 Third Avenue in the 53<sup>rd</sup> Street and Lexington Avenue station that serves the E and M trains. This escalator has been in and out of service since September 2008 and, according to NYC Transit, is beyond its 20-year useful life. The current owner refuses to replace the escalator and has only agreed to repair it. NYC Transit has questioned the practical wisdom of inconveniencing the public and wasting \$800,000 of the private owner's money trying to refurbish a twenty-six year old escalator that has a history of maintenance problems. NYC Transit officials believe the repair will at most extend the life of the escalator a few years before it becomes inoperable again, requiring a full replacement at the increased cost of \$1.5 million. Under this scenario, subway riders would be inconvenienced twice, once for the extensive repairs and then again for an extended period in order to replace the equipment, assuming the owner is then willing to do so. As a result of this dispute, and despite protracted negotiations, the equipment remains out of service.

Disagreements between owners and NYC Transit have also arisen over whether private owners must use NYC Transit's heavy duty and more costly specifications for equipment and parts when replacement of an escalator is needed. While the special permits given by New York City in connection with the easement agreements state that developers in general must comply with all applicable NYC Transit standards, many past agreements did not clearly establish which specifications had to be used. Since the more rugged standards were not specified, owners argued that they could install equipment that meets less costly, commercial specifications. According to NYC Transit officials, such a disagreement over specifications was a major reason for the three-year outage of escalators at the 14<sup>th</sup> Street/Union Square station. In that instance, NYC Transit ultimately reached agreement with the owner to install an escalator with specifications that were lower than NYC Transit's standards but higher than basic commercial specifications.

During the course of our review, MTA Legal has revised standard easement agreements for new out of system property. In June 2011, NYC Transit signed an agreement with a developer to install two escalators and an elevator at the 23<sup>rd</sup>/Ely and Court Square stations in Queens. The new easement agreement also provides that the developer establish both an ongoing maintenance letter of credit and a capital replacement letter of credit with the agency depositing as security specific amounts designated for ongoing maintenance, repair, and replacement of equipment. In an effort to prevent time-consuming disputes such as those that occurred at the 14<sup>th</sup> Street/Union Square station, this new agreement also clarifies which party has the obligation to pay the cost of upgrades if standards change.

## **Self-Help Should Be Considered**

While improved easement agreements should help NYC Transit enforce its expectations for the maintenance and replacement of future equipment, older agreements remain in effect for the life of the older buildings and the equipment they contain. MTA and NYC Transit need to use expeditiously all appropriate tools they have to serve the needs and best interests of the riders. One approach is commonly called “self-help.”

Throughout the years, easement agreements have commonly included some form of self-help clause. Generally speaking, the clause authorizes the agency to make repairs and charge the owner when the owner fails to meet its responsibilities under the agreement. Notwithstanding the authorization for self-help, the MTA and NYC Transit Legal have been reluctant to use it, preferring instead to make the owner comply with its obligations in the first instance.

Recently, the public has had to endure extremely long equipment outages while attorneys argue over who is responsible and what is required by an easement agreement. Four private escalators at heavily trafficked locations, i.e. two at the 53<sup>rd</sup> Street/Lexington Avenue station (875 and 885 Third Avenue), and two at the 14<sup>th</sup> Street/Union Square station, were unavailable to the public for over two years while NYC Transit negotiated with owners to have them install new equipment or fix the existing escalators. In our view, though, protracted litigation is not necessarily the best way, and certainly not the only way, to get broken equipment in proper working order.

Indisputably, an owner should dutifully comply with its obligation to maintain its elevators and escalators in safe operating condition, without the need for MTA or NYC Transit self-help or litigation. But when the owner fails to comply in a reasonable time, the MTA and NYC Transit must promptly take action necessary to promote the convenience and safety of the public.

## **Engaging and Partnering with Other NYC Agencies in Enforcement Resolution**

Another approach that has helped in the past to reduce the amount of time that privately maintained equipment is out of service, is to employ the New York City Department of City Planning (DCP) and the Department of Buildings (DOB) to help convince owners of their responsibilities to maintain and replace the equipment as required by their agreements. DCP issues the initial special permit that provides owners with the additional benefits in return for installing an escalator or elevator. DOB is responsible for conducting annual inspections of all privately maintained elevators and escalators.

During the outage of the two privately owned escalators at the 14<sup>th</sup> Street/Union Square station, DOB intervened, declared the existing escalators hazardous, and issued a violation to the owner. In 2009, during the escalator outage at 53<sup>rd</sup> Street/Lexington Avenue (875 Third Avenue), after a year-long stalemate, DCP helped expedite the replacement of the escalator. DCP officials effectively reminded the owner of the benefits it received and obligations it incurred, but also offered to intervene with DOB to expedite the permit for the new escalators. Transit Legal acknowledged that these measures helped to expedite the installation of new escalators at these stations.

## RECOMMENDATIONS

1. MTA should assign overall responsibility for privately maintained escalators, elevators, and stairways to one lead department.

*In their joint response, MTA/NYC Transit agreed with the goals of this recommendation. Toward those goals, the agencies reported that they had basically completed a more expansive interdepartmental protocol that addresses the respective responsibilities associated with monitoring and enforcement of agreements with private owners. The details of these protocols are ongoing as of the time of the agencies' response to this report. Further, the agencies designated the MTA Real Estate Department as the central point for developing and maintaining a list of all out-of-system elevators and escalators, and of stairways and passageways governed by easement agreements; formally notifying owners of outages; obtaining assurances as to the nature and speed of the restoration of service; and following up on actual compliance. The NYC Transit Stations Environment Division will inspect the condition of this property several times daily and report to various levels of NYC Transit management and to designated staff in the MTA Real Estate Department.*

*MTA OIG Comment:*

*While we remain concerned that by stopping short of designating a single lead department or agency MTA/NYC Transit may continue to have a vacuum in leadership and accountability in this critical area, we are encouraged by the agencies' ongoing efforts to better manage out-of-system escalators and other equipment, including its assignment of additional responsibilities to the MTA Real Estate Department. We will continue to monitor these efforts as appropriate.*

2. The lead department should establish and maintain a list of all out of system escalators and elevators and share it with all departments involved to ensure that the operational status of all equipment is checked each day and accurately reported on the MTA website.

*MTA/NYC Transit accepted this recommendation. The MTA Real Estate department is compiling a comprehensive inventory of out-of-system equipment for all departments involved to share, and the NYC Transit Stations Environment Department is conducting daily operational inspections, both as described above. The operational status of the equipment will be reflected on the MTA website.*

3. The lead department should establish written procedures clarifying the role of each department involved with out of system property.

*NYC Transit accepted this recommendation (see 1 above).*

4. The lead department should establish procedures, time frames, and criteria for contacting and following up with owners when outages occur.

*MTA/NYC Transit essentially accepted this recommendation. The agencies set a two day time frame for owners to initially respond after which, if concerns remain, formal notification is to be sent by the MTA Real Estate Department. While the details of the relevant protocols are still developing, and further specificity may be provided when they are finalized, the MTA/NYC Transit response in this regard is presently left to a case-by-case approach. Thus, if the private owner's actions are not "timely and satisfactory" after notice, the MTA Real Estate Department will "determine the most effective course of action" after "timely" consultation with various staff within both agencies, and/or with the NYC Department of Building. The response also specified that such intra-agency consultation will include the MTA Legal Department, which may, in turn, consult with the NYC Transit Law Department; the NYC Transit Division of Government and Community Relations, the NYC Transit Elevator and Escalator Division, and/or Capital Program Management Department.*

5. E&E should report the operational status of privately maintained elevators and escalators to the MTA Board as it previously agreed to do in response to a 2009 MTA Audit Services report.

*MTA/NYC Transit accepted this recommendation.*

6. The lead department should ensure that signage indicating the name and phone number of the owner is maintained by the owner on all out of system property.

*MTA/NYC Transit accepted this recommendation and designated the MTA Real Estate Department as responsible for notifying delinquent owners and following up if non-compliance continues.*

7. MTA and NYC Transit must work cooperatively and creatively to resolve out of system property issues expeditiously, utilizing all appropriate tools at their disposal, including self-help and leveraging New York City partnerships and resources, for the benefit of the riders.

*MTA/NYC Transit accepted this recommendation specifically in terms of affirmatively reaching out to appropriate agencies of the City of New York to secure responsive action from resistant private owners. NYC Transit notes that it has previously worked successfully on multiple occasions in recent years with the NYC Department of City Planning as well as the Department of Buildings. More generally, the agencies expressed their continuing commitment to work in a cooperative and creative manner to resolve issues involving out-of-system equipment expeditiously, utilizing available resources.*



## CONCLUSION

The public has been seriously disserved by the inordinate amount of time that privately-owned and maintained escalators, which help move passengers at some of the busiest subway stations in New York City, have been out of service. While this disservice is largely the result of private owners not meeting their obligations, a share of the fault belongs to the MTA and NYC Transit, which have not fully managed their own responsibilities regarding this “out of system” equipment.

To help correct this condition, we have made a series of recommendations to assign agency responsibility, establish procedures, and improve reporting practices to better inform the MTA Board of problems with out of system equipment and better promote the safety and convenience of the public. For their part, the agencies have recognized the need to move expeditiously and use all appropriate tools at their disposal to quickly get escalators back in service.

Unquestionably, owners must proactively comply with their obligation to keep this equipment in safe operating condition. Historically, when owners failed to comply, the agencies often acted as if their only recourse was negotiation – no matter how protracted. In our view, though, protracted negotiation is not necessarily the best way, and certainly not the only way, to get broken equipment in proper working order. Indeed, we believe that the agencies should work more closely with various New York City agencies that can be helpful in this regard, such as the Department of Buildings and the Department of City Planning. We also urge the agencies to give greater consideration to their legally-available remedy of self-help – fix the equipment themselves, send the owners the bill, and if the owners do not pay take them to court.

In the last analysis, though, the organizational strategy by which the MTA and NYC Transit accomplish their joint responsibility to the riders is less important than the responsibility itself – to expeditiously utilize every reasonable means to ensure that out of service equipment and property is restored to service as quickly as possible. Importantly, the agencies agree. We will continue to monitor their progress toward fulfilling this commitment.