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BEFORE THE
FEDERAL MARITIME COMMISSION

Docket No. 10-03

Comments on NVOCC Negotiated Rate Arrangements

Joint Written Comments Submitted by

BDP Transport, Inc.

CaroTrans International, Inc.

Mallory Alexander International Logistics, LLC

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VENABLE LLP
Counsel

June 4, 2010

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I. Comments on NVOCC Negotiated Rate Arrangements

A. *Introduction*

BDP Transport, Inc., CaroTrans International, Inc. and Mallory Alexander International Logistics, LLC (“Joint Commenters” or the “Companies”), respectively licensed Ocean Transportation Intermediaries,¹ hereby submit these Comments to the Federal Maritime Commission (“FMC” or “Commission”) in response to the publication of the Commission’s proposed rule in Docket No. 10-03 (“Proposed Rule”). The Joint Commenters strongly support the adoption and timely implementation of the Proposed Rule.

The Joint Commenters each serve shippers of all sizes (including Beneficial Cargo Owners and other transportation providers) in the foreign commerce of the United States. The Companies provide a full-range of diverse multimodal transportation solutions to U.S. and foreign-based shippers, including:

- Full Container Load and Less-than Container Load services;
- Consolidation and distribution;

¹ BDP Transport, Inc., CaroTrans International, Inc., and Mallory Alexander International Logistics, LLC hold FMC Ocean Transportation Intermediary license nos. 015908, 016017, and 000172, respectively.

- Neutral NVOCC services; and
- Integrated intermodal transportation solutions.

Collectively, the Companies handle in excess of over 200,000 TEU's² in all of the major North-South and East-West trades on an annual basis.

II. Support for Proposed Rule on Tariff Exemption

By exempting Non-Vessel-Operating Common Carriers (“NVOCCs”) from the present requirement to establish, publish, maintain and enforce tariff rates for ocean transportation, the Commission will adopt an appropriate and long-sought recognition of current global supply chain realities, and will act to rectify certain inconsistencies in the regulation of NVOCCs vis-à-vis other classes of services providers in the industry.

A. The Ocean Transport Industry Continues to Evolve

Since the implementation of the Ocean Shipping Reform Act of 1998³ amendments to the Shipping Act of 1984, over 90%⁴ of shipper dealings with ocean common carriers are in the form of confidential service contracts. NVOCCs need this same contracting authority that direct service carriers have when dealing with shipper-customers. The Proposed Rule will allow NVOCCs to price contracts in a manner that is appropriate to the particular transaction, and will allow the Joint Commenters and others in the field to eliminate costs that have proven unnecessary in the modern shipping environment. While we trust that the tariff publication rule was appropriate for its time

² This figure is based on calculations of the Companies factoring into consideration internal lifting reports and external data sources, such as publically available data as released by U.S. Customs and Border Protection.

³ Pub. L. No. 105-258, 112 Stat. 1902.

⁴ This figure is a general statement based on public documents and studies detailing the impact of the Ocean Shipping Reform Act of 1998 on the liner industry. *See generally* THE OCEAN SHIPPING REFORM ACT: AN INTERIM REPORT (June 2000); and OSRA IMPACT STUDY (September 2001).

when implemented decades ago, the reality of the NVOCC business today is that customers simply do not inquire as to the rates filed with the Commission, making such filed rates effectively without purpose.

B. *Continued Financial Burden of Tariff Publication*

Despite this fact, NVOCCs (collectively) spend countless amounts of funds on publishing rates that ultimately do not hold relevance to either the customer or NVOCC in the formation of a contract. The reality of the situation is that customers consult with multiple carriers directly, generally by email or telephone, in search of the best quote. This process typically occurs without any consultation at all of the rates made publically available by FMC rules and the Shipping Act.

Nevertheless, NVOCCs are tasked with the costly and administratively difficult task of maintaining published rates that are otherwise ignored by all parties to their transactions. This depletes the already-strained resources of private business, as well as the Commission, who is tasked with the duty to monitor for compliance with the existing regulations. Moreover, the increased business cost brought on by this circumstance inevitably accrues to the customer. In light of the uncertain state of the current economy and its implications for the shipping and logistics industries, the Proposed Rule will afford a welcome opportunity to allocate resources efficiently and, ultimately, to provide better value to the Joint Commenters' customers.

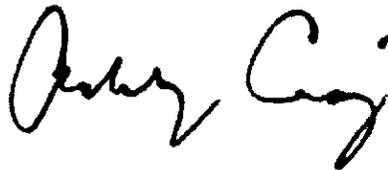
C. *Proposed Rule Strikes a Needed Regulatory/Commercial Balance*

The Joint Commenters maintain that the Proposed Rule, as crafted, represents an equitable solution that protects the interests of all parties – the NVOCC, the customer, and the FMC – who are stakeholders in the Joint Commenters' contracts and business activities. The Joint Commenters support the proposed requirement that unpublished rates be agreed to and memorialized in writing, including the requirement to provide notice to the shipper of the existence and location of the rules tariff. The Joint Commenters further support the requirement that rates will be agreed to and memorialized in writing, as well as the five-year document retention requirement. These provisions provide three key benefits to the stakeholders cited above: (1) customers will continue to receive a complete recounting of information as to the rights, liabilities, and obligations attendant to the execution of the contract; (2) NVOCCs retain flexibility in contract formation while removing the archaic financial and administrative burden of rate publication; and (3) the FMC will be afforded the opportunity to streamline its oversight procedures and responsibilities, while retaining critical regulatory mechanisms to enforce compliance in a targeted and informed capacity.

III. Conclusion

The Joint Commenters encourage the FMC to adopt the Proposed Rule and remove the NVOCC tariff publication requirements. The Proposed Rule will increase competition for the shipping public, afford greater economic flexibility and reduce the Commission's administrative burdens, simply by adapting the Commission's regulations to the reflect the practical realities of modern shipping and logistics.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ashley Craig". The signature is fluid and cursive, with the first name "Ashley" and the last name "Craig" clearly distinguishable.

Ashley W. Craig
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