

August 24, 2022

**VIA EMAIL**

Jamey Tesler, MassDOT CEO and Secretary  
10 Park Plaza, Suite 4160  
Boston, MA 02116

Steven Poftak, MBTA General Manager  
10 Park Plaza, Suite 3910  
Boston, MA 02116

**Re: Orange Line Shutdown – Civil Rights Concerns**

Dear Secretary Tesler and Manager Poftak:

Transportation disruptions often disproportionately harm communities of color and low-income communities. For this reason, federal law requires that federally-funded transportation providers examine the potential impact of any major service changes on these communities – before any such changes are made. The goal is to proactively assess whether harm to communities of color and low-income communities can be prevented, or at least mitigated.

We are deeply concerned that no such analysis was conducted before the shutdown of the Orange Line – and that this failure is part of MBTA’s ongoing pattern and practice of ignoring federal civil rights protections. Accordingly, LCR calls upon MBTA to not only remedy the specific shortcomings highlighted by the Orange Line shutdown, but also to undertake a comprehensive review of its policies and procedures to ensure that they do not result in and perpetuate racially disparate treatment. LCR is also requesting federal intervention and oversight of these matters.

**The Requirements of Federal Civil Rights Laws**

As you know, as a federally-funded entity, MBTA is prohibited from conduct that has an unjustified impact based on race, color, or national origin. See 42 U.S.C. § 2000d. To effectuate this mandate, the Federal Transit Administration (FTA) has directed federal funding recipients such as MBTA to conduct a “service equity analysis” whenever a major service change is proposed.<sup>1</sup> The purpose of this analysis, which must be in writing and communicated directly to the provider’s governing board and leadership, is to determine whether the change

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<sup>1</sup> See FTA Circular 4702.1 B, *available at* [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA\\_Title\\_VI\\_FINAL.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Title_VI_FINAL.pdf). The MBTA has promulgated a Title VI policy that mirrors the FTA directive. See MBTA, Equity Analysis for Major Service and Fare Changes, Jan. 30, 2017, *available at* <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fcdn.mbta.com%2Fsites%2Fdefault%2Ffiles%2F2017-11%2F1-30-17%2520-%2520MBTA%2520DIDB%2520Policy%2520-%2520Final.docx&wdOrigin=BROWSELINK>

will have a disproportionate impact on communities of color and/or low-income communities. *Id.* at IV-12.

Importantly, the analysis must take place “prior to implementation.” *Id.* at IV-11. That timing requirement is critical because it means that the transportation provider then has an opportunity to proactively prevent, or at least mitigate, harm to communities of color if a disproportionate impact is anticipated. See *id.* at IV-16 (noting analysis may lead to modifications that would “avoid, minimize, or mitigate potential disparate impacts”).

### **MBTA’s Apparent Failure To Follow Federal Law In Closing The Orange Line**

Unfortunately, it does not appear that the MBTA has followed these policies in closing down the Orange Line. The closure undoubtedly qualifies as a “major service change” that triggers the requirement of an equity analysis under the FTA Directive and MBTA policy. Indeed, there has perhaps been no greater service change in recent years than this 30-day closure of a subway line used by over 100,000 riders. See MBTA Policy at 3 (“[t]he complete elimination of existing routes..., by definition, constitutes [a] major service change[].”). Yet MBTA apparently undertook no equity analysis prior to the closure.

The result is that problems and issues that could have been flagged and prevented have now arisen and are being addressed – if at all – in a haphazard, last-minute fashion. This exacerbates the harm of the closure on communities of color and low-income communities. For example, while the MBTA is relying heavily on communicating alternative routes to Orange Line riders, inadequate attention has been paid to the needs of those who are Limited English Proficient. While some signage is available in some other languages, this is inconsistent at best. Similarly, while the MBTA has relied heavily on personnel on-the-ground to direct riders to alternative modes of transportation, there is a distinct lack of such personnel who speak languages other than English.

Moreover, obvious gaps in service that should have been flagged and remedied proactively are only now being dealt with in real-time. For example, it was only due to last-minute scrambling that the MBTA agreed to add additional shuttle routes through Chinatown – an alternative that still appears inadequate to meet the needs of communities of color in that neighborhood.

These and other similar issues can only be expected to escalate in the coming weeks, as schools and colleges re-open. Particularly for communities of color and low-income communities, which are already struggling with the disruptions brought on by the COVID-19 pandemic, this ongoing transportation disruptions is likely to translate directly into lost educational and employment opportunities, unless significantly greater mitigation steps are taken.

### **Action Required In Light Of MBTA’s History of Inequitable Conduct**

Unfortunately, the MBTA’s closure of the Orange Line without first undertaking an equity analysis is not the first instance of inequitable conduct by MBTA. Other examples in the recent past include:

- [The cancellation of late night bus service in 2016](#), which unjustifiably burdened people of color and low-income riders.
- The racial profiling of riders of color, [including a client of LCR's who was improperly removed from a Red Line train at South Station](#).
- [The cancellation of commuter trains on the Fairmount Commuter Rail Line](#), which resulted in a disproportionately negative impact on people of color and low-income riders.
- The disproportionate issuance of [fare evasion citations](#) to people of color.
- [The MBTA's May 31, 2020 shut-down of several stations in downtown Boston](#) immediately following a Black Lives Matter protest

In light of this pattern and practice, LCR calls upon the MBTA to: 1) immediately undertake an equity analysis for the Orange Line closure, as required by federal and state law, and adopt mitigation steps for the remainder of the anticipated closure; and 2) undertake an equity analysis, conducted by an independent consultant, of all of MBTA's policies and practices, to determine whether they have a disparate impact or otherwise disproportionately burden communities of color.

We request a meeting to discuss these critical racial justice issues with you. We look forward to MBTA taking immediate steps to rectify its lack of policies and procedures and ensure compliance with federal law.

Sincerely,

Iván Espinoza-Madrugal, Executive Director  
Oren Sellstrom, Litigation Director

Cc: Secretary Peter Buttigieg, U.S. Department of Transportation  
Nuria Fernandez, Administrator, Federal Transit Administration  
Matthew Welbes, Executive Director, Federal Transit Administration  
Rachael Rollins, United States Attorney for the District of Massachusetts