

Michael Yusim
7499 Eagle Point Drive
Delray Beach, Florida 33446

August 29, 2012

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

232889
ENTERED
Office of Proceedings
August 30, 2012
Part of
Public Record

DOCKET NO: MCF-21048

EL EXPRESO GROUP, LLC - ASSET ACQUISITION - CUSA EE, LLC D/B/A EL EXPRESO

Surface Transportation Board,

I am writing this letter in response to:
APPLICANTS' REPLY IN SUPPORT OF APPLICATION AND REQUEST FOR AN
EXPEDITED DECISION (232888)

Counsel makes the following arguments in support of the application for control:

Specifically, on June 13, 2012 Mr. Michael Yusim, a bus driver formerly employed by another Coach America carrier whose assets Applicants do not seek to acquire (Midnight Sun Tours, Inc.), filed a comment complaining about a practice employed by Midnight Sun Tours, Inc.

In light of the fact that there are no credible adverse comments, the Board should promptly find that the transaction at issue in this proceeding is in the public interest under section 14303(b). This will allow the Applicants to assume control of the motorcoach and 4 related assets at issue in order that they may operate their passenger transportation services as quickly as possible for the benefit of the travelling public.

All of the Coach America bus companies, as exemplified by what occurred at Midnight Sun Tours, require their drivers to falsify their records of duty status, by having their drivers log off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2.

Question 2: *What conditions must be met for a CMV driver to record meal and other routine stops made during a tour of duty as off-duty time?*

Guidance:

- 1. The driver must have been relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.*
- 2. The duration of the driver's relief from duty must be a finite period of time which is of sufficient duration to ensure that the accumulated fatigue resulting from operating a CMV will be significantly reduced.*

3. If the driver has been relieved from duty, as noted in (1) above, the duration of the relief from duty must have been made known to the driver prior to the driver's departure in written instructions from the employer. There are no record retention requirements for these instructions on board a vehicle or at a motor carrier's principal place of business.

4. During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing and to leave the premises where the vehicle is situated.

Any log in which a driver logs off-duty during a tour of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2 is a lie; and all of the Coach America bus companies are accepting those lies.

the duration of the relief from duty must have been made known to the driver prior to the driver's departure in written instructions from the employer

What follows is a description of the written instructions that every Coach America bus company must provide its bus drivers, in accordance with Provision 3 in Question 2 of the Guidance to FMCSR 395.2, in order that the Coach America bus drivers be able to log off-duty during their tours of duty. These instructions were taken from the Coach America "Hours of Service Guidance Logging Off Duty during a Tour of Duty" policy, dated August 1, 2007.

A driver must have a written statement, specific to the exact trip that he or she is performing which expressly authorizes the driver to log Off Duty for specific breaks and sufficient time to relieve fatigue during a Tour of Duty, Chartered Trip, Fixed Route or Shuttle.

The written statement should be part of the charter order, printed onto the charter order or attached to the charter order, trip sheet or route sheet, with specifics that relate to that exact piece of work.

The duration of the driver's relief must be a finite time with a starting time and a return to duty time.

The duration of the relief time Off Duty must be made known to the Driver prior to the driver's departure, in writing.

None of the Coach America bus companies, certainly not Midnight Sun Tours, are providing the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2, that are necessary for their drivers to log off-duty during their tours of duty; and yet the Coach America bus drivers are logging off-duty during their tours of duty; and the Coach America bus companies are accepting those logs.

The Coach America bus drivers know that if they do not log off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2, then they will be written up, suspended, and eventually fired; as I was.

Because of the way FMCSR 395.5 is written, the Coach America bus companies enjoy an unfair competitive advantage by requiring their drivers to falsify their records of duty status by logging

off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2.

§395.5 Maximum driving time for passenger-carrying vehicles.

Subject to the exceptions and exemptions in [§395.1](#):

(a) No motor carrier shall permit or require any driver used by it to drive a passenger-carrying commercial motor vehicle, nor shall any such driver drive a passenger-carrying commercial motor vehicle:

(a)(1) More than 10 hours following 8 consecutive hours off duty; or

(a)(2) For any period after having been on duty 15 hours following 8 consecutive hours off duty.

(b) No motor carrier shall permit or require a driver of a passenger-carrying commercial motor vehicle to drive, nor shall any driver drive a passenger-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after—

(b)(1) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(b)(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

[68 FR 22516, April 28, 2003; 70 FR 50071, Aug. 25, 2005]

Any segments logged as off-duty segments during a tour of duty, do not count towards the 15 hour maximum on duty time beyond which a driver may not drive.

Any segments logged as off-duty segments during a tour of duty, do not count towards 70 hour maximum beyond which a driver may not be on-duty during an 8 day period.

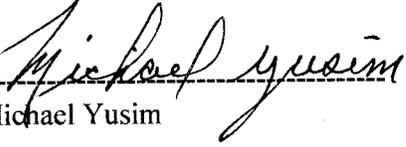
The Coach America bus companies are able to exceed the 15 and 70 hour safety limits, simply by requiring their drivers to falsify their records of duty status, by logging off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2.

Counsel contends that these transactions are “for the benefit of the travelling public”. The travelling public does not benefit by lies; by false records of duty status in which drivers log off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2.

Does El Expreso seek the same unfair competitive advantage as Coach America; by requiring its drivers to falsify their records of duty status by logging off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2?

As a safety precaution in the approval process, can we, the travelling public, at least find out?

Sincerely,



Michael Yusim

cc:

David H. Coburn
Christopher G. Falcone
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036



August 1, 2007

FMCSR 395 – Hours of Service Guidance Logging Off Duty during a Tour of Duty

The General Manager, Operations Manager, Safety Manager and Sales Manager shall be thoroughly trained and well-versed in Hours of Service rules.

A driver must have a written statement, specific to the exact trip that he or she is performing which expressly authorizes the driver to log Off Duty for specific breaks and sufficient time to relieve fatigue during a Tour of Duty, **Chartered Trip, Fixed Route or Shuttle**.

The written statement should be part of the charter order, printed onto the charter order or attached to the charter order, trip sheet or route sheet, with specifics that relate to that exact piece of work. **Distinctive software program has this capability.**

In general, a driver may log Off Duty if:

- The Driver is relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, cargo and passengers. This means the bus is securely parked, there are no passengers onboard and the driver is not responsible for the bus's cargo.
- The duration of the driver's relief must be a finite time with a starting time and a return to duty time.
- The duration of the relief time Off Duty must be made known to the Driver prior to the driver's departure, in writing.

The sales department must work with the client to define break times, meal stops and enroute destination stops in order that these times can be specified on Charter Orders and Trip Sheets.

Prior to a trip's departure, the client should be instructed by the Sales or Operations department that changes to an itinerary which would affect a Driver's Hours of Service are prohibited unless approved by a manager of the company. If the client wishes to make changes to the itinerary while enroute (during a trip or charter), then the client and the driver must (together) attempt to call the Coach America office to obtain approval/denial from a Manager.