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Federal Maritime Commission
email: secretary@fmc.gov

Re: Docket No. 22-04, Comments on Demurrage and Detention Billing Requirements ANPRM

Dear Sir/Madam:

Demurrage charges are one way in which ocean carriers abuse their monopoly power over ocean transport.

Demurrage charges are assessed on receivers of containers, and payment is frequently demanded before the steamship line will release the cargo. Particularly when the cargo is perishable, it is as if the cargo is held hostage. If the receiver does not pay any charges demanded immediately, not only does the cargo rot while the charges are under dispute, but demurrage charges will continue to accrue. The only option for the receiver is to pay all charges immediately under protest, and to file a dispute with the carrier.

The carriers assess demurrage based upon contracts made with the shippers, to which the receivers are not privy. Therefore it can be difficult for the receiver to verify the validity of demurrage charges. Moreover, if the steamship line agrees that demurrage has been charged incorrectly, it is unlikely to issue a refund in a timely manner. The receiver normally has to deduct from its next payment to receive timely restitution.

Terminal operators also charge demurrage. Unfortunately, demurrage charges incentivize terminal operators to operate slowly. If the terminal delays our container by a day, we pay an extra charge. This is another unacceptable abuse of monopoly power.

Regarding the specific questions raised in the docket, we have the following comments:

1. Should the Commission include both VOCCs and NVOCCs in the proposed regulation on demurrage and detention billing?

Absolutely there should be one rule that all must follow. If the rules for NVOCCs are more favorable, then the ocean carriers can set up NVOCCs and operate as the latter.

2. Should the Commission include MTOs in a proposed demurrage billing regulation?

Absolutely, as terminals abuse monopoly power by charging extra fees if they operate slowly or otherwise cause unnecessary delays to their customers.

3. Should a proposed demurrage billing regulation distinguish between the demurrage MTOs charge to shippers and the demurrage MTOs charge to VOCCs? That is should the Commission regulate the format in which MTOs bill VOCCs?

One regulation should suffice for all demurrage charges.

4. What percentage of demurrage and detention bills contain inaccurate information, and which information is most often disputed?

It is difficult to give a percentage, but inaccuracies are not infrequent. The number of days of free time is frequently disputed. Availability of containers is also subject to interpretation. If the container is technically available but it is not possible for the terminal to find the container, then the terminal gets to charge demurrage to the receiver.

6. Minimum Billing Requirements All of the information listed in the docket under #6 should be required on the invoice. Also a reference to the contract under which the terms are set, and the parties to this contract.

7. What information or timeframes should be required for VOCC or NVOCC demurrage and detention bills? Should the Commission require different types of information or timeframes?

In the modern world, demurrage and detention bills can be automatically generated every day. There is no good reason to allow demurrage invoices after two weeks from date that charge is incurred. Particularly in the produce industry, shipments are received on consignment, and receivers liquidate and pay the shippers frequently within 45 days of arrival. To receive a demurrage invoice 60 days after arrival is completely unreasonable.

8. Do common carriers invoice multiple parties for demurrage and/or detention charges? If multiple parties are invoiced for charges, should the billing party be required to identify all parties receiving the invoice for the charges?

If this is done, then billing party should be required to identify all billed parties.

9 Should the billing party be required to identify the basis of why the invoice party is the proper party in interest and therefore pable for the charges?

Yes.

11. How long from the point of accrual of a demurrage or detention charge does it typically take to receive a demurrage or detention invoice billing?

It depends. Some carriers and terminals will refuse to release any container until all charges are paid. The cargo is held hostage in this case, and the receiver must pay the charges regardless of whether there is no basis for them, and hope to be reimbursed later. Other times, steamship lines produce charges months later based on some internal auditing process. This late billing is unreasonable.

12. Should the Commission require demurrage and detention invoices be issued with 60 days of the date when the detention/demurrage/per diem stops accruing?

In fact, 60 days is completely unnecessary in the modern computerized world. Demurrage invoicing should be required to occur within two weeks.

13. Should the Commission require specific information be included on the invoice regarding how to dispute a charge?

Certainly. In particular, how exactly to dispute the charge, including contact information for a real human being who can investigate validity. Moreover, steamship lines should be required to respond to disputes within a fixed amount of time, say two weeks.

14. How long from the point of dismissal of a charge does it typically take to receive a refund?

In our experience, we receive credits to our account. Refunds are rarely if ever issued.

Very truly yours,
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