

Public Broadcasting 619-594-1515
5200 Campanile Drive FAX: 619-594-3812
San Diego State University www.kpbs.org
San Diego, CA 92182-5400

April 16, 2013



Tom Karlo
General Manager

Deborah Castillo
Manager of Marketing and Communications
North County Transit District (NCTD)
810 Mission Avenue
Oceanside, CA 92054
Email: dcastillo@nctd.org

Re: NCTD/KPBS San Diego – Sprinter News Story

Dear Ms. Castillo:

Thank you for your letter concerning the news story, "SPRINTER funds used for buses – and studies," which I received on Friday, April 5, 2013. Your letter requests a retraction of the news story, which KPBS and *inewssource* will more fully respond to in a future letter.

As set forth below, KPBS and *inewssource* remain willing to review any additional documents or other information NCTD wishes them to consider regarding the issues addressed in the news story, including documents sought by them under the California Public Records Act (CPRA). KPBS and *inewssource* remain willing to interview Matthew Tucker on air. We had offered to do an on-camera interview on March 25, 2013 before the news story was published, but NCTD cancelled that interview on March 13.

As you may know, KPBS and *inewssource* have requested documents from NCTD about the Sprinter brake problems that forced trains out of service, and the maintenance funding allocated for any brake repairs, for some time now in the form of requests for documents pursuant to CPRA. News reporter Brad Racino began requesting the documents on March 5, 2013, and he sent additional requests on March 15, 2013 and March 25, 2013.

To date, not all of the documents Mr. Racino requested have been produced by NCTD. KPBS and *inewssource* cannot agree to any extensions for production of those documents beyond the extensions already taken by NCTD. Let us know **on or before 3:00 p.m. on Wednesday, April 17, 2013** where and when the records to be produced may be picked up.



KPBS and *inewssource* have made other attempts to interview Mr. Tucker in advance of stories related to NCTD. Mr. Racino requested an interview before the "Security Breach" story published and aired on February 12, 2013, but that was denied, as was a request before "SPRINTER funds used for buses – and studies." KPBS and *inewssource* continue to extend their offer to interview Matthew Tucker on air. The interview could take place on **Thursday, April 18** for Midday Edition and Evening Edition. We are open to discussing other dates for on-air interviews in April. Please let us know by **noon Wednesday, April 17** whether Mr. Tucker will be available to be a guest on the Midday and Evening Editions shows on **April 18**.

Assertions Made In Your Letter

Regarding the issues raised in your letter, sources for KPBS and *inewssource* continue to confirm the truth of the facts as published in the news story. Some of the information and sources relied on are addressed below. But again, KPBS and *inewssource* remain willing to review any additional information NCTD wishes to provide them and to conduct interviews with NCTD personnel.

Re Assertion - "KPBS alleges that NCTD short-changed SPRINTER maintenance funding":

In your letter, we note NCTD does not refute any of the three key points our investigation addressed, *i.e.*, that:

1. The Sprinter Drive System Overhaul (Overhaul) was included in NCTD's 2012 budget;
2. The Overhaul was removed from NCTD's 2013 budget and replaced with bus funding and "studies" we reported on; and
3. The Overhaul includes replacing the wheels and brakes of the trains.

These points are discussed more fully below. It is also undisputed that NCTD took the trains out of service after a state inspection in late February 2013 found the center brake rotors on 12 trains worn past compliance.

Re Assertion - "KPBS alleges" that "money that was budgeted to fix the brakes and pay for other maintenance ... was instead used to pay for buses and transit studies."

Re "FACT": - "...The KPBS article incorrectly attempts to connect a capital project to fund the SPRINTER's vehicle drive overhaul with the need to replace the rotors...":

We note NCTD's own documents connect the overhaul with the need to replace the brake rotors. See, *e.g.*, the February draft of the 2014-2018 CIP budget submitted to NCTD's board. In that proposal, NCTD allocated \$735,000 for the "SPRINTER's Drive System Overhaul," and in the justification section, clearly states, "This project provides resources for replacement of wheels and brake discs..."

<https://www.documentcloud.org/documents/681241-nctd-feb-board.html#document/p99/a98589>

Re Assertion - "KPBS alleges that NCTD did not follow standard accounting practices."

Re "FACT: " – "...The implication that NCTD is not following Governmental Accounting Standards Board (GASB) requirements is false. NCTD is stunned that KPBS would make

such a strong and toxic allegation without having the facts. NCTD's use of capital funding is not an issue in terms of compliance with GASB..."

We note NCTD's own documentation and three experts we interviewed, including a senior official with the Governmental Accounting Standards Board, support the statements we made in the news story.

- According to Ken Schermann, who is a senior official within GASB, those studies do not belong in the capital budget;
- According to NCTD's own definition of a capital expenditure, those studies do not belong in the capital budget; and
- According to two certified public accountants in San Diego, those studies do not belong in the capital budget.

Supplemental letter

In response to your supplemental letter, we agree that FTA money can be obtained for planning purposes. But that does not make the planning a capital project, as evidenced in the FTA document you quote, at http://www.psrc.org/assets/471/2012_FTA_eligibility.pdf. The issue we addressed is whether NCTD is correct to show the "studies" on the capital budget, or whether it should have instead included them in the operating budget.

NCTD cites three types of activities eligible for funding:

1. Studies;
2. Capital investments in buses; and
3. Capital investments in rail.

NCTD therefore classifies "studies" separately from "capital investments." Moreover, according to our experts, "studies" are generally operating expenses that must be included in the operating budget, whereas only "capital investments" belong in the capital budget. FTA's own eligibility guidelines for 5307 funding even caution against such misplacement, on page 6:

"FTA cautions recipients not to confuse the fact that maintenance items often considered operating expenses may be eligible for FTA capital assistance. Generally accepted accounting principles (GAAP) and the recipient's accounting system determine those costs, that the recipient is to account for, as operating costs."

It continues,

"The National Transit Database, follows generally accepted accounting principles, so a recipient reporting to the NTD must report the operating costs the recipient has incurred as operating costs regardless of the costs' eligibility for FTA capital assistance.

Furthermore, your supplemental letter still fails to address the points KPBS and *inewssource* made in our story:

1. The Public Benefit Study was included in a revenue vehicle category in a capital project budget funded with FTA money and labeled as a capital project. NCTD has provided us with information on the study, and said it was cancelled, but the description of the project contains no explanation as to how it "would have resulted in the creation of a fixed asset."

2. Regarding the AECOM study, we did not question its eligibility for federal funding, but instead raised the issue of how it was ever approved without being on the board agenda. We still await NCTD's answer to that question.

In your letter to Mr. Karlo, we also did not accuse NCTD of diverting maintenance dollars away from the SPRINTER thereby **causing** the shutdown. We said money was planned for the SPRINTER one year, and gone from the budget the next. Some of that money was replaced with studies, which is true. It is also true that SPRINTER money would have replaced the brakes, as per the definition of SPRINTER Vehicle Drive System Overhaul in the agency's current CIP draft.

Conclusion

KPBS and *inewssource* remain willing to review any documentation from NCTD and conduct interviews of NCTD personnel regarding the brake funding issues addressed in the news story.

Very truly yours,

Tom Karlo
General Manager, KPBS



Suzanne Marmion
KPBS Director of News & Editorial Strategy

Lorie Hearn
Executive Director, *inewssource*

Brad Racino
Reporter, *inewssource*