

STATEMENT BY

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ON

CROSS-BORDER TRUCK AND BUS OPERATIONS

BEFORE
THE COMMITTEE ON COMMERCE, SCIENCE AND
TRANSPORTATION
UNITED STATES SENATE

THURSDAY, JULY 18, 2001

Mr. Chairman and Members of the Committee:

On behalf of 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, I am pleased to submit this testimony on whether Mexican-domiciled motor carriers should be allowed to operate throughout the United States. In addition, I thank you for holding a hearing on this crucial safety and fairness issue.

Initially, I take this opportunity to affirm our 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 the opportunity to work with this Committee, Congress and the Administration, toward a safe, effective and fair implementation of the cross-border passenger motor carrier provisions of the North American Free Trade Agreement (NAFTA). At this time, however, the ATU is firmly opposed to the proposed opening of the U.S.-Mexico border to cross-border passenger motor carrier operations.

As you know, the Senate Appropriations Committee reported out the FY 2002 Transportation Appropriations bill (S. 1178) last week, including in the bill several provisions drafted by Senator Patty Murray, Chair of the Transportation Appropriations Subcommittee, to address the issue of motor carrier safety with respect to Mexican cross-border truck and bus operations. These provisions are similar to those included in House Resolution 152. In addition to these pending bills, the House Transportation Appropriations bill (H.R. 2299) that passed the House of Representatives a few weeks ago includes language barring the U.S. from granting operating authority to any Mexican motor carriers. The ATU supports all of these bills which address many of the ATU's safety concerns. However, the ATU does have several concerns, **specific to the intercity bus industry**, that may require separate legislative action. These concerns are discussed below.

Specifically, it is the position of the ATU that:

- (1) **Mexican buses** should not be authorized to operate in the U.S. absent reciprocal treatment of U.S. buses by Mexico;
- (2) Mexican buses must be certified as safe before the first day they are

- authorized to operate in the U.S.;
- (3) The U.S. border crossing must be adequately equipped and staffed and inspectors must be fully trained before operating authority can be granted to any Mexican bus operation; and
 - (4) U.S. subsidiaries of Mexican companies must be subject to the same standards and reviews as their Mexican parent company.

Mexican Buses Should Not be Authorized to Operate in the U.S.
Absent Reciprocal Treatment of U.S. Buses by Mexico

As you know, on February 6, 2001, a NAFTA dispute resolution panel ruled that the U.S. violated its NAFTA obligations by not implementing the NAFTA cross-border *trucking* provisions. As a result, the Administration has moved forward with a plan, as evidenced by the implementation rules recently proposed by the Federal Motor Carrier Safety Administration (FMCSA), to fully open the border to *both* Mexican *trucks* and *buses* by January 2002.

It is important to note that the NAFTA panel decision concerned only the implementation of NAFTA's cross-border *trucking* provisions and no similar ruling has been issued with respect to the cross-border *passenger* motor carrier provisions. As such, there is no need to hastily open the border to Mexican buses without first ensuring not only their safe and legal operation, but also a level playing field for U.S. competition.

In fact, 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, made evident by the FMCSA's proposed implementation rules, 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.**

H.R. 2299 addresses this issue by simply prohibiting the opening of the border. Likewise, H. Res. 152 addresses the issue by requiring that a reciprocity agreement be reached by Mexico and the United States before operating authority can be granted to Mexican bus operations. **S. 1178, however, does not address this important issue of reciprocity.**

Mexican Buses Must be Certified as Safe
Before the First Day They Operate in the U.S.

The Administration is proposing to authorize Mexican passenger motor carriers to operate in the U.S. for up to 18 months before receiving a safety review. Further, under the FMCSA's proposed rules, those carriers who do not receive a review within the 18 month time frame, will be allowed to operate in the U.S. for an indefinite period until a safety review is conducted. At the same time, the FMCSA recognizes that "Mexican carriers have, for the most part, little or no experience operating under regulations comparable to the [Federal Motor Carrier Safety Regulations (FMCSRs)]" (66 FR 22372).

The results of an audit conducted by the Department of Transportation's (DOT) Inspector General (IG), released in May of this year, back up the FMCSA's observation. Specifically, the report stated that the percentage of Mexican trucks found to have safety deficiencies is 50 percent higher than that of U.S. trucks. (Report No. MH-2001-059, May 8, 2001). Like Mexican trucks, Mexican buses fail to comply with U.S. safety requirements for critical

safety items such as brakes, fuel systems, windows and emergency exits. Currently, there is only one Mexican-manufactured bus model that is known to meet the Federal Motor Vehicle Safety Standards (FMVSS) and the FMCSRs.

Mexican buses must be safe on the first day they are authorized to operate in the U.S. Given the evidence from the IG audit and the observation of the FMCSA that **these carriers do not and are not prepared to conform their operations to U.S. standards**, we cannot allow these buses to operate on our roads and highways for 18 months, or possibly longer, without first determining that they meet our drug and alcohol testing, driver, equipment, hours of service, fatigue and other safety standards. Failure to do so will seriously threaten the safety of U.S. bus passengers and others traveling our nation's roads. All three bills, H.R. 2299, H. Res. 152 and S. 1178, adequately address these safety concerns.

**The U.S. Border Crossing Must be Adequately Equipped and Staffed and
Inspectors Must be Fully Trained Before Operating Authority
Can be Granted to Any Mexican Bus Operation**

As the above-referenced IG study has shown, the U.S. is ill-prepared to handle the inspection and enforcement needs that will result from the increase in Mexican motor carrier traffic entering the U.S. when the border is fully opened. According to the IG, there are only two permanent inspection facilities on the U.S.-Mexico border, both of which are state facilities in California. Of the 25 remaining border crossings, 20 do not have dedicated telephone phone lines to access safety databases, such as those for validating a commercial driver's license. Further, almost all of these inspection facilities lack adequate space to inspect vehicles and/or place dangerous vehicles out of service. In addition, there are not currently enough inspectors to adequately staff border operations.

Despite these obvious deficiencies at our border, the Administration has not proposed a safety enforcement and compliance program that will ensure the safe operation of Mexican carriers authorized to provide cross-border services into the U.S. Such a program must be in place and must be adequately funded before operating authority is granted to any Mexican bus or truck operation.

In addition to being able to stop unsafe vehicles from crossing the border, the U.S. must be

prepared to ensure that the drivers of Mexican-owned passenger motor carriers are legally allowed to operate the authorized service. While the Administration has proposed to allow Mexican drivers possessing a valid Licencia Federal de Conductor (LFC) to operate cross-border bus service into the U.S., it is well established law that passenger motor carriers must use U.S. citizens or resident aliens to provide domestic point-to-point passenger service in the U.S., even if that service is part of an international operation. The U.S. must take steps to ensure that Mexican carriers are not only aware of this restriction, but that they are also in compliance with this important immigration law. To accomplish this, FMCSA must work with the Immigration and Naturalization Service (INS) to develop mechanisms that effectively enforce this law, which protects the safety of U.S. travelers and U.S. worker jobs. Such an enforcement system must be in place, and publicized, before any operating authority, domestic or cross-border, is granted to Mexican-owned carriers.

Again, H.R. 2299 addresses this issue by completely prohibiting the granting of operating authority to Mexican buses and trucks and both H. Res. 152 and S. 1178 would ensure that the U.S. border crossing is adequately equipped and staffed and that inspectors are fully trained before operating authority is granted to any Mexican bus or truck operation.

**U.S. Subsidiaries of Mexican Companies Must be Subject to
the Same Standards and Reviews as Their Mexican Parent Company**

In its proposed rule makings, 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 U.S. 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.

In fact, equal application of these rules to Mexican-owned subsidiaries in the U.S. is necessitated by the recent Memorandum from President Bush to the Secretary of Transportation lifting the moratorium on Mexican owned and controlled companies providing domestic bus service in the U.S. In his letter, President Bush stated that all such entities "will be subject to the same Federal and State regulations and procedures that apply

to all other U.S. carriers." **Unless these Mexican-owned subsidiaries are subject to the same application and review procedures proposed for other Mexican carriers, there will be no way to ensure that these Mexican bus companies, carrying U.S. passengers, are conforming their operations to U.S. standards.**

Further, 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 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. **None of the pending bills, H.R. 2299, H. Res. 152 or S. 1178 address this issue.**

Conclusion

In closing, I again emphasize the unyielding commitment of the ATU to the safety and well-being of the traveling public. It is for that reason, as well as those discussed above, that the ATU is opposed to the proposed opening of the U.S.-Mexico border to Mexican-owned bus operations until such time as our government can ensure to the American people that buses traveling into the U.S. from Mexico, as well as Mexican-owned buses operating throughout the U.S., comply with all safety, health and labor requirements as mandated under U.S. laws and regulations, and until the U.S. and Mexico have come to an agreement with respect to ensuring that the two countries provide the "same treatment" to foreign bus companies operating in each country.

Again, we express our thanks to the Committee for the opportunity to testify on this matter and we look forward to working closely with this Committee, Congress and the Administration to ensure a safe and fair implementation of the NAFTA cross-border passenger motor carrier provisions.