

**BEFORE THE
FEDERAL MARITIME COMMISSION**

**PETITION OF THE COALITION)
FOR FAIR PORT PRACTICES FOR)
RULEMAKING; NOTICE OF FILING)
AND REQUEST FOR COMMENTS)**

**DOCKET NO.
P4-16**

COMMENTS OF JOHN ATKINS, PRESIDENT, GCT USA

I thank the Commissioners for giving me the opportunity to present live testimony at the public hearings held on the above-referenced Petition on January 17, 2018. In general, these comments were presented as my live testimony but I am submitting this document to the Docket for the benefit of those who were not in attendance at the hearings and to add information that was not included in that testimony. I am the President of GCT USA, a subsidiary of GCT Global Container Terminals, Inc. GCT USA operates two Green Marine-certified marine terminals in the United States—GCT Bayonne and GCT New York.

GCT Bayonne and GCT New York are members of the Port of New York and New Jersey Sustainable Services Agreement and Port of NY/NJ—Port Authority/Marine Terminal Operators Agreement, which are FMC-filed discussion agreements¹ that focus on matters relating to promoting environmentally-sensitive, efficient, and secure marine terminal operations. These agreements have submitted comments to the docket on this issue and I respectfully refer the Commissioners to those comments.

I am also the Chairman of the Sustainable Services Agreement and the President and Chairman of the Board of Sustainable Terminal Services, Inc., known in the industry as STS. STS is a non-profit corporation created by the six container-terminal-operator members of the Sustainable Services Agreement for the purpose of developing and implementing an RFID-based technology platform to identify trucks entering the terminals as a means of enhancing terminal security and efficiency. I will discuss the about the work of STS and how GCT has leveraged its technology platform to dramatically enhance terminal velocity in these comments.

In addition, I also Chair the Gate Operations Team of the Council For Port Performance or CPP, which was formed by port industry stakeholders in the Port of New York and New Jersey to provide oversight on the implementation of programs and initiatives to improve efficiency and service reliability. The CPP was an outgrowth of the Port Performance Task Force or PPTF, which was created in 2013 in response to a convergence of factors that created obstacles to the smooth flow of cargo in the Port of New York and New Jersey. I am proud to say that the PPTF was conceived of and its implementation facilitated under the Sustainable Services Agreement.

¹ See FMC Agreements Nos. 201175 and 201210.

At the risk of being accused of being a “suck up,” I think it is important to thank the Commissioners and the staff of the FMC for the work they do in fostering Cooperative Working Agreements among entities subject to the Shipping Act. Many of the operational efficiencies that GCT USA as a company has been able to enjoy and present to the shipping community have had their genesis in FMC-filed agreements. While the Shipping Act creates obligations, it has also provided opportunities that have spawned innovation that have obviated the need for the draconian measures suggested by the Petition.

Purpose of Comments

I oppose the Petition at issue that seeks to shift to MTOs the legal, operational and financial risk for delays caused by port congestion, port disruptions, government actions, or weather. The Petition addresses commercial matters that are best addressed through commercial relationships and arrangements. It proposes a one-size-fits-all inflexible solution for a problem gleaned from exaggerated port circumstances that have not been replicated recently. The Petition primarily focused on events related to West Coast labor issues in 2014 and extraordinary weather conditions on the East Coast in 2014. While I will not address matters pertaining to the West Coast, I can tell you that stakeholders in the Port of New York and New Jersey have collectively addressed the issue of potential weather-related delays. Under the auspices of the Port Authority, port stakeholders including Customs and Border Protection, MTOs, IEPs, Railroads, and the Motor Carrier community participate in Planning Conferences in advance of and during weather-related events. During these conferences a unified plan of action is discussed taking each stakeholder’s views and circumstances into consideration. It is a collaborative process. Notwithstanding issues related to the deployment of snow removal equipment and the necessary salting of roads, a mechanism has also been created whereby the MTOs can individually assess whether weather conditions warrant the extension of free time for containers not already in demurrage. In addition, the Port Authority does an excellent job in sending out blast emails to the port community with periodic updates on port conditions. As a matter of fact, this plan was exercised just last week. The Winter Weather Plan is but one successful non-regulatory solution to limit port delays arrived at through collaboration and discussion among stakeholders.

The relief suggested by the Petition is not necessary. In fact we fear that the proposed regulations will:

- forestall or reverse the significant progress that has been made in addressing port delays;
- offer disincentives for retrieving containers in a timely manner creating terminal delays; and
- increase complaints and disputes that will have to be heard by the FMC.

Current FMC procedures provide appropriate recourse to the shipping public in the event of abusive practices.

Company Background

This issue is all about terminal velocity. In 2011, GCT Bayonne embarked on an approximately \$350 million terminal-expansion project building the most advanced terminal on the East Coast. Among other things, the project included the construction of a new berth, a new gate complex, a container-yard expansion, and an expanded M&R facility. Every dollar spent on this project was spent with the goal of ensuring safe, reliable, and consistent cargo handling with decreased processing time for over-the-road truckers calling the facility. Our goal was to ensure that cargo is never delayed. At the heart of the terminal is the semi-automated Rail Mounted Gantry Crane yard, which was designed to facilitate easier approaches and departures for truckers. In furtherance of increasing terminal velocity and to ensure that truckers can get in and out of GCT Bayonne quickly, easily, and above all, safely, each gate is outfitted with Optical Character Recognition software and RFID technology. This has resulted in a more efficient process for truckers and a safer work environment for everyone. This project is now complete.

Because of its unique location in the Port that does not require Bayonne Bridge air draft clearance, GCT Bayonne was the only terminal in the Port of New York and New Jersey to receive and service the new class of large containerships. To handle these vessels efficiently and as needed, GCT Bayonne would open as a standing order on Sundays without charge to the stakeholders utilizing the terminal on Sundays.

Using a FMC-Filed Agreement to Drive Innovation

In addition to the physical enhancement of GCT Bayonne, the terminal upgraded its systems technology. Certain aspects of the systems technology at GCT Bayonne is inter-related with a technology platform created under the Sustainable Services Agreement. Since its inception, the members of this discussion agreement have addressed important matters concerning:

- the reduction of polluting air emissions from cargo handling equipment;
- promoting the Port of New York and New Jersey as an attractive destination for cargo interests;
- enhancing marine terminal security;
- reducing terminal congestion by providing the shipping community enhanced transparency in the cargo transportation process; and
- enhancing terminal velocity through the deployment of a truck reservation system.

It is the port-wide cargo information portal and truck reservation system that will be the focus of these comments.

Not long after the Sustainable Services Agreement was established, discussions about security ensued. The members noted that there appeared to be a gap in the layered approach to facility security envisioned by the Maritime Transportation Security Act of 2002 or MTSA. MTSA laid the foundation for what has become the TWIC program, which requires the positive identification of individuals seeking unescorted access to marine terminals. It also requires cargo security and access control procedures. What was missing in this regime was positive

identification of the over-the-road trucks seeking access to terminals. To fill this void, the Agreement created STS to develop and implement a RFID-based truck identification and tracking system. It was anticipated that captured information from this system could be used to provide early warning of suspicious activity as well as a forensic tool in criminal investigations. Moreover, the system was to have the functionality to enable STS member-companies, at their own discretion, to restrict access to their facilities to those truckers with an appointment to pick-up or deliver cargo.

The Port Authority also saw this RFID-System as a potential means of enforcing compliance with its Clean Truck Program. Environmental concerns are of great importance to my company and the members of the Agreement. Thereafter, it was also further noted that the System could be leveraged to create a web-based terminal information portal that would provide greater transparency to cargo interests and the motor carrier community in seeking information about the availability of expected containers.

Enhanced Cargo Information Available

That portal, now known as TIPS, was established in September of 2015. TIPS was the first-of-its-kind information system designed to enhance terminal efficiencies by reducing uncertainty regarding container availability and unnecessary “trouble ticket” transactions. While the Petition is based on the faulty premise that all matters attendant with port delays are “beyond the control of the shipper, receiver, or drayage provider,” in fact shippers, receivers, and drayage providers exercise a great deal of control and do not necessarily utilize tools provided by MTOs to hasten terminal transactions. Often drayage providers dispatch truckers to marine terminals before containers are available for pick-up or without ensuring that outstanding charges have been paid and necessary releases issued. The Port Authority has reported that “seven of the top 10 causes of trouble tickets in the Port of New York and New Jersey can be avoided by checking TIPS in advance.”² In addition to general information regarding port wide matters and terminal-specific announcements regarding special conditions or changed operating hours, TIPS provides information about container availability and location, regulatory holds, any charges or demurrage as well as the status of free time. The United States Department of Commerce has singled out TIPS as one of its “Best Practices” for improving the Nation’s competitiveness.³

TIPS is noteworthy because it was implemented by MTOs not as the product of government regulation but as a commercial solution created with input provided by cargo interests and the port drayage community. TIPS provides cargo interests and the motor carrier community a one-stop on-line tool to assist them in managing their business in the port.

² Alan M. Field, *Port of New York and New Jersey Inaugurates the TIPS System* (September 2015) at 4 available at https://www.panynj.gov/port/pdf/JoC_WP-NYNJ0915-v3.pdf.

³ *Improving American Competitiveness: Best Practices by U.S. Port Communities*, 21st Century U.S. Port Competitiveness Initiative, U.S. Department of Commerce, December 2016 at 12, available at <http://trade.gov/td/services/oscpb/supplychain/acsc/resources/documents/USDOCBestPracticesByUSPortCommunitiesReportFINAL2017.pdf>.

TIPS, which has been made available to the shipping public at no cost, has been well-received. The success of TIPS has prompted STS to work with its system developers to enhance its information capabilities. Projects like TIPS are consistent with the mission of FMC and efforts of the Commissioners in encouraging commercial solutions to supply chain challenges. TIPS, which is now being followed by other regional information portals, is consistent with the notion of a nationwide information portal considered by Supply Chain Innovations Teams project authorized by the Commission and spearheaded by Commissioner Dye.

There was a great deal of discussion from the proponents of the Petition at the hearings that suggested that cash is being demanded at the gates of terminals for demurrage and that cargo interests have no recourse but to pay up at the gate or their cargo will be held hostage. This situation is not the norm as most BCOs have accounts with the terminals. Moreover, as was noted during the Ports and Terminals Panel, demurrage charges are known by the cargo interest well in advance of a terminal call. If a drayman is dispatched without notice to the drayman of the potential charges, that is not a matter that can be ascribed to the fault of the MTO. In the Port of New York and New Jersey, this scenario should never happen if the draymen are utilizing TIPS and the information provided by the particular terminals regarding the status of available cargo. Cargo interests have the ability to dispute these charges in advance of dispatching a drayman and they utilize the avenues provided for this. While the system might not be perfect 100% of the time, for the overwhelming majority of the millions of containers that are handled in our Nation's ports every year, the system works efficiently and in a cost effective manner.

It was also stated that cargo interests have no control over the terminal that handles their cargo. That is not accurate. I have personally hosted terminal tours for numerous BCOs, who are looking to ensure efficient handling for their cargo. While high-volume shippers may have more options than small companies, there is still a great deal of choice when shipping cargo. GCT Bayonne and its MTO colleagues in the Port of New York and New Jersey are working extremely hard at innovative solutions both collectively and individually to ensure highly-efficient service to all cargo interests. In the end, it is the quality of its service that will determine a MTO's return on its investment.

In addition to its involvement with implementing TIPS and in furtherance of supply chain information transparency, GCT Bayonne is currently in preliminary discussions with GE concerning its Optimizer Project that is anticipated to provide enhanced visibility throughout a shipment's transportation life cycle.

Truck Reservation System

Building on the TIPS platform, GCT Bayonne implemented a Truck Reservation System in January of 2017. In the first few weeks of operation appointments were limited to 6:00 to 8:00 am. Appointments span a two-hour window. Shortly after implementation, the demands for appointments increased dramatically and periodically throughout the past year the window for appointments has grown. Currently, access to GCT Bayonne is only available by appointment from 6:00 am to 1:00 pm. After 1:00 pm trucks without appointments are welcomed at the terminal. While this system has been in effect for a short period of time, dramatic performance enhancements have been realized even during non-appointment hours. Cargo interests and

draymen that may have in the past been reluctant to embrace reservations have articulated a positive response to this new protocol for terminal access. GCT understands that changing behaviors is not something that can be achieved overnight; therefore it proceeded carefully in implementing this system. While GCT does not assert that a truck reservation system is right for all terminals, it has worked at GCT Bayonne.

Trucker utilization has dictated the extension of appointment time-slots. The company credits much of the success of the implementation of the reservation system on its early outreach to the motor carrier community and bringing them into system design brain-storming sessions. On October 5, 2017, *The Journal of Commerce* reported that “Once skeptical of appointment systems, truckers at the Port of New York and New Jersey said GCT Bayonne’s system has slashed turn times to the extent that dual transactions can sometimes be completed in an hour compared with twice that or more in the past.”⁴ One factor that has helped improve the program is the reduction in appointments that are booked but not used. We urge truckers that are unable to use an appointment to notify us in advance so that the appointment can be offered to others. That effort has helped reduce the no-show rate from 15 percent early on in the program to less than 5 percent now. Speaking of “no-shows,” we do not impose fees for missed appointments or for making initial appointments. On the rare occasions that deterrents are necessary for repeat offenders, we suspend them from making reservations during the peak 6:00 to 8:00 am time slots for a period of time. What we have seen thereafter are these former offenders becoming diligent in keeping appointments to ensure that they are restored to full privileges. Moreover, GCT incentivizes highly-compliant drayage operators by giving them access to additional appointment blocks when needed.

Steve Schulein, vice president of drayage and industry relations at the National Retail Transportation in North Bergen, New Jersey in commenting on the reservation system has stated, “Any time you implement something new, there is always going to be glitches here and there,” ...“But as far as I am concerned, and most of the trucking community, we have improved our turn times, we can plan our operations better.”...“We can plan our drivers, our appointments and everything else. So as far as I am concerned, the appointment system works.”⁵ GCT Bayonne has recently received awards from World Trade Week for Global Logistics for its terminal expansion project and from the Intelligent Transportation Society of New Jersey for its truck reservation system. We are just as proud of a testimonial from a happy drayman as we are of these industry honors.

⁴ Hugh R. Morley, *NY-NJ Truckers Warm to GCT Bayonne’s Appointment System*, *Journal of Commerce*, October 5, 2017 available at: https://www.joc.com/port-news/port-productivity/ny-nj-truckers-warm-gct-bayonne%E2%80%99s-appointment-system_20171005.html

⁵ *See id.*

Conclusion—Relief Sought by Petition is Inappropriate

Several years ago our parent GCT Global Terminals, Inc. embarked on a proactive effort to enhance velocity at all of its terminal facilities. The measures implemented were unique to the circumstances of and challenges faced by each particular terminal. It has been said, that “when you have seen one terminal, you have seen one terminal.” For GCT Bayonne the answer was semi-automation, RFID-based software systems, and a truck reservations system. For its sister terminal in Staten Island, New York the answer has been enhanced cargo information, efficient on-dock rail operations and an on-dock Container Examination Station. In my experience, it is clear that the biggest impediments to terminal velocity are containers stowed on the facility for prolonged periods of time. Having to position and re-position idle containers over and over again slows down the delivery of containers to truckers waiting for them. Marine terminals cannot be treated as storage facilities, marine terminal space is limited. Extended free-time is a detriment to terminal velocity. There must be an incentive for cargo interests to retrieve containers in a timely-manner. Even the FMC has noted that landside productivity consequently declines when equipment operators have to move multiple containers to access the desired container.⁶

Absent from the Petition is recognition that cargo interests have a great deal of control over the supply chain. Cargo interests can pick and choose the ports, ocean carriers, marine terminals and inland carriers they utilize for the arrival and departure of their cargo. If cargo interests fail to exercise their choice in selecting carriers who offer more favorable demurrage or detention terms or service levels, that is a commercial choice and not a reason for government intervention into commercial relationships.

My company and MTOs throughout the country have collectively invested billions of dollars in enhancements to their facilities in order to efficiently service the larger containerships and to improve landside service. These terminals are fixed in their locations and cannot move. In order to realize a return on their investments these terminals must provide the level of service that satisfies the needs of their customers. At one time our ocean carrier customers’ concerns were solely focused on vessel productivity. Now, our customers want to be assured that our landside service is consistent and efficient as well. Because customers can exercise choice if a terminal’s service is not efficient, MTOs are highly motivated to service port draymen in a time-effective manner and to clear their terminals of congestion-causing containers.

The remedies suggested by the Petition are just cost-shifting measures that will in fact exacerbate the problem. Adopting the relief suggested by the Petitioners will remove any incentives on the part of cargo interests and port draymen to retrieve cargo and return equipment in a timely-manner. The complained of demurrage does not compensate a terminal for the exponential negative productivity impact for the failure to timely-retrieve containers and this conduct should not be rewarded with regulatory exoneration.

⁶ See *Report: Rules, Rates, and Practices Relating to Detention, Demurrage, and Free Time for Containerized Imports and Exports Moving Through Selected United States Ports* (April 3, 2015) at 21.

For the reasons cited herein, the Commission should deny the Petition and continue its efforts in addressing port congestion and delays by fostering commercial solutions similar to the described herein.

Respectfully submitted on behalf of John Atkins,

/S/Carol N. Lambos

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January 31, 2018