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May 15, 2009

BY FEDERAL EXPRESS

Hon. Rose A. McMurray
Chief Safety Officer and Assistant Administrator
Federal Motor Carrier Safety Administration
United States Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

**Re: PETITION TO RE-OPEN Docket No. FMCSA-2008-0312:
Parts and Accessories Necessary for Safe Operation; Grant
of Exemption for DriveCam, Inc.**

Dear Administrator McMurray,

I am regulatory counsel for TWU Local 101 whose members handle customer problems, infrastructure repair and maintenance, safety intervention and facility construction for more than one million gas consumers in National Grid's Brooklyn and Queens territory. On behalf of the Local's Executive Board and Marsha Spinowitz, its President, I write now to petition the Federal Motor Carrier Safety Administration to reopen Docket FMCSA -2008-0312 and temporarily suspend the two-year exemption granted DriveCam therein, pending consideration of the following information that may not have been available to the Agency during its deliberations.

1. Specifically, in August 2008, National Grid ("Grid") had DriveCam Inc. ("DriveCam") install audio/video recorders in some 88 Local 101 customer service vans and trucks.. Grid agreed that the installation would be a pilot to test the efficacy of the devices.

2. From the initial installation, Local 101 drivers complained that the devices interfered with their line of sight and provided a low level but continuing distraction because of green and red lights periodically going on and off.

3. National Grid insisted that it had selected DriveCam's system for its demonstrated superiority in changing risky driving behavior to effect dramatic reductions in vehicular accidents.

4. **Local 101 members did not know that, at the inception of the pilot, their DriveCam units were installed in violation of 49 CFR 393.60(e)(1).**

5. **Indeed, Local 101 only discovered this week that DriveCam had apparently failed to inform National Grid that it needed the exemption which it was seeking even as it positioned its units in Grid vehicles.¹**

6. Unaware of the above facts, and crediting National Grid's confidence in the safety benefits of DriveCam, the affected 101 drivers determined to work around the sight line discomforts and distractions, hoping that results would settle doubts or at least provide a template for next steps.

7. However, when the pilot ended in November, 2008, though the 88 units remained, National Grid invited little discussion, instead proffering conclusory assertions that the promised benefits had materialized.

¹ At a meeting on May 13, 2009, between Grid and Local 101, the Local was told that Grid had learned of the exemption issue from our members on Monday; at that meeting, the Local attempted to get voluntary agreement to suspend installation, pending further review. Instead, starting last night, new cameras were installed.

8. Then, in March of 2009, National Grid informed Local 101 that it Intended to install more than 500 additional DriveCam units in the entire company owned fleet in Local 101's area, only excepting vehicles driven by management personnel who own their cars under a Grid gas and maintenance subsidy program.

9. Members asked, without satisfactory response, why the latter were excluded, and then why such managers, who often travel on company business for more hours and greater distances than 101 crews do, weren't volunteering for a DriveCam installation, if the device enhanced vehicular safety to the degree Grid claimed.

10. That unanswered question naturally led to research on the provenance of the devices – and **the revelation that they had been installed almost 9 months before your Agency authorized DriveCam to do so.**

11. From there, members began measuring the devices in their own vehicles and found that many units were outside even the exemption-permitted area. (See Exhibit A hereto)

12. Finally, the Local began insisting on some quantification of the Company's decision to spend so much of its safety budget on DriveCam, while denying six-month old requests that cars be washed so safety stripes were actually visible; failing to providing flaggers in heavily trafficked areas, requiring construction crew members to stop and climb out of holes to help citizens avoid falling into them; or assuring that outside contractors didn't give safety short shrift because National Grid has insufficient personnel available to monitor ongoing jobs.²

13. Looking for answers, we were struck by the comments of the California Highway Patrol Department in this proceeding, and FMCSA's acknowledgement that "DriveCam did not present specific studies or data showing that safety will not be degraded" by the lower placement. (*74 Federal Register No. 71, 4/15/09/Notices at p. 17550*)

14. Starting from that point, Local 101 began researching the literature in this area. We discovered that in addition to an absence of any evidence supporting the contention that placement of devices inside the windshield within the driver's line of sight doesn't degrade safety, there is a paucity of data suggesting that DriveCam's safety enhancement program yields superior results to less continuously invasive and intrusive approaches like the Smith Program or good driver reward incentives or periodic in vehicle rides by inspectors.

15. Instead, we found largely conclusory and self serving representations of success made by the DriveCam company on its own website. Implicit in the absence of citation to authority or to statistically reliable studies to buttress its efficacy claims is the notion that we should credit such representations, because DriveCam has no reason not to be an objective reporter.

16. That notion, however, is belied by what actually occurred in this case. For surely it is not appropriate for a company to sell its products when it doesn't yet have legal authority to position them in the way that such company claims is essential to deliver the purported benefits.³

17. Our initial review of what disinterested researchers have said has taught us that DriveCam's utility is far from the settled matter National Grid and DriveCam claim. There are many open questions about the value, nature and usefulness of such recording devices in both commercial and

² This last month, because an inspector had to cover four dispersed contracting projects nearly simultaneously, that inspector wasn't present when a contractor failed to turn off two gas services prior to a main purge; happily, the error was caught as soon as 101 crews resumed project operation, preventing a potential disaster.

³ "The restrictions on location of devices mounted in the windshield area significantly degrade the ability to capture the proper viewing area... In inclement weather situations, the video event recorder needs be mounted such that the forward video recording cameras is within the swept area of the windshield wiper in order to obtain a clear forward view.... the current allowed placement for a video event recorder will not have the necessary field of vision, both internally and externally, to provide a substantial enough safety benefit to justify the cost.," DriveCam Letter to Hill: Re: Request for exemption from 49 C.F.R. §393.60(e)(1), *Prohibition on obstructions to the driver's field of view etc.*

residential automobiles – questions that include sensitivity calibrations, record reliability, technical seamlessness and their legal and public opinion implications for citizen and worker privacy.

We close by underlining that Local 101 has long been committed to a safe workplace. Moreover, the union is a recognized innovator in labor-management initiatives, including the creation of an in house construction firm, “BPI” , to compete with outside contractors to lower the cost and improve the quality of our installations. With Grid, over the last fiscal year, entirely without DriveCam involvement, BPI made a signal push on driver safety The effort resulted in a documented 18% decline in Road Traffic Collisions.(See Exhibit B- a Grid Posting on PBI bulletin boards). Still National Grid insists the BPI fleet now carry drive cams, because they purportedly lead to reduced “events.”⁴

In sum, because Local 101 respectfully that DriveCam and National Grid have failed to carry their burden of proof that these audio video recorders provide value that outweighs their negative consequences: from vision interference to increasing drive distractibility that compromise safety to creating an atmosphere where people feel they are being watched by Big Brother,⁵ we are turning to you for assistance.

To that end, we have submitted information we believe is sufficient to warrant at least suspending the exemption you granted, preventing DriveCam from contracting to place or placing its devices in contravention of 49 CFR 393.60(e)(1), demanding that DriveCam produce objective support for its safety claims and continuing the comment period.

We are ready to offer testimony from Local 101 Drivers and any further documentation you may need. Thank you.

Yours truly,



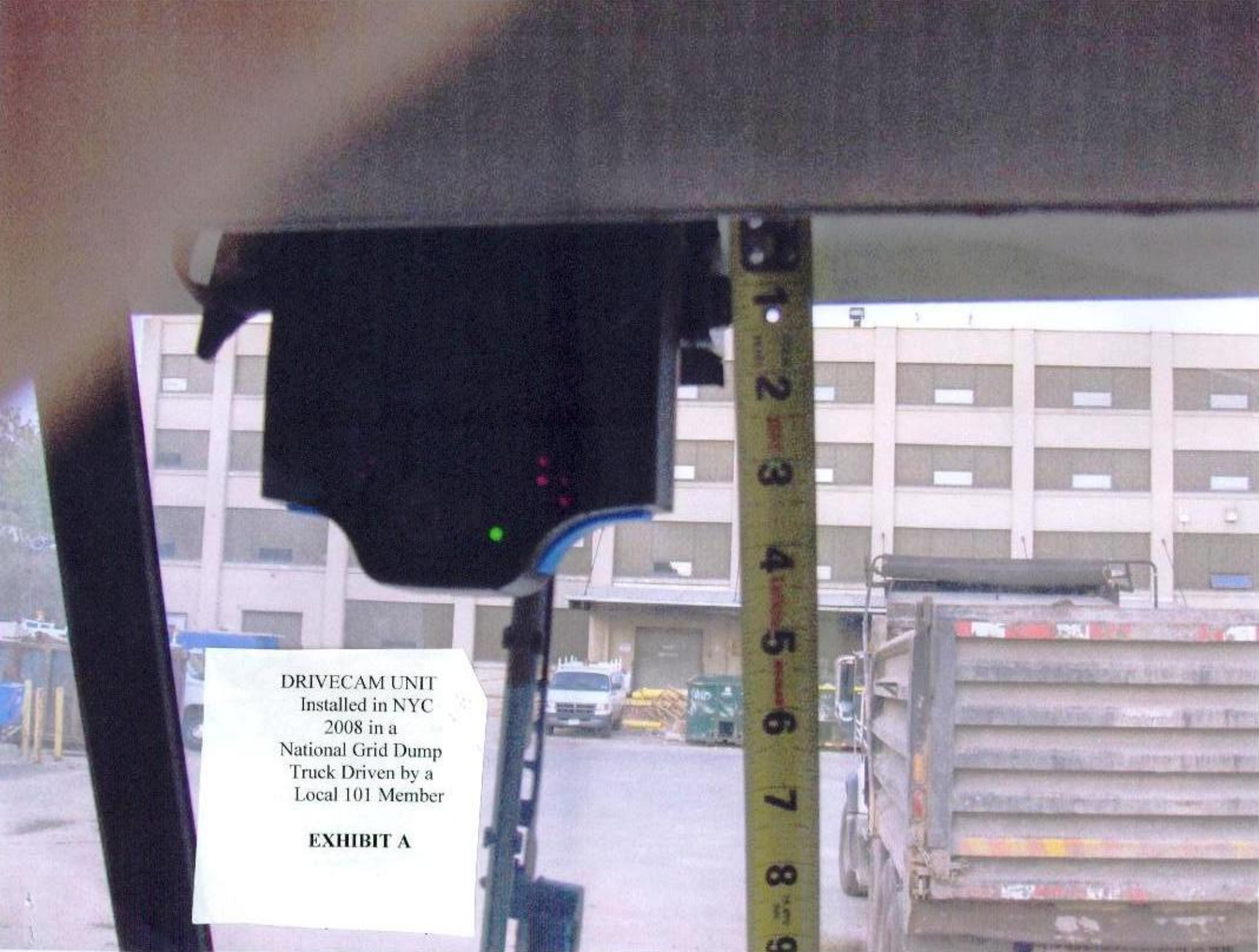
Karen S. Burstein
Counsel to Local 101

Attachments

cc: Local 101 Board of Directors
Marsha Spinowitz, President of Local 101
DriveCam, Inc.
National Grid, PLC

⁴ We are struck by the company’s reliance on data that show decreases in “events” – a measurement tailored to the company’s arrangement with DriveCam and one that reflects what DriveCam reports from the feeds it gets and over which it has complete control.

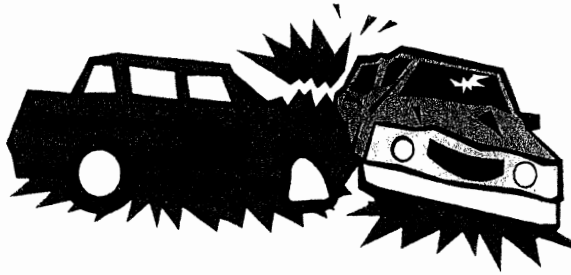
⁵ This concern is not a trivial one. Grid admits the cameras tape for 24 hours before looping, but it assures 101 that very little of video and audio ever actually reach DriveCam people and even less is then returned for National Grid review and use.. However, this past winter there were reported screenings of DriveCam video shorts in Grid field offices not for instruction but to give viewers a good laugh at how their colleagues acted in the driver’s seat. In light of those events and the reality of today’s YouTube environment, 101 members are understandably loathe to believe that Grid can prevent unwarranted, costly, and perhaps dangerous invasions of their privacy.



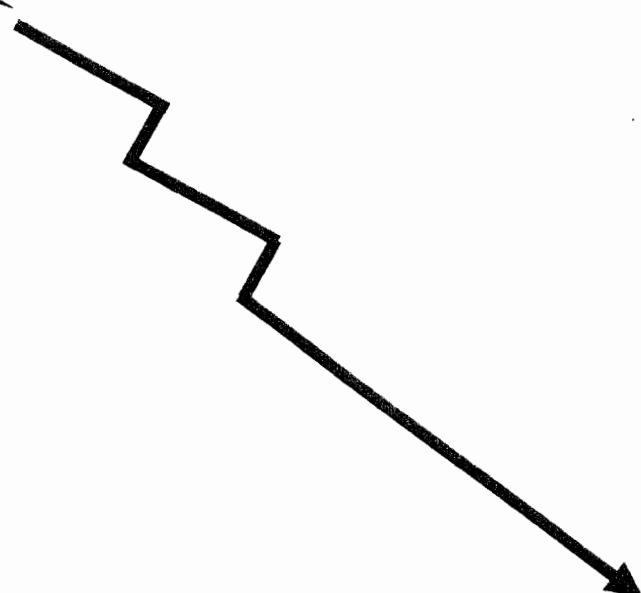
DRIVECAM UNIT
Installed in NYC
2008 in a
National Grid Dump
Truck Driven by a
Local 101 Member

EXHIBIT A

Road Traffic Collisions



Road Traffic Collisions (RTC's) are also down by 18% this fiscal year compared to last.



YTD NYC BPI has 15 RTC.

EXHIBIT B

Docket Information

Docket ID FMCSA-2008-0312

Long Title Parts and Accessories Necessary for Safe Operation; Application for an Exemption from DriverCam, Inc.

Document Information

Document ID FMCSA-2008-0312-0001

Document Title Parts and Accessories Necessary for Safe Operation; Application for an Exemption From DriveCam, Inc

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Government Agency Type

Government Agency

Comments

Please find attached the petition of our regulatory counsel, Karen S. Burstein, Esq., asking that this proceeding be reopened because of information bearing on the safety of present DriveCam units in trucks and vans driven by Local 101 members in the Brooklyn and Queens section of National Grid's New York City utility service area.

We note especially that :

- 1.) approximately 88 units were purchased and installed in fall of 2008, from eight to nine months before the FMCSA granted DriveCam the present two year exemption from 49 CFR 393.60(e)(1); and
- 2.) both then and now the units were and are installed in violation of what even the exemption allows.

We ask the exemption be suspended for further review.

Attachments

DriveCam petition.pdf