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**BEFORE THE
FEDERAL MARITIME COMMISSION**

Comments on Notice of Proposed Rulemaking on Carrier Automated Tariffs

Docket No. 21-03; RIN 3072-AC86

Submitted July 8, 2022

COMMENTS OF GEOFFREY C. POWELL

I, Geoffrey C. Powell, am President of C.H. Powell Company, and its related transportation entity, Tandem Global Logistics USA, OTI 0176 N/F headquartered in Canton, Massachusetts. C.H. Powell Company also has branch offices located in New Jersey, Maryland, Virginia, South Carolina, Georgia, Florida, Louisiana, Texas, Illinois and California.

C.H. Powell Company is an active member of the National Customs Brokers and Forwarders Association of America (NCBFAA) where I currently serve as Chair of the Transportation Committee, one of three principal Standing Committees of the association. I appreciate the opportunity to provide comments on behalf of C.H. Powell Company.

A. Tariff Access Fees

We are in favor of a transparent business environment when it comes to ocean tariffs and support the Federal Maritime Commission's (FMC) position of free access to tariffs. It is incumbent on Beneficiary Cargo Owners (BCO) to understand all costs and rules associated with moving cargo globally. We appreciate the proactive measures the FMC has taken in approving the use of Negotiated Rate Arrangements (NRA's) and Negotiated Service Agreements (NSA's) by the Non-Vessel Operating Common Carrier (NVOCC) community as this better aligns with the current business practices in an ever-changing trade environment. With the increased use of Service Contracts between BCO's and Vessel Operating Common Carriers (VOCC),



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and NSA's & NRA's between the BCO's and NVOCC's, the need for tariff visibility lessens as long as the Rules Tariffs are readily available. However, we believe that providing free access does provide a benefit.

B. Cross-Referencing tariffs

We appreciate the FMC's understanding of the fast-paced, ever-changing market where charges associated with international freight movement are so volatile and can negatively impact the financial situation of NVOCC's. In many instances, the BCO's are working with NVOCC's due to the inability, or unwillingness, to contract directly with the VOCC's, for numerous reasons. In addition to the administrative burden to cross-reference VOCC tariffs by the NVOCC's, the BCO may have a very difficult time trying to understand the rules of each VOCC's tariffs and therefore do not think this is practical. NVOCC's develop a distinct relationship with the BCO and do not want to jeopardize this by pointing to an underlying VOCC's tariff for certain aspects of the movement of the cargo. Although we appreciate the FMC proposing the ability to cross-reference tariffs, we do not believe this is something that many NVOCC's would utilize.

C. Charges passed through by VOCC's

We are in support of the FMC's proposal to allow pass through charges by a NVOCC to the BCO, however there are many instances where there may be a separate line item administrative expense associated with this charge that may also be invoiced. In most instances the cargo will not be released and continue its journey unless payment is made immediately. Some NVOCC's and/or Customs Brokers may pay this on behalf of the customer to expedite movement as a service to the customer, understanding there are other associated costs such as overnight courier, electronic funds transfer fees, accounting resource costs and cash outlay costs which the NVOCC may charge to cover their costs. This additional fee should be a separate item on the invoice from the pass through charge.



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D. Definition of Co-loading

Since co-loading has included both Less-than-container load (LCL) and Full Container Load (FCL), we do not understand why the FMC is only defining one portion of the current definition. Instead of redefining 'co-load' to only LCL, we would recommend that FMC either propose a separate term for FCL co-load, or refine co-loading to be termed as 'FCL Co-load' and 'LCL Co-load'. By redefining 'co-load' as LCL only, it appears that the FMC does not acknowledge or allow for FCL co-loading, and therefore believe further clarification is required.

E. Documentation for Co-loading and other NVOCC Arrangements

Being an active member of the NCBFAA, through our counsel, the NCBFAA has opined on numerous occasions, advising that showing all co-loading parties on the documentation is not only an administrative burden, but also believe that requiring this will not yield the transparency and be beneficial to the BCO that the FMC believes. As the FMC knows, the ocean bill of lading is a contract of carriage between the shipper and the NVOCC who is contracted to move the cargo. The contract of carriage between a BCO and an NVOCC is clear not only per the terms and conditions of the bill of lading, but also stated in the Power of Attorney and separate and distinct contracts, where the BCO provides authority to the NVOCC to move the cargo at their discretion. There are accepted business rules and agreements in place between vendors and customers that have the proper checks and balances that provide equity to each party. In this same manner, an NVOCC who co-loads either FCL or LCL cargo, it is those parties that are subject to the terms of this contract of carriage, the BCO is not a recognized party to this transaction as the master loader is not privy to their name. I do not see the benefit of the BCO's knowing who may be involved with the movement of this cargo if there is no direct contractual agreement between these parties. This commercial relationship between the BCO's and NVOCC's is transacted thousands of times per day and either party has the right to



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change or terminate this relationship at any time. Of the thousands of transactions that occur every day, before any rule making on required annotation to the bill of lading of associated NVOCC's involved with the shipment, I would propose that the FMC provide statistics on how many complaints are received by the FMC regarding lack of visibility by the BCO on co-loading annotations. I would think the administrative burden put on NVOCC's to require a listing of all parties on the bill of lading would far outweigh any benefit to the BCO for a perceived problem.

Respectfully Submitted

Geoffrey C. Powell

Geoffrey C. Powell
President