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May 12, 2003

### BY HAND

Honorable Louis B. York  
Justice of the Supreme Court  
80 Centre Street  
New York, N.Y. 10003

Re: NYPIRG Straphangers Campaign v. MTA  
Index No. 107871/03

Dear Justice York:

Pursuant to the Court's instructions, we write to address briefly two matters that arose at the hearing on Friday, May 9, 2003: (1) the May 9, 2003 affirmation of Mr. Shanahan, which was served on respondents in Court; and (2) the issue of the standing of a legislator *qua* legislator in this proceeding.

(1) Mr. Shanahan's affirmation (§§ 5,6) cites *New York City Health and Hosp. Corp. v. McBarnette*, 84 N.Y.2d 194, 616 N.Y. Supp. 2d 1 (1994), which stands for the proposition that the MTA Board's decision on March 6, 2003 was quasi-legislative and subject to review, "if at all," under CPLR Article 78, "in the nature of mandamus to review." 84 N.Y.2d at 203, n.2, 616 N.Y. Supp. 2d at 5, n.2. Mr. Shanahan also cites (§ 8) to *Lakeland Water District v. Onondaga Co. Water Auth.*, 24 N.Y. 2d 400, 301 N.Y. Supp. 2d 1 (1969), which stands for the proposition that any applicable standard of review is extremely high: whether the government "acted in disregard of statutory standards, in excess of its grant of authority, in violation of due process or in a discriminating matter." 24 N.Y. 2d at 408, 301 N.Y. Supp. 2d at 6; accord *Sheldon v. NYC Transit Auth.*, 39 A.D. 2d 950, 332 N.Y. Supp. 2d 992 (2d Dep't 1972).

The cases cited in Mr. Shanahan's affirmation (§ 8) that deal specifically with the public hearing requirement – the issue in this case – demonstrate why petitioners have no viable claim under this stringent standard of review. In each of these cases, the issue was whether respondents had prevented the public from being heard on the issues that were to be voted upon. See *Orbach v. NY State UDC Corp.*, 110 Misc. 2d 720, 442 N.Y. Supp. 2d 900 (Sup. Ct. N.Y. Co. 1981) (UDC failed to appoint qualified person to attend

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hearing and respond to questions); *Forest Hills Residents Assn. v. NYC Housing Auth.*, 69 Misc. 2d 42, 50-52, 329 N.Y. Supp. 2d 69, 78-79 (Sup. Ct. N.Y. Co. 1972) (plan ultimately adopted by board materially differed from the plan presented at public hearing); *Levine v. Long Isl. R.R. Co.*, 38 A.D. 2d 936, 938, 331 N.Y. Supp. 2d 451, 454 (2d Dep't 1972) (no new public hearing required because plan adopted by MTA "bears a reasonable relationship to and is derived from" proposal presented at hearing (*citing Tinsley v. Monserrat*, 26 N.Y. 2d 110, 114, 308 N.Y. Supp. 2d 843, 845 (1970) (same and specific statutory requirements not met)); *Reizel, Inc. v. Exxon Corp.*, 42 A.D.2d 500, 349 N.Y. Supp. 2d 14 (2d Dep't 1973) (zoning decision could be attacked "where no notice is given or the notice given is so deceptive that reasonable persons were duped into not appearing," but no basis on this record); *County of Rensselaer v. Capital District Transp. Auth.*, 42 A.D. 2d 445, 447, 349 N.Y. Supp. 2d 20, 23 (3d Dep't 1973) (fare decision overturned due to failure to hold a public hearing); *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y.2d 668, 642 N.Y. Supp. 2d 164 (1996) (despite petitioners' misinterpretation, notice of hearing held sufficient since it "satisfied its purpose of alerting the public to potential and contemplated revisions of local ordinance").

None of the defects alleged by petitioners (Shanahan Aff. ¶7) approach these factual scenarios where the courts have considered or would consider ordering new public hearings. The duly posted notice of public hearing advised the public of the actions under consideration – increasing fares and tolls and closing token booths. Nothing in the notice can be deemed to have defeated the public's right to attend the hearings at which, in reality, several hundred speakers were heard on the precise matters that the MTA Board then considered and adopted on March 6. *See Tandler Aff.*; Caplan Supp. Aff. ¶¶ 17-18.

No matter how inflammatory petitioners' rhetoric, the notice of public hearing complied with the statutory obligation to give the public notice of the actions under consideration. The MTA's reference in the notice to its two year deficit cannot be characterized as unlawful under the governing statutes (PAL §§ 1205 (1), (7); 1263(9); 1266 (3)). Nor can it otherwise be concluded that the MTA "acted in disregard of statutory standards, in excess of its grant of authority, in violation of due process or in a discriminating matter" (*Lakeland; Sheldon*), based on petitioners' effort to manufacture a legal obligation, where none exists, to present detailed budgetary documents and to propose a budget option (that was not under consideration) that would apply all available funds to 2003, thereby pushing the multi-billion dollar deficit into 2004 (resulting in a much larger fare hike next year). *See Caplan Aff.* ¶¶ 11-14; Caplan Supp. Aff. ¶¶ 9-18; Respondents' Memorandum of Law (PI) at 10-15.


The MTA's quasi-legislative action, "if at all" subject to judicial review (*McBarnette*), cannot be overturned on this record.

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(2) With respect to the issue of whether petitioner David A. Paterson has standing in his capacity as a legislator, we respectfully refer the Court to *Sheldon Silver, as Member and Speaker of the New York State Assembly v. Pataki*, 96 N.Y.2d 532; 730 N.Y. Supp. 2d 482 (2001). Not only is Mr. Paterson named as a petitioner in his individual capacity (Amed. Pet., Caption and ¶ 2b), but his allegations of injury do not constitute either rationale for legislator standing recognized by the Court of Appeals, *i.e.*, nullification of votes or usurpation of power. *Id.*, 96 N.Y. 2d at 537-42, 730 N.Y. Supp. 2d at 486-90.<sup>1</sup>

Respectfully,



Gregg M. Mashberg



Florence Dean

cc (by fax): All Counsel of Record

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<sup>1</sup> To ensure completeness of the record, enclosed is an affidavit from Douglas R. Sussman, sworn to May 12, 2003, annexing the "accordion" notice of public hearing that was handed up during the hearing on May 9, and the schematic diagram of the Lawrence Street station that was displayed in Court during the hearing.



1. I am Deputy Director, Government and Community Relations, Metropolitan Transportation Authority ("MTA"). As part of my official duties, I was responsible for overseeing the dissemination of information and materials in connection with the public hearings held in February 2003 in connection with proposals to increase fares and tolls and close token booths. I am personally familiar with the matters set forth below.
2. Annexed as Exhibit A is what we refer to as the "accordion" notice of public hearings. This document was made available to members of the public who attended each of the ten public hearings, and was provided to anyone who otherwise contacted the MTA requesting information regarding the public hearings.
3. Annexed as Exhibit B is a reduced version of the schematic diagram of the Lawrence Street station, showing the proposed closing of one of the two token booths at that station. The full-size schematic (17" x 11") was posted in the station. This schematic notice is an example of the type of schematic notices that were posted in each of the 177 stations for which token booth closings had originally been proposed. These schematics were bound in a "yellow book" and, like the "accordion" informational material, were made available to members of the public who attended the hearings or otherwise contacted the MTA for information.

Sworn to before me  
May 12, 2003

  
Notary Public

ROGER J. SCHIERA  
NOTARY PUBLIC, State of New York  
No. 4919788  
Qualified in Suffolk County  
Commission Expires April 17, 2007



# Public Hearing

**Notice of Public  
Hearings on  
Proposed MTA Fare  
Increases, Fare  
Policy Changes,  
Subway Station  
Booth Closings, and  
Toll Increases**



Metropolitan Transportation Authority

ET A

## Introduction/Overview

In November 2002, the MTA published its two-year Financial Plan for 2003 and 2004 in which it projected a combined gross deficit of \$2.8 billion.

Numerous internal actions have been identified, including administrative reductions and cost-saving measures such as the closing of some token booths (see details beginning on page 6 of this brochure) and the elimination of the token, as a means to reduce this deficit to an estimated \$1 billion. This remaining deficit is proposed to be addressed by one of three options described on the next three panels of this brochure, which include combinations of fare and toll increases, service reductions, and/or increased governmental assistance.

Public comments are being solicited on these proposals through a series of hearings throughout the region as noted on the reverse side of this brochure. Comments can also be submitted via email through our website at [www.mta.info](http://www.mta.info).

## Option A

### NYC Transit

- Increase the subway, bus, and paratransit base fare from \$1.50 to \$1.75 with an increase in MetroCard® passes such that the average fare would increase by 10% from \$1.04 to \$1.14.
- Increase the one-way Express Bus fare from \$3.00 to \$4.00.
- Reduce weekend bus and subway service by 10% and reduce weekday service by 2%.

### Long Island Rail Road/ Metro-North Railroad

- Increase commuter rail fares by 10%.
- Provide discounts from base fare for rail tickets purchased on the web or through Mail&Ride.
- Cut 33 peak and off-peak trains.
- Close certain waiting rooms.
- Reduce frequency of train cleaning.

### Long Island Bus

- Increase base fare from \$1.50 to \$1.75 with an increase in MetroCard passes such that the average fare would increase by 10% from \$1.04 to \$1.14.
- Increase Able-Ride paratransit fare from \$3.00 to \$4.00.

### Bridges and Tunnels

- Increase tolls by \$0.25 in each direction.

### Other

- Obtain increased governmental assistance in 2004 from the State and/or localities within the MTA service area.

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## Option B

### NYC Transit

- Increase the subway, bus, and paratransit base fare from \$1.50 to \$2.00 with an increase in MetroCard passes such that the average fare would increase by 20% from \$1.04 to \$1.25.
- Increase the one-way Express Bus fare from \$3.00 to \$4.00.

### Long Island Rail Road/ Metro-North Railroad

- Increase commuter rail fares by 20%.
- Provide discounts from base fare for rail tickets purchased on the web or through Mail&Ride.

### Long Island Bus

- Increase base fare from \$1.50 to \$2.00 with an increase in MetroCard passes such that the average fare would increase by 20% from \$1.04 to \$1.25.
- Increase Able-Ride paratransit fare from \$3.00 to \$4.00.

### Bridges and Tunnels

- Increase tolls by \$0.50 in each direction.

### Other

- Obtain increased governmental assistance in 2004 from the State and/or localities within the MTA service area.

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**Option C**

**NYC Transit**

- Increase the subway, bus, and para-transit base fare from \$1.50 to \$2.00 with an increase in MetroCard passes such that the average fare would increase by 33% from \$1.04 to \$1.39.
- Increase the one-way Express Bus fare from \$3.00 to \$4.00.

**Long Island Rail Road/  
Metro-North Railroad**

- Increase commuter rail fares by 33%.
- Provide discounts from base fare for rail tickets purchased on the web or through Mail&Ride.

**Long Island Bus**

- Increase base fare from \$1.50 to \$2.00 with an increase in MetroCard passes such that the average fare would increase by 33% from \$1.04 to \$1.39.
- Increase Able-Ride paratransit fare from \$3.00 to \$4.00.

**Bridges and Tunnels**

- Increase tolls by \$0.50 in each direction.

**Proposed Station Booth Closings**

As part of the MTA's internal cost-savings effort, New York City Transit proposes closing certain subway station booths.

There are 128 part-time and 49 full-time booths with low entry and exit volume that can be closed permanently without significant inconvenience to our customers.

Except for eight locations that exit into privately owned buildings and are closed at certain hours, all of the proposed sites will provide access to customers at all times.

At every station in which the 177 booths scheduled to be permanently closed are located, there will continue to be a full-time booth operating 24 hours a day, 7 days a week. MetroCard Vending Machines will also be located at all stations and High Entry/Exit Turnstiles will allow for 24-hour access to the system.

The affected stations (and booth numbers) are:

**BRONX**

	<b>Line</b>
149th Street (R260)	4
167th Street (N206)	2
170th Street (N208)	D
174th Street (N212)	U
174th Street (R321)	2
205th Street (N225)	D
Bedford Park Blvd (N223)	U
Brook Avenue (R403)	6
Cypress Avenue (R405)	6
East 143rd Street (R407)	6
East 149th Street (R409)	6
East Tremont Avenue (R323A)	2
Fordham Road (N218)	D
Freeman Street (R319)	2
Kingsbridge Road (N220)	D
Longwood Avenue (R411)	6
Pelham Pkwy (R327)	2

**BROOKLYN**

Prospect Avenue (R315)	2
Simpson Street (R317)	2
<b>BROOKLYN</b>	
15th Street-Prospect Pk (N541)	F
18th Avenue (N550)	F
22nd Avenue-Bay Pkwy (D11)	N
25th Street (C17)	F
59th Street (C22)	B
86th Street (C26)	F
95th Street (C28)	N
Avenue N (N554)	F
Bedford-Nostrand Avenues (N418)	2
Bergen Street (N531 & N533)	F
Bergen Street (R618)	2
Brighton Beach (B31)	D
Carroll Street (N534)	F
Church Avenue (B15)	D
Church Avenue (N545)	F
Clinton-Washington Avenues (N112A)	C
Court Street (C1)	B
Ditmas Avenue (N547)	F
Flatbush Avenue (R646 & R647)	2
Flushing Avenue (N414A)	C
Franklin Avenue (N113)	C
Ft. Hamilton Pkwy (D4)	2
Ft. Hamilton Pkwy (N544)	F
Graham Avenue (H14)	C
Grand Street (H16)	L
Greenpoint Avenue (N403)	C
Halsey Street (H30)	C
High Street (N101)	B
Hoyt Street (R605)	C
Kings Highway (B23)	D
Kings Highway (N558)	F
Kingston-Throop Avenues (N118)	C
Lawrence Street (C4)	2
Lorimer Street (H12)	L
Marcy Avenue (J2)	J
Myrtle-Wiloughby Avenues (N416)	G
Myrtle-Wyckoff Avenues (H27)	L



New Utrecht Avenue (D6)	N	116th Street (R303)	3	46th Street (N316A & N317)	G
Newkirk Avenue (R644)	Z	125th Street (N25)	A	46th Street (R520)	7
Nosstrand Avenue (N117)	C	125th Street (R305)	3	63rd Drive (N330C)	R
Ocean Pkwy (B34)	C	135th Street (N22 & N23)	C	67th Avenue (N332)	R
Prospect Avenue (C15)	B	135th Street (R307)	3	71st-Continental Av (N333 & N333B)	E
Rockaway Avenue (N123B)	C	137th Street (R175)	1	74th Street-Broadway (R525)	7
Sheepshead Bay (B28)	C	145th Street (R177)	1	80th Street-Hudson (N130)	A
Union Street (C11)	P	157th Street (R179)	1	111th Street (N138)	A
Utica Avenue (N120A)	C	168th Street (N12)	A	169th Street (N340)	F
Utica Avenue (R625)	A	175th Street (N11)	A	179th Street (N342)	F
West 8th Street (G15)	C	207th Street (N1)	A	Northern Blvd (N319)	G
		Broad Street (A84 & A85)	J	Parsons Blvd (N339)	F
<b>MANHATTAN</b>		B'way-Lafayette Street (N519A)	F	Parsons-Archer (N607)	E
3rd Avenue (H5)	L	Canal Street (N90)	A	Queens Plaza (N310)	F
5th Avenue (A7)	R	Canal Street (R120)	1	Rockaway Blvd (N135)	A
6th Avenue (H3)	L	Chambers Street (A69 & A71)	J	Roosevelt Avenue (N323)	E
14th Street (N510, N511, & N513)	F	Chambers Street (N91)	A	Steinway Street (N314)	G
18th Street (R130)	L	Christopher Street (R126)	1	Sulphur Blvd (N338)	F
23rd Street (A31)	P	Cortlandt Street (A51, A52, & A53)	R	Union Tpkk (N335)	E
23rd Street (N75 & N77)	C	Delancey Street (N526)	5	Vernon Blvd-Jackson Av (R503 & R506)	Z
23rd Street (R132)	L	East Broadway (N528)	3	Woodhaven Blvd (J32)	L
23rd Street (R226A & R227A)	C	Franklin Street (R118)	1	Woodhaven Blvd (N329A)	P
28th Street (R230)	C	Fulton Street (A81 & A82)	1		
28th Street (A29)	R	Fulton Street (R208)	4		
28th Street (R134)	L	Grand Central (R237B)	6		
33rd Street (R231A & R232A)	C	Houston Street (R121, R122, & R124)	1		
34th Street (A22 & A25)	R	Lexington Avenue (N305A)	E		
34th Street (N67A)	A	Prince Street (A42)	R		
42nd Street (N504)	F	Rector Street (A55)	5		
42nd Street (N63)	A	Rector Street (R102)	4		
49th Street (A14 & A16)	R	Rocketfeller Center (N501A)	F		
51st Street (R242A)	C	Second Avenue (N521)	F		
57th Street (A11)	P	Spring Street (N87)	C		
79th Street (R163)	L	Spring Street (R216)	6		
86th Street (R165)	L	Times Square (R153)	5		
96th Street (N39)	C	Union Square (A33)	R		
110th Street (N34)	C	Wall Street (R203A & R204A)	4		
110th Street (R171)	L				
110th Street (R253)	C				
116th Street (N29)	C				
116th Street (R257)	5				

For station maps showing the booths to be closed, visit the MTA website, [www.mta.info](http://www.mta.info), or call 212-878-7483 for a brochure.

**Fare Increase Information — MTA Long Island Rail Road and MTA Metro-North Railroad**

For detailed information about proposed fare increases and zone changes for MTA Long Island Rail Road and MTA Metro-North Railroad, visit the MTA website, [www.mta.info](http://www.mta.info).

**MTA Bridges and Tunnels — Toll Increases and E-ZPass® Discounts**

MTA Bridges and Tunnels will continue to offer discounts to E-ZPass tag holders. For additional information about proposed toll increases and discounts, visit the MTA website, [www.mta.info](http://www.mta.info).

**QUEENS**

33rd Street (R517)	7
36th Street (N311)	C

## Public Comment Opportunities

### Public Hearings

Before implementing any of the aforementioned proposals, the MTA will conduct public hearings to encourage input and to entertain alternative ideas from our customers. The dates and times of the hearings are:

**Tuesday, February 4, 2003, 4 p.m.**

Beacon High School  
101 Matteawan Road  
Beacon, New York

**Directions:** Metro-North to Beacon Station, then Loop 3 bus or taxi

**Wednesday, February 5, 2003, 4 p.m.**

The Roosevelt Hotel, Junior Ballroom  
Madison Avenue at 45th Street

**Directions:** ④ ⑤ ⑥ ⑦ ⑧ to Grand Central; M1, M2, M3, M4, M5, M15, M42, M101, M102, M103, or M104 bus

**Thursday, February 6, 2003, 4 p.m.**

New York City College of Technology  
Kilgord Auditorium  
300 Jay Street  
Brooklyn, New York

**Directions:** ② ③ ④ ⑤ to Borough Hall; ④ ⑥ to Jay Street; ⑦ ⑧ to Court Street; B25, B26, B37, B38, B41, B51, B52, B54, B57, B61, B65, B67, B75, or B103 bus

**Monday, February 10, 2003, 4 p.m.**

Hofstra University  
Student Center — Multi-purpose Room  
200 Hofstra University  
Hempstead, New York

**Directions:** LIRR to Hempstead Station, then Long Island Bus N70, N71, or N72 bus

**Tuesday, February 11, 2003, 4 p.m.**

Stony Brook University  
Student Activities Center, Ballroom  
Stony Brook, New York

**Directions:** LIRR to Stony Brook Station, then Suffolk County Transit 3D or S-71 bus; Suffolk County Transit S-60 or S-69 bus

**Wednesday, February 12, 2003, 4 p.m.**

Susan E. Wagner High School  
1200 Manor Road  
Staten Island, New York  
**Directions:** S54 bus

**Thursday, February 13, 2003, 4 p.m.**

The Westchester County Center  
The Little Theatre  
198 Central Avenue  
White Plains, New York

**Directions:** Metro-North to White Plains Station, then any of these buses on Bee-Line: 1W, 5, 6, 13, 14, 15, 20, or 40

**Tuesday, February 18, 2003, 4 p.m.**

Bronx County Building, Rotunda  
851 Grand Concourse  
Bronx, New York

**Directions:** ④ ⑤ ⑥ to 161st Street-Yankee Stadium; Bx1 or Bx6 bus

**Wednesday, February 19, 2003, 6 p.m.**

Queens Borough Hall, Central Jury Room  
120-55 Queens Boulevard  
Kew Gardens, New York

**Directions:** ② ③ to Kew Gardens-Union Turnpike; LIRR to Kew Gardens Station; Q10, Q37, Q46, Q60, or Q74 bus

**Thursday, February 20, 2003, 4 p.m.**

Palisades Mall, Adler Community Room  
1000 Palisades Center Drive  
West Nyack, New York

**Directions:** Metro-North to Tarrytown, then Tappan Zee Express bus

## Email comments

In addition to the public hearings, MTA customers can comment directly on these proposals through the MTA website, [www.mta.info](http://www.mta.info). All comments and suggestions will be made part of the hearing record.



Registration to speak will be open until 8 p.m. on the dates of the hearings. You may speak on any financial plan proposal at any of these public hearings. Verbal testimony is limited to three (3) minutes for each speaker.

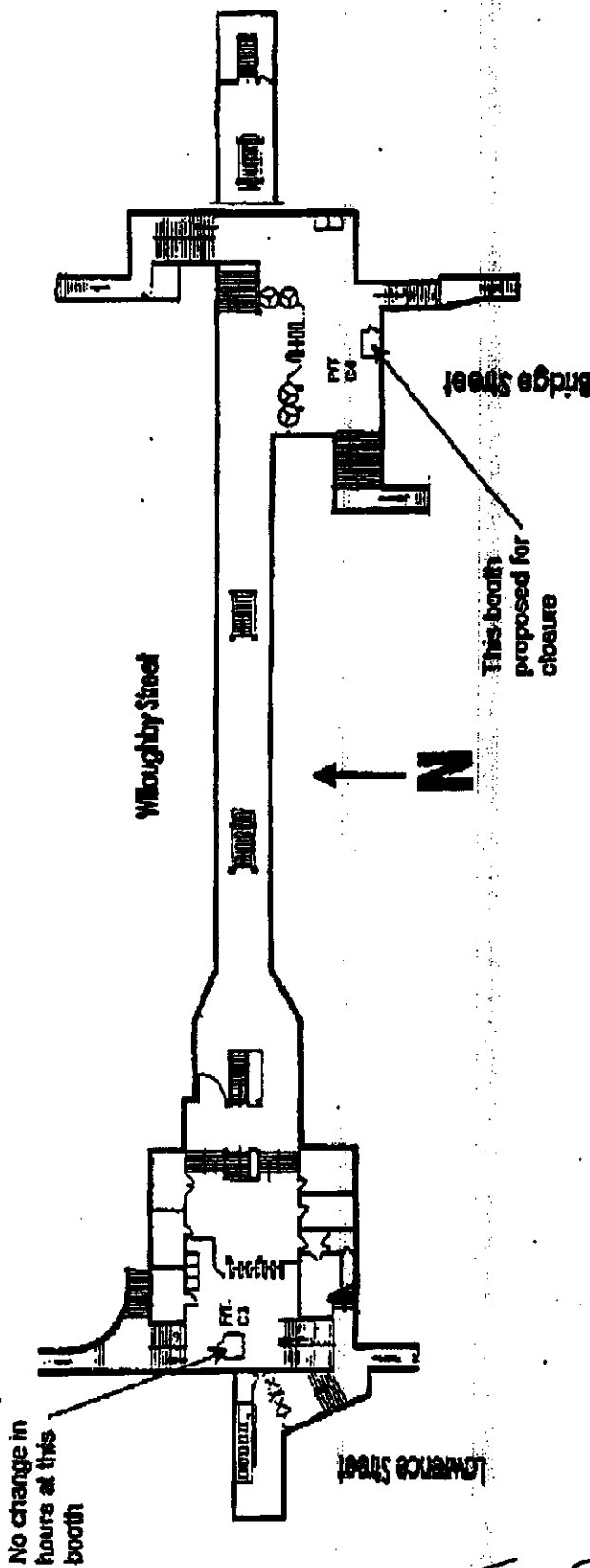
For more information on the MTA Financial Plan, or to register to speak in advance of the public hearings, please contact: Douglas Sussman, Deputy Director, MTA Government and Community Relations, 347 Madison Avenue, New York, NY 10017, 212-878-7483.

Customers may also comment on the MTA Financial Plan on the MTA website, [www.mta.info](http://www.mta.info). All public hearing locations are accessible to the mobility-impaired. Interpreter services will be available for the hearing-impaired.



Metropolitan Transportation Authority

[www.mta.info](http://www.mta.info)



No change in hours at this booth

EXB

**Current Operation**

- C3: 24 hour agent approximately 212 feet from C4
- C4: Part-time agent 4:00 pm to 6:30 pm Mon-Fri
- Access hours: 7:20 am to 9:20 pm Mon-Fri, 7:00 am to 10:00 pm Sat, Sun & Hol.
- Existing equipment: 2 MVM's, 2 HEET's, 2 HXT's

**Proposed Operation**

- Close part-time booth C4
- Close related turnstiles
- Automated access: 24 hours, all days

P/T	Part-time agent booth	⊗	High Entrance/Exit Turnstile (HEET)
F/T	Full-time agent booth	⊗	High Exit Turnstile (HXT)
STAIR	Stairway	□	MetroCard Vending Machine (MVM)