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Global Logistics, LLC

BEFORE THE
FEDERAL MARITIME COMMISSION

Comments on Advanced Notice of Proposed Rulemaking regarding
Demurrage and Detention Billing Requirements

Docket No. 22-04; RIN 3072-AC90

Dated March 17, 2022

April 15, 2022

COMMENTS OF JAMES S. SHAPIRO

I, James S. Shapiro, am the Owner/Director of Thunderbolt Global Logistics, LLC OTI No. 021287NF based in Baltimore, MD. Thunderbolt Global Logistics, LLC is a member of the National Customs Brokers & Forwarders Association of America (NCBFAA). My company is a freight forwarder/customs broker/NVOCC with 16 employees. We deal with container demurrage and detention on a regular basis.

The need to have a more unified approach to demurrage and detention (D & D) billing practices is long overdue. I don't think anyone in our industry believes that D & D should be eliminated. We understand that marine and rail terminals are not warehouses where containers can just sit and wait to be picked up without any monetary penalty.

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Demurrage and detention are costs that should be borne by the cargo owner if they can't work within the free time schedule of the port and ocean carrier's requirements. It should not be a charge that is arbitrary and left open to interpretation. It should also not be a profit center for ocean carriers and terminals. It should be a way to incentivize the cargo owner to pick up and return ocean containers in a timely and consistent manner.

I will answer each of the numbered questions using the same number for the responses so as not to repeat each of the questions in my response:

Section A: Scope

1. The Commission should not include Non-Vessel Operating Common Carriers (NVOCC's).in the proposed regulations unless the NVOCC is adding additional D&D charges to make a profit. D&D charges are invoiced by the ocean carrier and/or marine or rail terminal. Who they invoice is not consistent especially for container detention. Sometimes the ocean carrier invoices the NVOCCs who is the consignee on the ocean bill of lading or the trucker who picks up the container is invoiced for detention.

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2. The Commission should include marine and rail terminal operators in the proposed rulemaking because they typically invoice demurrage charges in most cases and need to be part of equation in coming up with streamlined rules. They have accurate information on when a container was picked up and returned (though not always at the same place). Most of the time the empty import container is returned to the same location where it was picked up but not all the time. Even with that both the marine terminal and rail terminal operators should be included.

3. There should be as part of the regulations a way to distinguish between demurrage that marine terminal operators charge to a shipper/importer/exporter and demurrage that they charge the ocean carriers. The Commission should regulate this format, and investigate both the ocean carriers and terminal operators to see if they are unfairly profiting from D & D.

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4. Invoices for D & D should be very clear on how the charges are being applied based on the dates involved. There are reasons beyond the control of a cargo owner on why a container has fallen into demurrage or accrued detention. A major reason is lack of an available pier appointment or a U.S. government hold. The container could be in an area of the port or rail terminal that was not accessible through no fault of the cargo owner. I would say we don't dispute charges to often because we feel it's a losing battle. Ocean carriers and marine/rail terminal operators have a shoot first and ask questions later policy so you have to pay and then fight it out later.

5. There is no consistency in definitions from one ocean carrier to the next, or one marine terminal operator/ rail terminal to another, regarding demurrage & per diem. Usually it's the marine terminal operator that invoices for demurrage for containers that are not picked up timely at the terminal or delivered to early for an export vessel or the railroad that charge storage for containers that are not picked up timely on their terminals. Ocean carriers typically charge detention, per diem, and sometimes demurrage for the time that containers are not returned timely. We can be billed twice for the same charge (mostly demurrage). As I have said detention is often invoiced to the trucking company but again this is not consistent among the ocean carriers.

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6. All the fields listed in Section 6A through 6L should be required on all demurrage and detention invoices so that the charges are clearly understood by the bill to party. A section for dispute resolution for be indicated on all invoices with a reasonable amount of time to lodge such dispute. A certification that the invoice that is compliant with the Shipping Act, much like is being proposed within OSRA21 and OSRA22 in the House and Senate should be on the invoice.

7. The billing practices of ocean carriers and terminal operators is inconsistent and that is putting it mildly. We have received invoices for demurrage and detention months after a shipment has been completed. In most case demurrage payments are required in advance of cargo release. When D & D doesn't impact the immediate release of a shipment you never know when you receive an invoice form the carrier or terminal operator. It could be 1 month, 2 months, 6 months or even a year later. Our ability to invoice the correct party for the charges is much more difficult the longer we have wait for an invoice. The FMC should introduce standards for invoicing D & D. A best business practice of 15 days or 30 at most for invoicing would be a reasonable policy. The invoicing party can't have an unlimited time to invoice these charges. If they don't invoice within 60 days then they should forfeit the ability to collect the charges.

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8. We don't really know if ocean carriers or terminal operators are invoicing more than one party for D & D. If they do it is wrong. This is a practice that should not be allowed.
9. There should be justification on why the carrier or terminal operator is billing a certain party for charges due. Customs brokers, freight forwarder and NVOCC's are often invoiced for charges but have nothing to do with that aspect of the shipment. They are invoiced and can have their credit jeopardized if they don't pay a charge that is not for their account. They have no interest in the goods yet they get charged.

10. We suggest that Marine and/or rail terminal operators invoice demurrage and ocean carriers invoice per diem/detention. That would clarify who is responsible to invoice the specific charge. Demurrage tariffs can vary by port/rail terminal. An ocean carrier could invoice demurrage charges and the terminal operator may not because they have different free time requirements for the same charge. We often see ocean carriers bill demurrage at rail terminals in addition to the demurrage being billed by the railroad. This is unfair as the importer is being invoiced twice for the same charge. An ocean carrier should not be billing demurrage charges if the terminal is not charging it. It should not be a profit center for an ocean carrier.

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11. Demurrage payment is usually in advance of freight release. Cargo cannot be picked up unless the charge is paid. The terminal operator won't always know who should be the bill to party so they will collect the money from whomever can get it to them the fastest. They rarely issue an invoice for payments that are made in advance and this is a practice that should change. Any amount that is paid should have a corresponding invoice sent to the party that pays the charge for record keeping purpose and for any dispute that may arise. Payments are often made by credit card or through a third party payment facilitator. Some terminals allow a guarantee by e-mail and will invoice the paying party if they have credit established.

12. The Commission should require D&D invoicing to be done timelier. 14-21 days would be reasonable. Invoicing after sixty days should not be allowed and considered time barred much like an insurance claim if it submitted too late.

13. The Commission should require that every invoice list a dispute email address or web address, including links to any form(s) that must be filled out. There should be clear guidelines in how a dispute can be resolved. We typically have to pay and then dispute later so the money is already outlaid. If there is a dispute it

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would be helpful that payment not be required until resolved. A notice in writing that the dispute has been accepted or declined and the reason for decline should be required.

14. Refunds are paid when the carrier or terminal operator wants to do it. It's rarely within 30 days. It can take anywhere from 3-6 months to receive a refund. The Commission should require that dispute refunds be paid within 15 days.

15. Most shippers and NVOCC's are not part of the UIIA. That is really for truckers and terminal operators. This should be taken up separately.

16. Current D&D billing practices are all over the place. There is no consistency by carrier or terminal. In a lot of cases when a payment is made in advance we never receive an invoice documenting the charges. We pay the charge, cargo is released and that's the end of the story. There should be an invoice generated for any charge that is paid whether in advance or not. It is very difficult to overturn D&D charges once they have been paid. Ocean carriers do it their own way. Rail terminals are very hard to work with and the Commission should include them in all demurrage discussion policy.

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It's hard to know where to go for any dispute. All carriers, marine terminal operators and rail terminal operators should have clear instructions on how to dispute a charge and what their requirements are to dispute a charge. The Commission should put pressure on the carriers to make sure they have a clear and concise way for the public to dispute a charge. It can't be pay first and then we'll see later what can be done.

Additionally, the Commission should look more closely into regulating the application of D&D charges during periods of a government hold on a shipment. Carriers charge demurrage and detention when an importer cannot pick up or return a container. This is unfair. The carrier will argue they need the container back and must charge demurrage and detention. There should be a moratorium if there is a government hold that causes the container to get "stuck". Some holds are particularly costly when multiple containers are moved on the same bill of lading, All containers are penalized for the time it takes to examine the cargo while only one may be the target of the inspection. The Commission should consider a regulation that where containers that undergo certain government inspections do not incur D&D charges. This is how it is handled in Long Beach.

Respectfully Submitted,

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Director

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