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Federal Maritime Commission  
Office of the Secretary

PETITION NO. Pz 16

DIRECT CHASSISLINK, INC., FLEXI-VAN LEASING, INC., AND  
TRAC INTERMODAL,

PETITIONERS

PETITION FOR AN ORDER TO SHOW CAUSE

**Introduction**

This is a Petition filed pursuant to 46 C.F.R. §502.76 (Rule 76) for the issuance by the Federal Maritime Commission of an Order to Show Cause under 46 C.F.R. §502.73 (Rule 73) of the Commission's Rules of Practice and Procedure directing the West Coast MTO Agreement, FMC Agreement No. 201143, as amended, ("WCMTOA" or "Agreement") and its members participating in WCMTOA's Marine Terminal Operator Schedule No. 1, as amended, (the "Schedule") to show cause why they have not violated the Shipping Act of 1984, as amended, (the "Act") and Commission regulations issued pursuant thereto.

Rule 76 authorizes Petitions for "all claims for relief or other affirmative action by the Commission" and Rule 73 states "The Commission may institute a proceeding by order to show cause." Thus, Petitioners seek the Commission's affirmative action of initiating a proceeding by issuance of an Order to Show Cause for the purposes set forth herein.

1. Petitioners are Direct ChassisLink, Inc., ("DCLI"), 3525 Whitehall Park Dr., Suite 400, Charlotte, NC 28273, Flexi-Van Leasing, Inc. ("Flexi-Van"), 251 Monroe Avenue, Kenilworth, NJ 07033 and TRAC Intermodal ("TRAC") 750 College Road East, Princeton, NJ 08540. Petitioners own and lease/rent chassis to ocean common carriers, motor carriers, cargo interests and others on a short and long term basis.

2. In the Ports of Los Angeles and Long Beach, Petitioners collectively operate the Pool of Pools, discussed below, through which they provide chassis at 13 marine terminals and at four rail yards.

3. Petitioners respectfully Petition the Federal Maritime Commission to issue an Order to Show Cause to the West Coast MTO Agreement and its individual members participating in WCMTOA Marine Terminal Operator Schedule No. 1, as follows:

APM Terminals Pacific Ltd., 2500 Navy Way, San Pedro, CA 90731

California United Terminals, Inc., 2525 Navy Way, San Pedro, CA 90731

Eagle Marine Services, Ltd., 16220 N. Scottsdale Road, Suite 300,  
Scottsdale, AZ 85254-1781

International Transportation Service, Inc., 1281 Pier J Avenue, Long  
Beach, CA 90802-6393

Long Beach Container Terminal, Inc., 1171 Pier F Avenue, Long Beach,  
CA 90802

Pacific Maritime Services, L.L.C., c/o SSA Marine, 1131 SW Klickitat  
Way, Seattle, WA 98134

SSA Terminals, LLC, c/o SSA Marine, 1131 SW Klickitat Way, Seattle, WA  
98134

SSA Terminals (Long Beach), LLC, c/o SSA Marine. 1131 SW Klickitat  
Way, Seattle, WA 98134

Total Terminals International, L.L.C., 301 Hanjin Road, Long Beach, CA  
90802

TRAPAC Inc., 920 West Harry Bridges Blvd., Wilmington, CA 90744-5230

Yusen Terminals, Inc., 701 New Dock Street, San Pedro, CA 90731

West Basin Container Terminal, L.L.C., 111 W. Ocean Blvd., Suite 1610,  
Long Beach, CA 90802

Everport Terminal Services, Inc., 389 Terminal Way, Berth 228-233,  
San Pedro, CA 90731.

The Order to Show Cause would require WCMTOA and the terminal operators listed above to show cause why they have not violated the provisions of the Shipping Act of 1984, as amended, and FMC regulations issued pursuant thereto, as set forth below.

## **I. Summary of Violations by WCMTOA and its Members**

WCMTOA and its members have violated the Shipping Act of 1984, as amended (the "Act"), with respect to the publication in WCMTOA Terminal Schedule No. 1 of Rule 15 establishing a Chassis Services Fee in an amount that would cumulatively cost the Petitioners an estimated \$28 million annually.

More specifically, the Petitioners contend that the Chassis Services Fee published as Rule 15 of the WCMTOA Schedule is not specifically authorized by the Agreement, as filed and effective under the Act, as required by the Commission's regulation (46 CFR §535.402), and cannot be reasonably believed to be authorized by the Agreement. The Chassis Services Fee violates 46 U.S.C. §41102(b)(2) as conduct outside the scope of the filed and effective Agreement. In addition, the Chassis Services Fee violates 46 U.S.C. §41103 as an unjust and unreasonable practice relating to receiving, handling, storing, or delivering property and it violates 46 U.S.C. § 41106(2) because (a) it creates an undue or unreasonable preference or advantage to chassis owners who are not chassis providers, *e.g.*, ocean common carriers, motor carriers and cargo interests and imposes an undue or unreasonable prejudice or disadvantage on the chassis providers, (b) the WCMTOA members use the chassis providers' chassis without compensating the chassis providers and (c) the WCMTOA members charges for maintenance and repair are at hourly rates that include WCMTOA members overhead and administrative costs. Finally, the violation by the Agreement parties of the Commission's regulation at 46 CFR §535.402 constitutes a violation of 46 U.S.C. § 41107(a) for which the Commission may assess a civil penalty, and because the Chassis Services Fee violates the Commission's regulation, the application of an unauthorized fee is *per se* an unjust and unreasonable practice in relation to receiving, handling, storing or delivering property in violation of 46 U.S.C. 41103.

## **II. The Petitioners**

A. DCLI is a chassis provider that leases chassis to ocean common carriers, motor carriers and others under both short and long term lease/rental agreements. As relevant here, DCLI is a member of the Pool of Pools, which is operated with Flexi-Van and TRAC to provide "grey" chassis pools at 17 start/stop locations in Southern California including 13 marine terminals and 4 rail ramps. The Petitioners' have a combined fleet of approximately 80,000 chassis in the Pool of Pools. See, <http://www.pop-lalb.com>.

B. Flexi-Van is a chassis provider that leases chassis to ocean common carriers, motor carriers and others under both short and long term lease/rental agreements. As relevant to this Petition, Flexi-Van is a member of the Pool of Pools and provides chassis to locations served by the Pool of Pools.

C. TRAC is a chassis provider that leases chassis to ocean common carriers, motor carriers and others under both short and long term lease/rental agreements. As relevant to this Petition TRAC is a member of the Pool of Pools and provides chassis to locations served by the Pool of Pools.

### **III. WCMTOA and Its Members**

A. WCMTOA was created, effective June 23, 2003, by FMC Agreement No. 201143, initially as the West Coast MTO Discussion Agreement. It became the West Coast MTO Agreement, effective July 19, 2004 and is classified by the Commission as a Terminal Conference Agreement.

B. WCMTOA membership has changed from time to time as shown by amendments to the Agreement as filed with the Commission. The members as of the date of this Petition are those marine terminal operators who are listed in WCMTOA Marine Terminal Operator Schedule No.1 as participants in said Schedule and who are listed above in Paragraph 3 of the Introduction.

### **IV. The Chassis Service Fee**

A. WCMTOA, acting through its wholly-owned agent, PierPass, published amendments to its Schedule, effective August 1, 2016 that adds a Rule 15 by which the WCMTOA members would impose a new and unprecedented Chassis Services Fee applicable solely to chassis providers. On July 29, 2016, Pier Pass announced it had delayed the effective date of Rule 15 to September 1, 2016. Petitioners believe that WCMTOA has not filed with the FMC or published on its website an amendment to Schedule No. 1 showing the change in the effective date of Rule 15.

B. The Chassis Service Fee is \$5.00 for each chassis entering a WCMTOA member terminal with a container on the chassis, loaded or empty, and \$5.00 for each chassis exiting a WCMTOA member terminal with a container on the chassis, loaded or empty. Based on Pool of Pools

data for the period July 1, 2015 through June 30, 2016, the application of the fee would have resulted in approximately \$28 million of additional cost to the Pool of Pools in that year.

C. If a chassis made multiple entries and exits from a terminal or terminals, with loaded or empty containers, on the same day, the Chassis Services Fee would be assessed for each entry and exit, so that the daily charges for the Chassis Services Fee could exceed the daily published lease rate for a chassis.

D. The Chassis Services Fee would not be charged for chassis owned by ocean common carriers, motor carriers, cargo interests or others. Petitioners estimate that these entities own approximately 20% of the chassis utilized in the ports of Los Angeles and Long Beach.

E. WCMTOA claims that the Chassis Services Fee is to cover (i) chassis storage, (ii) chassis stacking and unstacking expense and (iii) EDI provided by the marine terminal operators to the chassis providers. However, WCMTOA has not provided any information as to how the Chassis Services Fee was calculated such as (i) what portion of the Fee is for alleged chassis storage and how the storage is calculated, and how it is calculated on a per chassis entry/exit basis; (ii) what portion of the Chassis Services Fee is for alleged stacking and unstacking of chassis and how is that calculated on a per chassis entry/exit basis; and (iii) what portion of the Chassis Services fee is for EDI and how is the EDI portion calculated on a per chassis entry/exit basis. Petitioners note that not all marine terminals are operated in the same manner; they have different lease costs, different uses of technology and different uses for chassis on their terminals. As a result, a uniform Chassis Services Fee would not represent the alleged provision of services to the chassis providers, either individually or collectively.

F. The WCMTOA, as filed with the FMC, contains no specific reference to a Chassis Services Fee. The Agreement makes no specific reference to chassis storage fees; the Agreement makes no specific reference to stacking or unstacking of chassis on marine terminals or to fees or charges for stacking or unstacking of chassis; the Agreement makes no specific reference to the provision of EDI to chassis providers or charging fees for providing such EDI. The Agreement makes no specific reference to "chassis providers."

G. The Chassis Services Fee would by its terms "be adjusted annually to reflect increases in labor costs based on Pacific Maritime Association maritime labor cost figures." This basis for increase would have no relation to "storage charges" or "provision of EDI" which are two of the three bases for the institution of the Chassis Services Fee.

H. WCMTOA has stated to the Commission through its counsel that

“This fee arises primarily out of the change in the nature of chassis operations at the ports of Los Angeles and Long Beach, and many other ports and locations throughout the United States. In recent years, ownership and control of chassis has fundamentally changed. As a result of those changes, the large majority of chassis are now owned and controlled by the major leasing companies, coincidentally all members of IICL.” (Letter from Cozen O’Connor to the FMC Secretary, dated July 22, 2016)

Whether owned by ocean common carriers or by chassis providers, the marine terminal operators use the chassis in exactly the same manner. If anything, the chassis providers have through the Pool of Pools provided greater functionality and efficiency to the terminals, the ocean carriers, the motor carriers and the cargo interests in obtaining, using and returning chassis.

I. WCMTOA has stated through its counsel, that

“While the terminals receive *some benefits* from the presence of chassis on the terminals, the chassis providers receive the primary benefits.” (Emphasis added.) (Letter from Cozen O’Connor to the FMC Secretary, dated July 22, 2016)

The statement is not accurate. The benefits received by the marine terminal operator members of WCMTOA from the chassis provided by Petitioners are enormous in that they effectively enable the terminals to operate. Without the chassis providers’ chassis, the terminals would have to shut down. Chassis are a *sine qua non* for marine terminal operation. Chassis are essential to bring containers to marine terminals and to remove containers from marine terminals as well as for use on the marine terminals in various ways. In fact, the terminals establish the terminal requirements by requiring that 31,000 chassis be available daily on the 13 terminals served by the Pool of Pools. Moreover, Petitioners’ provide a combined fleet of approximately 80,000 chassis in Southern California. Some containers, such as refrigerated containers, tank containers, or containers containing hazardous materials must be maintained on chassis while on terminal under applicable laws and regulations. The WCMTOA members use Petitioners’ chassis without compensating the chassis providers for such use.

J. Petitioners earn revenues from motor carriers and ocean common carriers that use their chassis to move containers from a marine terminal to an off-terminal location or to the marine terminal from an off-terminal location. Ocean carriers use the chassis in connection with shipments in which they agree to provide carrier haulage while motor carriers use the chassis on behalf of cargo interests for shipments that require merchant haulage. Petitioners earn no revenue from the terminal operators in connection with their use of the chassis in the chassis pools. In terms of benefits, the marine terminals need the chassis in connection with their terminal operations and to assure that containers discharged from ships can exit the terminals as quickly as possible.

K. The stacking and unstacking of chassis by marine terminal operators is not requested by and is of no benefit to the chassis providers. The stacking and unstacking of chassis is solely the decision of the marine terminal operators and results in wear and tear and outright damage to Petitioners chassis. The marine terminals, either directly or through sub-contractors, perform maintenance and repairs on chassis. The chassis providers are billed for such maintenance and repairs. Maintenance and repair of chassis on marine terminals generates significant revenues to the marine terminals and significant expenses to the chassis providers.

#### **V. Violations of the Shipping Act of 1984, as amended.**

A. WCMTOA and the terminal operators have violated 46 U.S.C. §41102(b)(2) in that they have imposed the Chassis Services Fee without the authority to do so under WCMTOA as filed and effective under the Act. WCMTOA's authority is limited to the terms of the agreement that its members have filed with the FMC. *See, Possible Unfiled Agreement Between Hyundai Merchant Marine Company, Ltd. and Mediterranean Shipping Co., S.A.*, 27 SRR 1028, 1030 (FMC Order of Investigation, 1997) ("The 1984 Act and the Commission's regulations are explicit that a true and complete copy of every applicable agreement be filed with the Commission, and that parties operate only pursuant to the terms of such agreement"). A violation of this provision is considered so serious that the Act provides that the Commission may order reparations up to twice the amount of the actual injury (46 U.S.C. §41305(c)).

B. The Federal Maritime Commission's regulations at 46 C.F.R. §535.402 require that an agreement filed with the FMC "must be clear and definite in its terms" and "must set forth the specific authorities and conditions under which the parties to the agreement will conduct their operations . . . ." WCMTOA and the terminal operators have violated this

regulation with respect to the fact that they have instituted the Chassis Services Fee without clear and definite terms or specific authorities in the Agreement. Violation of a Commission regulation is punishable by a civil penalty as provided in 46 U.S.C. § 41107(a). In addition, it would also be a violation of 46 U.S.C. 41102(c), in that instituting the Chassis Services Fee without clear and definite and specific authority is not a just and reasonable practice relating to or connected with receiving, handling, storing, or delivering property.

C. WCMTOA and the terminal operators have violated 46 U.S.C. §41103 because the Chassis Services Fee is an unjust and unreasonable practice relating to receiving, handling, storing and delivering property. The Chassis Services Fee was created solely to charge the Petitioners. The alleged services related to the Chassis Services Fee, namely (a) chassis storage, (b) stacking and unstacking chassis and (c) providing EDI, are not justified on the basis of specific costs and the alleged services are either not provided, or are performed for the terminal operator's own benefit or are services that do not cost them anything to provide. A charge that is not justified is unjust and unreasonable.

D. WCMTOA and the terminal operators have violated 46 U.S.C. §41106(2) because imposition of the Chassis Services gives an undue or unreasonable preference or advantage to chassis owned by ocean common carriers, motor carriers and others, and it imposes an undue or unreasonable prejudice or disadvantage to the chassis providers. The imposition of the Chassis Services Fee on Petitioners when that fee (a) was not charged to ocean common carriers when they owned the chassis and (b) is not currently charged to ocean common carriers, motor carriers or other owners of chassis, is the essence of undue or unreasonable prejudice or disadvantage when that fee is solely charged to Petitioners. Undue or unreasonable preference or advantage or undue or unreasonable prejudice or disadvantage involves unjust and unreasonable treatment to entities that are indistinguishable in terms of transportation characteristics. For example, the Commission has long held that ocean common carriers cannot charge a higher rate to a NVOCC as compared to a beneficial cargo owner solely because of its status as a NVOCC. See, FMC Circular Letter No. 1-85, Rates Which Exclude Certain Classes of Shippers, and FMC Notice of Proposed Rulemaking, Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States, 49 F.R. 29980, 29981 (July 24, 1984) ("The Commission is unaware of transportation characteristics which would warrant a distinction between cargo tendered by NVOCCs and similar cargo tendered by other shippers."). There are no different transportation characteristics between chassis provided by chassis providers and chassis provided by motor carriers, shippers or ocean

common carriers. All chassis enter and leave the marine terminals in the same manner; the chassis themselves are virtually the same.

**VI. Relief Requested**

Petitioners respectfully request that (a) the Commission issue an Order to Show Cause directing WCMTOA and its marine terminal operator members to show cause why they have not violated the Shipping Act provisions and the Commission's regulations as set forth above and (b) that the Commission issue an order directing WCMTOA and the terminal operators to cease and desist from the imposition of the Chassis Services Fee; (c) that the Commission in accordance with 46 U.S.C. § 41307(a) seek an injunction of the Chassis Services Fee pending completion of the Order to Show Cause proceeding herein requested, and (d) grant such further relief as may be necessary and proper in the circumstances.

Respectfully submitted,

Hoppel, Mayer & Coleman

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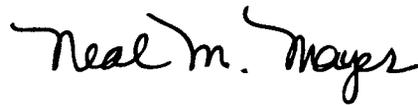
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301-460-0035 (Coleman)

Attorneys for Petitioners

**Certificate of Service**

I, Neal M. Mayer, certify that pursuant to Commission Rule 76, a copy of the foregoing Petition for an Order to Show Cause has been sent on August 9, 2016 by first class mail, postage prepaid, to the West Coast MTO Agreement, c/o Mr. John Cushing at PierPass, Inc. and to the members of the West Coast MTO Agreement who participate in WCMTOA Marine Terminal Schedule No 1 at the addresses shown in Paragraph 3 of the Introduction to the Petition.

A handwritten signature in black ink that reads "Neal M. Mayer". The signature is written in a cursive style with a large initial 'N' and a long, sweeping underline.

Neal M. Mayer