BEFORE THE
FEDERAL MARITIME COMMISSION

Carrier Automated Tariffs

Docket No. 21-03; RIN 3072-AC86

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COMMENTS OF RICHARD J. ROCHE

I, Richard J. Roche, am employed as Senior Vice President at Mohawk Global Logistics Corp, OTI No. 00395NF, headquartered in North Syracuse, NY. We operate four branch locations across New York State, and five others in New Jersey, Ohio, Illinois, Massachusetts, and Georgia

Mohawk Global Logistics is a member of the NCBFAA where I serve as the NVOCC Sub-Committee Chairman for the Transportation Committee, as I have done for the past 11 years. I am also a member for the National Shippers Advisory Committee where I serve as Chairman for the Ancillary Charges Sub-Committee. Before entering the forwarding side of the business some 28 years ago, I worked for Hapag-Lloyd. As such, I am quite familiar with common carrier tariffs and both VOCC and NVOCC practices.

While I do represent these groups, it is highly anticipated that each may be submitting comments under their name, so the comments recorded here are my own, and reflective of my opinions, and those of Mohawk Global Logistics.

FMC Proposals:

A. Tariff Access Fees - Remove the option for ocean common carriers to charge a fee to access their tariff

We are generally in support of the proposal to remove tariff access fees from VOCC tariffs. NVOCCs (including Mohawk Global), under the requirements of Negotiated Rate Arrangements (NRAs), have been posting our Rules Tariff on our website for many years now for all to view free of charge. For those NVOCCs still filing Rate Tariffs and charging for access, it would be a good time for them to convert to NRAs and NSAs that are structured to be in alignment with normal business practice. We continue to commend the Commission for instituting these measures that simplified the rating process for NVOs – allowing us to work without the archaic requirement to file rates in a tariff that no one ever accessed. The NRA process works brilliantly.

Many ocean common carriers already post tariffs on their websites too. We occasionally view these tariffs, however, not frequently. We find some better than others, not always easy to navigate, but we can usually drill down to get what we need. On some occasions we cannot find what we are looking for because it is either not there, not there yet, or too deeply buried to be

easily found. We do agree there should be no charge for any kind of tariff viewing for all common carriers.

The premise that the FMC is using that "*a competitive and efficient ocean transportation system is dependent on transparency and availability of price information to the shipping public*" may be handled in a better way than requiring ocean common carrier tariffs to be free of charge. Tariffs, used as a transparent rate mechanism, are a tool of the past since the passing of OSRA98 which precipitated the changeover from Common Carriage to Contract Carriage.

Since that time, the bulk of containerized cargo moves on confidential service contracts or spot rates with VOCCs, and in more recent years on NVOCC Service Arrangements (NSAs) and NRAs with NVOCCs. The latter are accompanied by Rules Tariffs offered free of charge on NVOCC's websites. VOCC service contracts however get bogged down in pointing back at what should be obsolete Rate Tariffs that do more to cloud transparency than provide it. Perhaps the better mechanism to ensure transparency is to require that rates and surcharges are spelled out in service contracts, spot rate quotes, NSAs or NRAs prior to time of shipment, more so than to simply make them 'available' if the cargo owner wants to seek out accompanying tariff information. We believe Rate Tariffs are of themselves a roadblock to transparency and should be done away with altogether. All common carriers should be required to disclose all rates and

surcharges in their contractual offerings, and cover rules in their Rules Tariff that cannot be used as a repository, or hiding place, for rates. Rate Tariffs should be eliminated. That would be real transparency.

B. Cross-Referencing Tariffs - Allow non-vessel operating common carriers (NVOCCs) to cross reference certain aspects of other carriers' terms in their tariffs

We are glad to see that this is an optional change instead of a requirement or mandate. We are not likely to support this process for a variety of reasons:

a. We are a service provider to our clients who trust us to make good routing decisions on their behalf. We do the work for them in seeking out best routings that they neither have the time, knowledge, nor relationships that we leverage to provide the variety of service offerings we bring to the table. Our value proposition is doing the work for our clients, not pointing them to the tariffs of the VOCCs we employ on their behalf, that even we find difficult to navigate.

b. We have no desire to purposefully introduce our clients the VOCCs we use, particularly in the current environment where VOCCs have reduced our allocations while going after our own largest clients with their 'newfound space' for direct business, or are otherwise locking us out of our own accounts using bundled service offerings with their 'take it all or get nothing' propositions. We are in a tough market today, and introducing our clients to the websites of our suppliers is not in our best interest

c. We feel this will add undue administrative burden to the tens of thousands of shipments we process annually. We handle some clients with multiple ocean carriers, that compounds the administrative burden. Further, we would undoubtedly have to field more communications from clients struggling to find what they are looking for in tariffs we do not control. This creates additional and unwanted work for us.

d. The thought that *"VOCC-originated surcharges and assessorials must be published in the VOCC tariff 30 days prior to taking effect"* would provide some relief from "*the number of new charges and frequent increases to existing charges that make it impracticable for NVOCCs to provide same day notice*" in our own tariffs, is in conflict with the 30-day administrative extension now permanently given to VOCCs for tariff filing. If we relied on this new optional cross-reference of charges, we could find ourselves pointing to tariffs that have yet to be populated for another 30 days. Further updates of the same charge in subsequent months would also provide more confusion for our clients and administrative burden for us in tracking all changes, filing dates and effective dates.

e. Instead of pointing our clients to tariffs of the VOCCs we select on their behalf, we always have the ability to look it up ourselves and provide the back-up upon request. In our experience, requests for such back-up are few and far between. We keep our clients well informed of market conditions and rate updates.

C. Charges passed through by VOCCs - Clarify the ability for NVOCCs to reflect increases in certain charges passed-through by other entities without notice.

We are generally in agreement with the concept that NVOCCs should be able to pass through fortuitous charges not under the control of ocean carriers in the same manner they pass through such charges. We agree that the charges themselves should not be marked up. We do however wish to note that when pre-paying any charges on our client's behalf, where they are extended a certain amount of time to pay us per a separate credit agreement, it is common practice to apply a nominal disbursement fee to the entire invoice - not intended as a mark-up of charges, but rather to cover the cost of the outlay. Same is true for delinquent accounts where we would also apply a late fee or interest charge for collections, again, not a mark-up of the charges. We feel these are reasonable, but the NPRM is not particularly clear on this, even in Section C.2. Therefore, if any disbursement fees, late fees or interest charges are in conflict with the proposed pass-through wording, we would ask that this be spelled out more completely in the regulations as the application of these fees are normal invoicing policies applicable to the overall invoice, and not specific to pass-through charges..

D. Definition of Coloading = Update the definition of co-loading to apply only to less than container loads

By allowing the term of coloading to go unchecked since its original adoption of the Shipping Act 1984, subsequent reviews by the Commission in 1993 and 1994, and OSRA 1998, the

Commission has allowed the definition of coloading to evolve and become universally understood to include both LCL and FCL shipments. It has clearly become part of the vernacular for the forwarding industry as it has been in constant use that way for the past 40 years. It comes as quite a surprise therefore that the Commission has chosen this time to correct everyone else's understanding of the coloading definition, while still apparently supporting the concept of cooperation between NVOCCs on FCL shipments, without creating a new term to define that practice. If the definition of coloading is to be narrowed to mean less-than-container-load only, then we recommend a new definition be created to define FCL cooperation. Some ideas come to mind:

a. FCL Coloading (changing also LCL Coloading)
b. Chain Loading
c. Progression Loading
d. Sequence Loading

Our first choice above would be to separating coloading definitions into LCL coloading and FCL coloading so the departure from the current industry-wide usage will need only the prefix to determine what kind of coloading or coloader is referred to.

In today's environment of VOCCs withholding allocations from the smallest of forwarders, and limiting allocations for larger forwarders and coloaders, it is more important now than ever before, that NVOCCs cooperate with each other on Full Container Loads. The methodology for this cooperation has never been explicitly spelled out since the inception of the Shipping Act. We struggle with the proper application of Carrier to Carrier agreements and Carrier to Shipper

Agreements, neither of which are sufficiently defined or articulated. Perhaps it is time to scrap specific coloading rules altogether in light of the fact these arrangements have legal standing in the existing NRA or NSA provisions for NVOCCs. If that is too much to ask of the Commission, then perhaps everyone's understanding can be improved with explicit definitions and a set of expectations for both LCL and FCL coloading thereby allowing these practices to conform with whatever new definitions are set forth by the Commission.

E. Documentation for Co-Loading and Other NVOCC Arrangements - Require that documentation be annotated with the names of all NVOCCs involved in a shipping transaction

Referring back to the previous section, the title of this section would have been much clearer if it was written as: **Documentation for LCL Coloading and FCL Coloading.** Or even better written as: **Documentation for Coloading**. Everyone in the industry would have understood what that meant. Perhaps it is the Commission that needs to change its thinking on this point, or removing coloading rules altogether.

Regarding annotation of our bills of lading, We have raised this issue with the Commission through NCBFAA counsel several times now, but failed to get any resolution on it. The plain truth about annotating bills of lading is that few, if any, NVOCCs actually do it for LCL cargo. Now we find ourselves staring down the barrel of this new rulemaking that hopes to strengthen

the annotation process instead of eliminating it, and worse, going multiple levels deep if applicable.. This is not the direction we had hoped the Commission would to go with this.

We agree with the statement: "*Shipments involving multiple NVOCCs encompass a wide and complex range of interactions between parties in the supply chain. The various arrangements made among NVOCCs can provide efficiencies and result in lower transportation costs to the beneficial cargo owner (BCO).*" We disagree with the premise that: "*…co-loading practices have the potential to reduce transparency in the shipping process and can lead to NVOCCs controlling cargo without the knowledge of the BCO".* As we stated in section B above, we are a service provider to our clients who trust us to make good routing decisions on their behalf. We do the work for them in seeking out best routings that they neither have the time, knowledge, nor relationships that we employ to provide the variety of service offerings we bring to the table. Our value proposition is in doing the work for them, not disclosing the relationships we have with coloading NVOCCs so that they might go directly to them the next time allocation gets tight.

For both LCL and FCL shipments, we answer to a higher power than the Commission – we serve our customer through our brand, our reputation, and our bond. We are middlemen, assembling the links of the supply chain in a way that VOCCs and BCOs cannot do. We sell it as our own service, and we stand behind each link of the chain, whether it is a booking agent, a first-mile trucker, a last mile trucker, LCL coloader, or an FCL coloader or two. We deal with reputable companies so we can stand behind our service. We required that the reputable companies we deal

with also deal with the same in their circlesy. We should not be forced to disclose all the links in the chain we assemble. We do not believe we have an obligation to tell a BCO who we partner with. In fact, the vast majority of BCOs do not want to know, or do not care. We have the relationship directly with the BCO and we deliver based on our service offering. We have the leverage to go back through the chain to fix issues as needed. We are the choke point should any problems occur. That is whole purpose of the requirement that carry a bond. We are unaware of any cases that have been brought where prior disclosure of this information would have been any better than disclosure upon request.

Just as our BCO clients trust us, and they do not need to know all the links in the chain we have assembled, so we trust our suppliers. We as NVOs, therefore, do not need to know the identities of who our suppliers are getting allocation from - just that the documentation is properly consigned between parties. We are not privy to that documentation much as our BCO clients are not privy to the underlying master bill of lading that moves their cargo. We cannot and should not have to provide what we are not privy to.

The requirement for annotating documentation with "*the name of all NVOCCs associated with the cargo*" is impracticable and would create a very large administrative burden. The NPRM goes on to say: "*This annotation requirement ensures that, for either co-loaded cargo or full container loads, the BCO has the information required to contact any NVOCC which may have control of its cargo. This information is critical to the BCO, particularly in cases of failure to*

perform by the NVOCC with which the BCO contracted to transport its cargo." This statement is presumptuous at best assuming that simply knowing the name of associated NVOCC(s) would allow transfer of title or control. The cargo is truly controlled by the layer(s) of ladings and how they are consigned. The BCO does not appear on any lading except the final house bill, and thereby knowing the names of other NVOs in the chain would essentially do nothing for the BCO who is unnamed on the interim bills of lading - that are properly acting as master, house, and in some cases sub-master and sub-house. The only lading that will convey cargo to the BCO is the final house bill that carries their name as consignee or assign. The requirement to annotate our bills of lading is an unwarranted and unnecessary intrusion into our business propriety, and such offers our clients no measurable benefit.

Much as the proposed annotation wording requires us to identify other NVOCCs in the chain, but there is no equal requirement to name the VOCC used, who is the ultimate control party based on their issuance of the master bill of lading. The logic of listing other NVOs but not the VOCC uncovers the ultimate inadequacy of the annotation requirement.

The annotation requirement does not impact the largest NVOCCs who can handle their own cargo volumes without the need to use coloaders, nor does it impact master-loading NVOCCs because they are the earliest in the chain. Instead, the annotation requirement disproportionately impacts mid-sized and smaller NVOs who lack sufficient volume or have little access to sufficient allocation, so they must use the services of coloaders and other NVOs.

We view the proposed annotation requirements as a solution looking for a problem to solve. We are unaware of complaints, problems, or cases that have been, or would be, prevented or resolved because the documentation was annotated in such manner. We therefore recommend that the annotation requirements for both LCL and FCL documentation be dropped.

F. Other Proposed Changes to Part 520 - make other miscellaneous updates and clarifications to the regulation.

We support the changes as stipulated in this section without the need for further comment.

Respectfully Submitted,

Richard J Roche

Richard J Roche

Senior Vice President