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Office of the International President

163418

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Docket Clerk
United States Department of Transportation
Docket Management Facility
PL-401
400 Seventh Street, SW
Washington, DC 20590-0001

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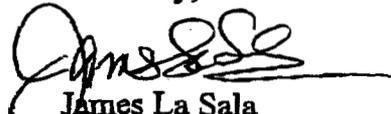
VIA FAX

RE: ATU Comments on Dockets Nos. FMCSA-98-3297; FMCSA-98-3298; FMCSA-98-3299; FMCSA-2001-11060; FMCSA-01-10886; NHTSA-02-11594; NHTSA-02-11592; and NHTSA-02-11593

Dear Docket Clerk

Attached are the comments of the Amalgamated Transit Union concerning the above referenced notices, published in the Federal Register on March 19, 2002, concerning Mexican-owned motor carriers operating in the United States. We ask that our comments be carefully considered.

Sincerely,


James La Sala
International President

kh/mg

Enclosure



163418

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration
National Highway Transportation Safety Administration**

Docket No. FMCSA-98-3297; Docket No. FMCSA-98-3298; Docket No. FMCSA-98-3299; Docket No. FMCSA-2001-11060; Docket No. FMCSA-01-10886; Docket No. NHTSA-02-11594; Docket No. NHTSA-02-11592; and Docket No. NHTSA-02-11593

**COMMENTS OF THE AMALGAMATED TRANSIT UNION
ON NAFTA IMPLEMENTATION RULES OF FMCSA AND NHTSA**

APRIL 17, 2002

The Amalgamated Transit Union (ATU), which represents over 175,000 members maintaining and operating bus, light rail, ferry, intercity bus, school bus and paratransit vehicles in the United States and ~~Canada~~, including over 5,000 Greyhound employees operating from 88 cities throughout the United States, is pleased to submit the following comments in response to the above-referenced notices, published in the Federal Register on March 19, 2002, concerning Mexican-owned motor carriers operating in the United States.

Initially, ~~we~~ take this opportunity to affirm our full support for and agreement with the comments filed by the Transportation Trades Department, AFLCIO (TTD) on these proposed rules. In addition, the ATU supports the positions set forth by Greyhound in their comments on these matters. Our specific position on this matter is detailed below.

The ATU has a longstanding commitment to the safety and security of U.S. bus passengers and operators, as well as the rest of the traveling public. As such, we welcome this opportunity to work with the Federal Motor Carrier Safety Administration (FMCSA) and the

National Highway Transportation Safety Administration (NHTSA) toward a safe, effective and fair implementation of the cross-border passenger motor carrier provisions of the North American Free Trade Agreement (NAFTA).

ATU **supports** many **of the** revisions made by **FMCSA and NHTSA** to the application and authorization **process for** Mexico-domiciled **carriers seeking** to operate in the United States. In particular, ATU is pleased **that** these carriers will be subject to **thorough safety evaluations and inspections** before **they** are **granted permanent operating authority**. It is crucial **that this** process ensure **that these carriers are operating** in full compliance with all U.S. commercial **motor** vehicle safety laws, **including** the Federal Motor Carrier Safety Regulations (**FMCSRs**) and **the** Federal Motor Vehicle Safety **Standards** (**FMVSSs**), **as well as** U.S. labor and environmental laws. In order to **ensure such** full compliance, however, **the process can** be improved in several **ways**.

First, all commercial motor vehicles should be required to have a sticker or plate certifying compliance with the FMVSSs before they are allowed to operate in the U.S., regardless of whether they have previously operated in the U.S. While we fully support the proposals by **FMCSA and NHTSA to require** all commercial motor vehicles **operating** in the U.S. to comply **with the FMVSSs and** to be affixed with a **certification of compliance with the FMVSSs, we do not support the two year grace period** for complying with this requirement for vehicles that **have** previously operated in the U.S.

As **Greyhound** points out **in its** comments, **the vast majority of Mexican-manufactured buses** did **not** comply with the FMVSSs when they were **manufactured and do not comply** with **these standards now**. Specifically, **these buses do not** comply with the **standards** for fundamental safety items **such as brakes, fuel systems, windows and emergency exits**. It is ~~for~~ that **reason** that the **proposed grace period is illogical**. Simply because a vehicle has

previously been operated in the **U.S.** is no reason to believe that it meets these federal **safety standards**. **We cannot** continue to put the American **driving** public at **risk** by allowing these vehicles to continue operating on **U.S.** roads for the **next two** years Without certifying compliance. These vehicles **should** be **treated** the same as **any** other motor vehicle **operating** on **U.S.** highways. To do otherwise creates not just a weaker **standard**, but no **standard at all** with which to measure **their safety** performance **during** the **two year** grace period.

In **addition** to being bad **policy** to allow these uncertified vehicles on the road, the grace period will be extremely hard to enforce since it will be difficult for **DOT** to determine **whether a particular** vehicle **has** previously operated in the U.S. If the Agencies do proceed with the **grace** period, they should do **so** only where a carrier can present clearly documented proof that a particular vehicle **has** operated **in** the **U.S.** In that **case**, a waiver should be **granted** solely for that vehicle and affixed to or carried on the vehicle **at all times** while operating in the **U.S.** during the two year period.

Further, **FMCSA** should not simply **rely** upon the vehicle **manufacturer's** **certification**. Considering the low rate of compliance with the FMVSSs **among** Mexican-manufactured **buses**, **FMCSA** should **ensure** that these vehicles are **thoroughly** inspected **during** the on-site **pre-authorization** safety audits in order to determine whether they comply with the **FMCSRs** (which incorporate **most** of the FMVSSs). If a vehicle fails **such** inspection, provisional operating authority should be denied until all vehicles are brought up to **standard**.

Second, the application for **Mexico-domiciled** carriers seeking to operate in the **U.S.** should require **detailed** explanations of compliance measures to ensure a **full understanding** of the applicable laws. **As** we pointed out in **our** comments, filed on June 29, 2001, in response to earlier rulemakings on **this matter**, the application forms, as **currently** proposed, **are** vague **and cannot** be relied upon to prove compliance with or **understanding**

of the applicable U.S. safety, labor and insurance laws. Specifically, the certification questions are presented as simple check-offs, with no option for a carrier to answer "no" to any particular question. As such, the forms seem to encourage applicants to simply check the "yes" lines without really reading the questions presented.

Third, Mexico-domiciled bus companies seeking to operate in the U.S. should have to certify that they will comply with U.S. labor laws. While we support FMCSA's decision to include a statement on its application that compliance with U.S. labor laws is mandatory, we oppose the Agency's decision to remove the requirement that applicants certify to such compliance, instead opting to include the statement as an instruction below the signature line. We strongly urge the Agency to move this statement above the signature line and to require applicants to certify that they will comply with all U.S. laws, including labor and environmental laws. Any violation of these laws should be automatic grounds for a refusal to grant or for revocation of operating authority.

Fourth, Mexico-domiciled carriers should not be allowed to operate in the U.S. if they demonstrate inadequate safety controls in any one of the six safety factors identified by the FMCSA. The pre-authorization safety audit proposed by FMCSA will be used to determine whether an applicant exercises necessary basic safety management controls and includes analysis of the carrier's compliance with "acute" and "critical" regulations of the FMCSRs and Hazardous Material Regulations (HMRs) in the following categories: general, driver, operational, vehicle, hazmat and accident. Using these criteria, FMCSA will only deny operating authority to an applicant if it demonstrates inadequate safety management controls in at least three of the six separate categories. The ATU strongly believes that inadequate safety management controls in any one of the six categories should be grounds for denial of an application. How can FMCSA justify a policy that would allow an unsafe bus, or unlicensed driver(s) to operate simply because other standards have been satisfied.

Fifth, FMCSA must allow interested parties sufficient time to comment on applications and the Agency must fully consider those comments before provisional authority is granted. Again, **the ATU supports the Agency's decision to require public notice of its intent to approve an application before provisional authority is granted, however, as written, the FMCSA's public notice requirement does not include a set comment period nor does it require the Agency to follow any sort of guidelines or process for considering and responding to any comments filed.** The Agency must further define this requirement, providing at least **45 days for interested parties to review and respond to applications and ensuring fair consideration and follow-up to any concerns raised by those parties.**

Sixth, the Agency must further define what it means by "intensified roadside inspections" for Mexico-domiciled carriers with operating authority. Specifically, **FMCSA should require a specific number and frequency of such inspections per carrier and should set forth guidelines for what the inspections will entail.**

Seventh, safety audits and compliance reviews should be automatically expedited when a carrier commits any one of the violations enumerated by the FMCSA, including using an unlicensed driver or one who has failed a drug or alcohol test, or operating out-of-service or uninsured vehicles. As currently written, it is up to **FMCSA whether such expedited action is necessary when such a violation occurs.** There is no logical reason why **one carrier could be treated differently by FMCSA from another carrier who committed the same violation.** As such, the Agency should treat **all Mexico-domiciled carriers the same and subject any violator to an expedited audit or compliance review.**

Eighth, FMCSA must provide detailed regulatory guidelines for the certification and training process for safety auditors, investigators and inspectors. As currently written, **FMCSA's proposal is vague and does not contain any substance or guidelines for the**

certification and training process. While we agree with the Agency that there needs to be flexibility to allow for constant updating of the training and examination criteria, there are certain elements that should be regulated, including the duration and frequency of training and examinations and the general topic areas to be covered.

Ninth, only government employees should be certified to perform safety audits, compliance reviews and roadside inspections. This is necessary in order to ensure effective oversight and uniformity of the safety audits, compliance reviews and roadside inspections, as well as to prevent conflicts of interest.

Tenth, Mexico-domiciled passenger carriers should not be authorized to operate in the U.S. absent reciprocal treatment of U.S. bus companies by Mexico. As we pointed out in our earlier comments on this issue, granting operating authority to Mexican-owned buses at this time is premature under the terms of NAFTA, which provides that, upon opening the border, Mexico is obligated to provide the "same treatment" to U.S. bus firms as the U.S. provides to Mexican firms. However, the Mexican and U.S. governments have taken different positions on several important operational issues that would result in vastly different treatment of the foreign bus operations in each country, involving access to bus terminals and the ability to provide service to multiple points within each country.

Specifically, the Mexican government has taken the position that it would only authorize U.S. bus companies to provide cross-border service to one point in Mexico, In contrast, the position of the U.S. government is to authorize Mexican operators to provide cross-border service to multiple points in the U.S. Additionally, while the U.S. has not proposed to place any restrictions on the ability of Mexican companies to own or operate bus terminals in the U.S., Mexico's position has been to strictly prohibit foreign ownership or operation of Mexican bus terminals. The different treatment accorded foreign bus companies by the two

countries would result in **unfair** competition **and** would be a violation of the “same treatment” requirement imposed by NAFTA. **As such, the U.S.** should not open the border to Mexican buses until Mexico **has agreed** to provide reciprocal **authority** to **U.S.** owned or controlled passenger motor carriers operating in **Mexico**.

Eleventh, U.S. subsidiaries of Mexican-owned companies must be subject to the same standards and reviews as their Mexican parent company. Despite the prior urging of the ATU, Greyhound **and the ABA, FMCSA** has **specifically exempted** from the special application procedures and oversight, **U.S.** subsidiaries of **Mexican** companies that provide domestic point-to-point **service in the US** . **As pointed out by** Greyhound, these are the carriers that will have the most impact on **U.S.** travelers since they will be providing **both domestic and cross-border** service to those passengers. **As such,** their operations should, at a very minimum, be subject to the same level of **scrutiny and review,** with respect to safety concerns, as their parent company and other cross-border carriers.

Further, **as we pointed out before,** this exemption would result in a loophole through which Mexican passenger motor carriers could bypass entirely **safety fitness evaluations** by setting up a U.S. subsidiary that can combine its **U.S. domestic bus** authority with its Mexican parent’s **domestic and cross-border Mexican** authority to provide an integrated **domestic and cross-border** service. Again, **given the earlier observations of the FMCSA that Mexican operators are unfamiliar with U.S. safety regulations, and therefore must be subject to special safety scrutiny,** we cannot allow these Mexican-owned **U.S. subsidiaries** to operate without the **thorough safety evaluation that the FMCSA says is needed.**

Twelfth, FMCSA should immediately issue its final rules with regard to the application of FMCSRs to commercial passenger vans carrying 9 or more people, including the driver. Since commercial vans, known as “camionetas” are likely to be a significant part of

the influx of passenger-carrying commercial vehicles into the U.S. once FMCSA begins granting operating authority, it is crucial that the Agency take extra steps to ensure that Mexican carriers are familiar with the new rule and the special application and oversight rules proposed by the current rulemakings. To further strengthen this safety net, FMCSA should ensure that state and federal enforcement efforts focus on camioneta operations, as well as Mexican-owned bus operations. This is especially important in light of the recent warning issued by NHTSA concerning the dangers of these vans, specifically the high risk of rollovers.

Finally, the FMCSA must give special focus to passenger carriers crossing the Mexican border into the U.S. The ATU shares Greyhound's concern that the recent controversy concerning the safety of Mexican trucks will detract the Agency and its enforcement personnel from adequately policing and inspecting cross-border bus activity. As we have continuously pointed out, buses are not simply carrying oranges or handbags – bus cargo is too precious to put at risk! Allowing unsafe Mexican buses to operate in the U.S. will not only put at risk the lives of the U.S. motorists sharing the road with these vehicles, but would also endanger the lives of the U.S. and Mexican citizens who choose to travel aboard these buses. FMCSA must ensure that necessary resources are focused on addressing issues unique to the passenger carrier industry.

In closing, we again emphasize the unyielding commitment of the ATU to the safety and well-being of the traveling public. We appreciate the efforts of the FMCSA and NHTSA in addressing the concerns expressed in our earlier comments on this matter and express our thanks to the Agencies for the opportunity to again submit our comment on the subject. We look forward to working closely with the Agencies, as well as other agencies affected by the proposed border opening, to ensure a safe and fair implementation of the NAFTA cross-border passenger motor carrier provisions.