Statement OF

Philip L. Byrd, Sr.
President and CEO
Bulldog Hiway Express

Before

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Commissioner Khouri I sincere appreciate this opportunity to discuss the very critical issue of ***"Congestion"*** in America's vital South Atlantic seaports.

My name is Phil Byrd, and I am the President and Chief Executive Officer of Bulldog Hiway Express. Bulldog is a 55 year old asset based trucking firm domiciled here in Charleston, SC. Our company has four operating units, flatbed long haul, specialized heavy haul, contract dedicated, and intermodal. Bulldog's intermodal division primarily serves the ports of Charleston, SC and Savannah, GA. In Charleston we typically make 500 container drayage moves per day, Monday through Friday. We perform this service for numerous customers with the use of 80 assigned company trucks. Each of these trucks utilize state of the art technology to garner operational efficiencies, such as computerized dispatch, vehicle tracking, enhanced communications capability, and two way radio communications. Our trucks are staffed by experienced, well trained professional commercial drivers that have on average 18 years of container drayage experience.

I am also the Immediate Past Chairman of the American Trucking Associations (ATA). ATA is the trucking industries leading voice of representation for safety, advocacy, essentiality, sustainability, and research. Having been intimately involved in leading ATA over the last five years I am keenly aware of the industry's most alarming issue, currently and well into our future, the looming **"driver shortage"**. ATA has studied this issue extensively and predicts that by the year 2022 there will be a shortage of 239,000 drivers. Further study has indicated that over the next ten years the industry will need to add 96,000 drivers per year, just shy of one million new drivers, just to provide our economy with the capacity of today. The American trucking industry current moves 68.5 percent of the total tonnage manufactured, imported, exported and distributed in the US. This percentage is projected to go to 72.5 percent over the next 10 years. Being of knowledge and in possession of such alarming data makes these discussions extremely timely. Productivity is in large part driven by efficiencies up and down the logistics supply chain. Therefore it is critical that all types of congestion and causes of loss productivity be thoroughly studied and remedied.

My comments to this body are not to be taken as negative criticism of the South Carolina State Port Authority. I have worked closely for decades with all aspects of the SCSPA and know that they are eager to increase volumes across their docks and through their gates, which means continually improving truck productivity.

The following comments and observations hopefully will be helpful in this process.

Truck Gate/Wait Times

It is common practice for ports to start the measurement of in and out time (turn time) when a driver reaches the in interchange booth, which means time waiting in line to get to the in interchange booth is not measured. This practice skews the actual process time considerably, and creates considerable driver dissatisfaction, and motor carrier economic loss. AT Bulldog we measure our operational cost on a per hour basis based against our known hourly operating cost. It is common to see extreme variations in this measurement from week to week of up to 20% deviation. Bulldog's drivers are paid on an hourly production and safety matrix based off of their prior month performance. This hourly compensation ranges from $18 per hour to $23 per hour, which means because of port inefficiencies our drivers as well as our company is being monetarily effected. These inefficiencies are not just at the port but extend to warehouses, rail ramps, container repair facilities, and most noticeably on our states overly congested highways. Another huge factor in port terminal turn time has to do with the road readiness of the steamship line and chassis providers equipment, as well as the availability of this equipment. Motor carriers routinely find themselves draying equipment to on dock repair shops to have another party's equipment made safe and DOT road ready. We find this to be a major loss of productivity and another economic burden to the motor carrier. Of course the motor carrier is not compensated for draying bad order equipment to on dock repair, neither is the motor carrier compensated for delay time at the port. The gate operations in Charleston shut down for lunch rather than offering continuous service by alternating gate personnel, this creates a backup of trucks and the loss of approximately one half hour of truck production. Additionally drivers will line up in a specific lane to work through the gate process and while in line and without notice or warning have that line shut down causing the driver to fall out of that line and take the last position in another line. Once again this causes driver frustration. This might be avoided by simply putting out a sign behind the last truck that will be serviced in a given line before the lane closes. Additional container handling equipment is needed at peak times to maintain reasonable production. We have also observed that Monday truck productivity is reduced

because of the weekend vessel discharges, container ships work throughout the weekend but typically there is little to no truck outbound activity.

Chassis Ownership and Deployment

The "Gray Chassis Pool" model we find to be beneficial in improving productivity and efficiency. For a motor carrier to find a road worthy chassis at the beginning of a work day and use it for the duration of the day serving numerous steamship lines is extremely productive. However this process creates a cumbersome chassis rental reconciliation audit for the motor carrier. At Bulldog the chassis reconciliation process volume has required us to hire two additional administrative employees to effectively manage the billing process. We are aggressively adding to our already large Bulldog owned chassis asset pool.

Congestion Factors outside the Port Gates

It is important to understand that the water side of a port operation runs 24 hours a day seven days a week, while the truck gates only operate eight to ten hours a day Monday through Friday. This imbalance of operating time is in large part the major reason for production losses and operational inefficiencies. Private sector warehouses, distribution centers, rail ramps, steamship line offices, and government agencies all conform to schedules that are reflective of the ports truck gate hours. This disallows trucking firms to double staff or stagger their equipment and personnel to extend a given work day, therefore exacerbating congestion during the eight to ten hour work day. The SCSPA has worked extremely hard to grow our port volumes and has had considerable success to the delight of all port vendors. It has been quite obvious to us at Bulldog that the two rail ramps serving Charleston have not adequately beefed up their operations to effectively handle this increased volume. We experience longer delays at the rail ramps than we do at any of the four Charleston port terminals. There simply is not enough container-handling equipment in place to move the trucks in and out with any degree of efficiency. This is a "**Major**" cause of loss productivity to the entire port process. Additionally, we see our highway infrastructure as being another major impediment to port productivity. I applaud the management of the SCSPA and our state legislative body for their work in getting funding to deepen the Charleston harbor, and to modernize all phases of the port operations inside the gates. However, South Carolina road needs are not being addressed

adequately. Interstate 26 is the major artery into and out of the SCSPA and is incapable of effectively handling the traffic volumes of today. This interstate needs to be expanded from start to finish. Interstate 26 intersects with Interstate 526 in North Charleston and runs to Mt. Pleasant, SC where the SCSPA largest terminal is located, The Wando Welch Terminal. Interstate 526 is a much newer highway than is I-26 but is none the less over congested and adds to the loss of port productivity. At the intersection where these two interstates connect is a major bottleneck and at certain times of the day can turn a 12 mile trip into an hour transit each way. It is obvious to the ATA and to the trucking industry at large that we are past due as a nation in increasing the federal motor fuel tax and indexing it to inflation to offset fuel efficiency gains and the use of alternatively fueled vehicles to fund our federal highway system. This commission would do well to encouraging Congress to address America's highway needs by stabilizing the Federal Highway Trust Fund by increasing the federal motor fuel tax. This funding mechanism allows for 98% of the collected fund to flow directly to our nation's highways, while all other funding mechanisms requires a major portion of the collected revenue go to the administering of the collection process, and not to our roads.

I am thankful for this forum and the opportunity to participate. Hopefully through this process and the efforts of the many dedicated entities making up America's logistics supply chain we will see improved productivity and greater operating efficiencies that will benefit all America.

Thank you Commissioner Khouri for the opportunity to address the FMC on port congestion issues and industry challenges that all stakeholders are wrestling with in today's logistics supply chain. I am Ed McCarthy Sr. VP and COO of CMA CGM Americas and Vice Chairman of OCEMA.

My entire career has been within this industry and has seen my fair share of operational challenges. After spending nearly two decades on both the East and West Coast in port operations with APM Terminals and VIT, I have now spent the last three years on the carrier side, giving me even greater insight to the challenges that occur "outside the gate." Yet nothing has quite prepared me for the challenges we are facing today. As everyone here knows, the smallest bit of congestion at the port has a trickledown effect throughout the intermodal chain. Even brief periods of congestion can lead to days or weeks of recovery. With the sustained congestion we have seen this year, the supply chain is seriously at risk of grinding to a halt which will impact our economy. I think all of the stakeholders here today know that I'm not exaggerating or being melodramatic when I say that the challenges we are discussing today have reached crisis level.

I have followed the previous port congestion forums with great interest, and I appreciate Commissioner Khouri and the other commissioners providing these opportunities for public discussion. Unfortunately, it seems to me that at the previous meetings many stakeholders have been too anxious about their own point of view and not working collaboratively with other stakeholders. To quote Pogo: "we have met the enemy and the enemy is us," all of us. We need to stop working against each other for our own interest and come together on solutions. I recognize that each stakeholder here today has competing priorities; but at the same time, I hope we can agree that we each need to make a profit in order to build infrastructure and reinvest in our individual organizations for sustainability.

With that in mind, I'd like to highlight a few areas where I think investment is the key to resolving the current crisis.

Port Authorities need to invest into capital infrastructure to ensure competitive capabilities and to develop jobs in each of their states. The large capital investments necessary to develop facilities have been slow to develop and are

currently behind the industry demands. We hear a lot from East Coast port authorities and politicians about the introduction of "big ships" after the Panama Canal expansion. That can't happen without critical infrastructure development, starting with the ports.

Terminal Operators need to invest in container handling equipment to ensure they can grow their operations to eliminate congestion and empty container rejection. They also need to invest in necessary resources to timely repair chassis in terminals that are perceived to have more equipment out of service than in service. Terminals cannot simply rely on solutions such as Pier pass, which have only pushed gate congestion at facilities to peak periods. Equipment investment needs to be considered in order to ease congestion and to keep the terminals fluid.

Motor Carriers need to invest in their drivers to ensure there is a future for drayage and inland trucking. Motor carriers also need to invest in equipment and taking responsibility for chassis in line with the model followed elsewhere in the world. The owner operator has been squeezed for years on rates to a point where the driver living wage is unsustainable. The driver population average age has grown from 41 to 55 over the last decade. This trend is obviously unsustainable and the entire supply chain needs some corrective action to be taken.

Shippers (NVOCCs and BCOs) need to invest in the service levels they demand. Shippers are demanding the best service, while driving rates down. Cargo is compressed into seasonal windows, straining peak capacity. Warehousing hours do not meet the demand of cargo surges, so shippers are holding equipment and asking for more free time. Carriers are usually willing to grant the additional free time to secure the business, but this just contributes further to the equipment shortages. The cycle of service demands and rate erosion is not stable.

Railroads & TTX need to invest in equipment and infrastructure and also look at operational practices that add to the congestion and equipment shortages. For example, the wheeled chassis operation required by railroads to minimize operational costs has a negative impact on already over utilized chassis capacity. Also, there is insufficient rail car supply in the network, causing rail car shortages

and delays throughout the network. While railroads want to protect their individual interests, over usage of rail cars by one company to protect its interest against competitors has a negative effect on supply throughout the industry.

Chassis Management & Leasing Companies need to invest in an ageing fleet in new equipment and the resources needed to timely repair equipment, as well as to reposition equipment from surplus locations. Depots are holding chassis that could be deployed to mitigate chassis shortages in other areas. Again, this simply exacerbates to the problem.

USMX/ILA/PMA/ILWU – Cyclical availability in the workforce and stronger internal leadership in each organization is required to meet the demands of the industry. I applaud what has been done by USMX and ILA to increase the workforce in NYNJ, including the ILA effort this year to limit vacations in the North East to meet the demand of peak freight. Labor availability has notably improved over 2013, but these initiatives need to be formalized in an agreement with PMA and USMX to ensure the industry is provided with the consistent, skilled and efficient labor force for the long term. Certainty of labor supply plays an important role in the confidence of shippers and carriers alike.

Last, but not least,

Ocean Carriers need to invest in larger ships to take advantage of the economies of scale needed to provide superior service at a competitive price. At the same time, we need to exercise restraint in pricing to ensure that service levels are not eroded by declining rates. Right now, carriers are barely afloat, losing money as an industry year after year. To mitigate the bleeding, the carrier industry has adopted a slow steaming policy. This mean when vessels are delayed due to port congestion, it is cost prohibitive to spend the money to make up time.

Carriers also need to play our role in equipment investment by ensuring a strong supply of containers, including specialized containers, and we need to invest our time and efforts into finding a solution for container imbalances so that the containers are not only available, but available where we need them. At the same time, carriers must continue to push for a move out of the chassis business so

that equipment can be managed more efficiently by other stakeholders who are in a better position to maximize efficiencies.

None of these issues are new to the industry, but they are exacerbated by the volume growth in the industry. I do not pretend to think that these comments are all inclusive for each of the stakeholders, but I do hope that I have identified some of the competing challenges and areas where we can reach common ground and stop working in different directions. Until we as an industry identify a common path and accept that we all need to take responsibility for a financial piece of the solution, this cyclical nature of congestion will persist and only get worse. I recommend an industry wide CEO level task force encompassing all stakeholders be formed to address the issues and work toward a common industry solution. We all know the challenges and have the power to influence the solution, but no one of us can solve it separately.

Thank you again for your time and opportunity to discuss solutions for change.

Federal Maritime Commission Forum on Port Congestion
Charleston, SC, Thursday, October 30, 2014

Prepared Remarks for Donald A. Pisano, President or American Coffee Corp.
Director of National Industrial Transportation League and Green Coffee Association

Good afternoon. My name is Don Pisano and I am president of American Coffee Corporation of Jersey City, New Jersey. We are importers and traders of green coffee beans, which are the raw coffee beans that are imported and delivered to the manufacturers here in the United States for roasting, grinding, packaging and distribution.

I am on the board of directors of the National Industrial Transportation League and chair its Ocean Transportation Committee. I am also on the board of the Green Coffee Association and chair its Traffic and Warehouse Committee.

On behalf of both organizations, I would like to express our appreciation to the Federal Maritime Commission for organizing and sponsoring these forums which allows all stake holders the opportunity to provide constructive dialogue. We do think these forums have raised the level of attention to the problems and are an important part of the process to eventually achieve a long term solution.

Everyone here knows first-hand of the significant congestion our ports are experiencing around the country, so I will forgo restating the litany of issues and instead simply try to provide a shipper's perspective. Although the congestion and delays affect everyone, it is the shipper who pays the freight bills which covers the costs of the ships, equipment, terminal operations, drayage, and in many cases, demurrage or detention charges.

As an importer, I have always considered our draymen as a direct extension of ourselves, the shipper. Whether handling import or export cargo, the drayman is the shipper's representative at the ocean terminals. So what affects the draymen, affects the shipper.

A significant problem with the industry structure is the fact that there is no real commercial relationship between the shipper, or his draymen, and the terminal operator upon whom we both depend for efficient performance, although neither of us have any means to impact its level of service.

The ocean carriers have been aggressive in pursuit of profitability by driving down unit costs and have more than tripled the size and capacity of their vessels. There have been tremendous efforts to accommodate these ultra large vessels by port authorities, terminal operators, the Army Corps of Engineers and even of course, the lowly tax payer, who has very little say in how his money gets spent.

Clearly too little planning and investment has been made to ensure the efficient throughput of the cargo out of the terminals and into the commerce for which it is intended. Terminal operators have provided inadequate resources to their gate operations. Local, states, and the federal government have failed to direct funds in developing direct links from our ports to the interstate highway system and on dock rail where attainable.

The current capacity crunch has stimulated a lot of attention and everyone has their own opinions about the causes and even some solutions. But some are truly absurd and should be given little credence.

To be clear, port congestion is not due to shippers demanding lower freight rates so now the carriers are struggling to survive and meet the service demands. The carriers made their own decisions to invest in ultra large container vessels increasing their capacity well prior to the demand ever materializing. That's not on the shippers, that's on them. Freight rate levels are mostly impacted by supply and demand, just like most businesses. Surely carriers know this well since they have demonstrated their ability to manipulate capacity when rates fall below acceptable levels. Bringing in extra high volumes on a single ship well beyond the terminals current capacity to handle smoothly is something they themselves need to better coordinate together. So don't blame the shipper for poor economics or planning.

Another misdirection of blame for port congestion is the lack of truck drivers. The lack of drivers is an **effect** of the situation, not a **cause**. Any day you can see lines of draymen waiting outside the terminals trying to get in to pick up or deliver their loads. The draymen may in fact be fleeing the industry but that is due to their inability to get in and out of the terminals in a timely manner so they can make a living. Who can blame them? Improving the terminal and gate operations now will go a long way in preserving the truckers we still have, and hopefully reverse the trend which is now heading into a crisis.

And finally, one of the most ridiculous suggestions of all is that current free time is too generous, and that causes the back up at the terminals. I would have to say that I really don't know any shipper that looks to store their cargo at the marine terminals. They just can't get to them. What we have now is that the shippers are being penalized with demurrage charges for the terminal operators own lack of efficiency. If anything, the lack of terminal and equipment free time may in fact contribute to the congestion, as there is little allowance for schedule accommodations.

Making false arguments is not constructive and only serves as an impediment to finding solutions and as fodder for the media.

So from a shipper's perspective, what we need is for the carriers and terminal operators to understand that "Cargo is King". They are in business to serve the beneficial cargo owner who ultimately pays the bills, not solely each other.

We need labor to be part of the solution and work with management to get us through the more difficult periods of abnormally high volumes.

We need US Customs and all examination sites to be completely electronically integrated and eliminate any need for hard copy "Permits to Transfer" or other documentation.

We need "grey chassis pools" where they currently don't exist.

We need to factor in systems designed to allow for "street turns" so truckers can use the same import equipment just unloaded for an outbound export load.

Longer term, we need to influence investment towards our gateways to improve the traffic patterns in and out of the port areas providing easy access to rail, state and interstate highways.

Again, I thank the FMC and all of you in attendance for your time.

Statement of

Curtis E. Whalen
Executive Director

Intermodal Motor Carriers Conference
Of the
American Trucking Associations

Before the

Federal Maritime Commission
At the

Public Forum on International Supply Chain Efficiency: Challenges Facing South Atlantic Ports

Charleston, SC

October 30, 2014

Commissioner Khouri, members of the Commission, I very much appreciate the opportunity to participate today in Public Forum-South Atlantic Ports. As you recall when I provided a truck congestion update during the Commission's June 18 business meeting, I advised that because of the Federal Maritime Commission's (FMC) broad regulatory marine transportation oversight responsibilities, the intermodal motor carrier members of the American Trucking Associations (ATA) believed that the Commission could exercise a very constructive role in identifying problems and facilitating discussions among port transportation stakeholders and other government entities that ultimately could solve or at least mitigate the growing economic harm caused by what most believe is the port congestion crisis. We are therefore most encouraged that you have fully embraced this proactive leadership role and with this meeting will have conducted 3 of 4 planned fact finding events!

It is also clear from both the level of participation and quality of discussion that have already taken place under this broad FMC initiative that a clearer consensus is being formed among the container transport sector stakeholders on the issues and factors that are contributing to this unprecedented port congestion problem. Most importantly, there is also a consensus forming that in order to solve the congestion problem all stakeholders-and certainly not just the trucking community- must take responsibility for various aspects of the container –supply chain process and bear some share of the pain/inconvenience/ financial costs that it is going to take to address and solve the ongoing and worsening port congestion problem.

My name is Curtis Whalen and I am the executive director of the American Trucking Associations' (ATA) Intermodal Motor Carriers Conference (IMCC). The IMCC is an affiliated conference within the ATA and is open to all ATA member companies engaged in intermodal truck transportation or businesses and services supporting intermodal transportation. ATA is a federation of affiliated state trucking associations, conferences and organizations that includes more than 37,000 motor carrier members representing every type and class of motor carrier in the country.

As you know, over the last year there has been an increase in port congestion levels in many locations that, unfortunately, appears to be systemic in nature and contains such diverse operational elements that collectively do not appear to present a readily identified process or focal point for developing needed solutions. Indeed, maritime transportation stakeholder groups and various industry, local, state and federal entities have been in what seems to be constant formal and informal discussions on how best to address and mitigate port congestion impacts that have become all too common at a growing number of America's key ports. Unfortunately, these discussions have not yet produced operational improvements and in some regions congestion is now being described as "unprecedented" or "the worst in decades".

Congestion elements identified and discuss include: better, more accurate and efficient gate entry data processing; more labor and dock related equipment; trucker appointment or reservation systems; staggering ship arrivals to prevent "bunching"; extended hours for terminal operations and weekend operations; and suspension of demurrage, per diem and other fees ordinarily levied

during period of congestion. In addition, it now seems apparent to all port stakeholders that solutions to address port congestion are also very much tied to the long neglected and until recently not generally even discussed **intermodal chassis** that provides the pivotal link between the truck driver and the transport of the international freight container. As a result, congestion solutions now include the need to establish "gray" chassis pools with operational rules that not only inject competitive pricing components but also recognize the need to enforce statutorily mandated chassis "roadability"-safety conditions as well as effective roadside repair programs.

Indeed, in just the last few weeks port stakeholder groups in several regions have discussed and in some cases implanted plans: to extend "free time" contractual provisions and suspend demurrage fees when congestion causes container pick-up delays; to establish chassis pools on both the east and west coasts to include "gray" poll mandates; and in Long Beach, the port is considering acquiring 3000 chassis to use as a controlled resource option to be deployed in times of equipment shortages.

From an intermodal trucking prospective, effective management of port congestion will also positively impact and help mitigate key port truck drayage industry concerns regarding both driver compensation and driver shortages. As identified in a recent study by the Tioga Group, port trucking/drayage related delays are costing the industry $348 million, 14 million hours and 9 million gallons of fuel annually, and adding 103,000 tons of GHGs unnecessarily to the ports' emissions' footprint.

As referenced above, however, very much exacerbating the search for port congestion solutions is the fact that chassis ownership is undergoing a rapid evolution whose final structure is not yet certain but whose resolution must be reasonably assured before congestion solutions (like extended gates hours, trucker appointment/reservation systems etc.) can be successfully deployed. Compounding the situation, Federal Motor Carrier Safety Administration (FMCSA) regulatory operational mandates for truckers and chassis concerning Hours of Service (HOS), Compliance Safety and Accountability (CSA) and Chassis Safety-Roadability very much impact and potentially restrict port and terminal operational flexibility but are in varying degrees beyond the control of port/stakeholder management decision makers.

These FMC sponsored forums are indeed providing open and candid discussions among the relevant port stakeholders and as a result are helping us to reach a common understanding of the specifics and possible solutions to addressing the congestion problems we are currently experiencing. Thank you for your leadership and we look forward to working with you to reestablish the requisite efficient port/container transport logistics framework through which a substantial portion of the consumer goods and freight our nation relies on must traverse.

The following issue discussions are submitted for the record for this October 30 forum and were also included in my comments previously submitted to the Commission during port congestion briefings on June 18 and October 1.

<u>Gate Congestion - Truck Waiting Lines and Turn Times</u>

Port congestion is most often visibly marked by long lines of idling trucks waiting to enter port terminal complexes. Such congestion is not only a very real business concern for the

international freight shipping sector but also presents a quality of life consideration for the communities that are situated adjacent to these facilities. Long truck lines and the resulting hours of non-productive, non-revenue waiting delays for the port driver community are becoming routine enough that port drivers are leaving the drayage business or refuse to take loads to those terminals with consistently long wait times. For example, I have been advised by the New Jersey Motor Truck Association, an ATA and IMCC member, that many New Jersey motor carriers who serve the NYNJ port complex have lost 20% of their driver work force over the last year. Similar impacts are being experienced at the Port of Virginia. This fact should not come as a surprise since with the all too common terminal gate delays drivers cannot generate adequate revenues by making only 1 or 2 container pickup and delivery "turns" a day for which they are paid. And, as we enter the container "peak season" leading up to the Christmas-holiday season, projected container traffic volume increases and the resulting congestion are expected to only get worse!

Some terminals attempt to address the negative financial impacts of "excessive" trucker wait times through tariffs filed with the FMC. Unfortunately, most of these efforts like those in the NYNJ Port complex intended to provide some compensation to drivers for excessive gate delays are at best ineffective. Often these tariffs **do not commence until the driver reaches the gate** - "first point of processing" and in today's NYNJ port dray daily marketplace, **drivers are often forced to enter long lines and wait many hours BEFORE they reach the gate**. Moreover, given the narrow streets and large volume of trucks in and around terminal gates, the trucker wait time frustration is exacerbated because once the truck enters the long waiting queues, the driver is in effect captive-there is no space or configuration available to pull out and abandon the line...you are in it for the duration.

While the "when and where the gate line starts" has historically been a subject of much debate between the truckers and the terminals, with today's available modern technology being deployed, objective/accurate data answering that key question as is now readily available and is already being used in LA and Long Beach. As of January 2014, NYNJ terminals now require all trucks entering the port to have RFID tags. As a result, terminals could now capture accurate waiting queue data - which would fairly establish wait times that should be eligible for offsetting compensation - by simply placing RFID readers at strategic points **outside the gate**. This readily available solution could be done cost effectively and thereafter provide more equitable tariff based financial relief for "excessive wait time" compensation for drivers who are now bearing the lion's share of escalating port congestion costs.

The importance of establishing equitable and realistic "excessive" trucking wait time tariffs is further underscored by the impacts of the FMCSA's Hours of Service (HOS) restrictions setting strict limits on driver work and rest hours. Port congestion/terminal delays already serve to reduce driver total work hours thereby reducing the number of revenue paying turns/loads the driver needs to make to "pay the bills". HOS work-duty restrictions put additional strict parameters on the amount of time drivers can be "on duty" which includes the time drivers are waiting to get into the port or and waiting for equipment to be located and loaded. This imposed regulatory work hour limitation obviously adds urgency to the need to better track and manage truck movement in and around the port complex and provide a more equitable excessive wait time compensation for port dray drivers.

In addition, the wait time and federal HOS regulations clearly will impact and limit a port's effort to address overall system delays i.e. congestion solutions like extended gates hours or Saturday operations may well not be feasible if the drivers have already legally run out of hours while waiting to get into and out of the port.

Finally, concerning the issue of better use of data to address/manage port congestion, it should be noted that data streams currently generated by the deployment of RFID tags could be routinely made available to motor carriers in real time and would help truckers avoid more congested gates and routes as they make their driver dispatch decisions. Unfortunately, this is not being routinely done most ports and motor carriers are not able to utilize available data sources which would allow them to maximize driver use of on duty hours and provide ports/terminals with some additional flexibility in the search for congestion mitigation solutions.

- **We therefore urge the Commission to review the efficacy of tariff filings covering excessive wait time compensation and to encourage terminals to make RFID and other real time traffic and gate congestion information available to motor carriers so they can maximize driver use of on duty hours including available data from readers positioned outside the gate.**

Container Facility Overload

Key facts to consider in understanding and potentially mitigating the growing instances of port congestion are: ocean vessels are getting larger; shipping alliances are being formed; and greater volumes of containers are being delivered on a single port visit or within a very narrow time frame. Shipping alliances are now particularly being identified as exacerbating the port cargo congestion problem by causing a fragmentation in freight delivery destinations which lowers efficient movement density particularly for intermodal rail movements.

Vessel arrivals also continue to often be **bunched** which results in thousands of containers being discharged for truck transport in a very short period of time. Under current operational procedures, once the vessel(s) have been off loaded and the freight discharged, the container "free time" clock (example: 4 no charge "free days" to remove container from the port) negotiated between ocean carriers and cargo owners starts, and serves to produce/force a trucker and equipment scramble to identify, load and remove the containers before late fee demurrage related charges are levied.

Obviously with the rush to avoid fees and move the cargo off premise in a set number of days, truckers forced to line up and wait in long lines for many hours to pick up the containers and chassis are now often "late" due to congestion impacts that are beyond their controls. Nevertheless, cargo owners are being assessed late charges by the terminals, truckers are being harassed and blamed by their customers for being late, and sometime truckers have to pay the late fees themselves or perhaps lose a customer.

Moreover, container volumes today often exceed the volumes that the terminals' equipment and labor resources can actually move off the dock before free time expires. Under current operating procedures described above, however, most terminals collect late fees even though they know in

advance that they cannot clear the cargo within the free time constraints. And in an ever growing number of instances truckers cannot make the required pickups on time because slow terminal gate processing has produced long lines outside the gate that effectively prevents on time container pickup.

In addition, gate congestions also prevents truckers from returning empty containers within post-delivery free time allowances which then trigger exorbitant/excessive per diem charges which are paid by the motor carrier to the ocean carriers.

- **From our truckers' perspective, we ask the Commission to review the efficacy of this "free time" process and its impact on the flow of containerized cargo. We certainly believe that terminals should not be allowed to collect fees when the terminal does not have the ability to actually move the cargo prior to free time expiration and not when slow gate processing and long waiting lines prevent the trucker from picking up a container, nor should the ocean carriers access late per diem fees when terminal gate congestion prevents on time container returns by the motor carrier.**
- **We likewise recommend that the Commission consider ways to encourage ocean carriers to spread out arrival times so that cargo volumes do not overload terminal capacity.**

<u>Chassis Ownership and Deployment</u>
The chassis as an intermodal utility has been and continues to be essential to the movement of freight supporting U.S. global container commerce. Since the introduction in 1956 of containerized intermodal shipping in the United States, foreign based ocean carriers providing regularly scheduled liner service generally provided chassis for importers and exporters and their motor carrier transporters that pick up and deliver container cargo at ports and inland intermodal terminals. In this historic chassis provisioning model motor carriers/truckers thus utilized ocean carrier provided chassis and were not charged daily chassis rental fees - the use rate for the equipment was basically included in the containerized freight delivered price negotiated between the ocean carriers and their customers/shippers.

Beginning in 2009 / 2010, however, ocean carriers began to individually announce that, as of a date certain they would no longer furnish chassis for cargo shipments. One ocean carrier thereafter split off its chassis operation and began charging motor carriers a daily rental fee for chassis use. Other ocean carriers issued releases advising motor carriers that its chassis were sold and henceforth motor carriers should use chassis provided by the specific purchaser and the chassis rental rate was also already set and provided in the announcements. These "getting out of the chassis supply business" announcements were and continue to be made in a random fashion and include many operating and rate exceptions by geographic locations, trade lanes, common carriage, contract carriage, store door service, intermodal and port to port service.

Historically, terms and charges for the use of the container and chassis were specified in liner tariffs and/or service contracts between the ocean carrier and the shipper. For motor carrier transport, most ocean carriers utilized the intermodal industry's standard interchange agreement-the **Uniform Intermodal Interchange and Facilities Access Agreement (UIIA)** with added

addendums covering specific terms for free time and per diem filed by individual ocean carriers when their terms and charges differed from the standard UIIA provisions.

In the still evolving new chassis ownership and deployment marketplace shippers and motor carriers are now confronted with a widely varying and confusing array of interchange and transport contracts that are complex, expensive and makes planning and billing accountability very difficult and operationally inefficient. Moreover, motor carriers often are confronted with no realistic options to obtain/provide their own chassis because in many wheeled locations (container is already mounted on a chassis when the trucker arrivers) flipping the container to your own chassis instead of taking it already mounted on another chassis provider's equipment is costly/time consuming/not practicable. In addition, providing your own chassis is often not practicable because most intermodal motor carriers competing for cargo shipments are small or medium size firms that do not have the capital or resources necessary to acquire their own chassis equipment. As a result of this no real trucker "Open Choice" chassis supply reality, in many areas and intermodal facility locations daily rental charges the trucker must now pay are subject to little or no competitive rate pressures.

In order to proactively address the otherwise limited options available to motor carriers in the emerging chassis supply model, the **North America Chassis Pool Cooperative, LLC. (NACPC)** was incorporated on October 3rd, 2012. The Company formed by a group eleven U.S. **motor carriers received approval from the U.S. Surface Transportation Board (STB)** on January 22nd, 2013, to commence operations as a joint venture chassis pool cooperative. With its STB authority NACPC has begun to acquire or lease intermodal chassis from ocean carriers and or chassis leasing companies and contribute these chassis into various existing chassis pools in the U.S. **NACPC's mission is to establish an effective chassis supply utility that will be implemented on a national basis to support the U.S. intermodal container network with efficient chassis supplies, a modernized chassis fleet and a transparent set of economics and terms of use that will benefit all users.**

An important objective of NACPC is to preserve the existing "gray pool" low cost chassis pool model previously established by the ocean carriers under their FMC approved agreement with the Ocean Carrier Equipment Management Association, Inc. (OCEMA). These open pools are managed by Consolidated Chassis Management (CCM), a pool management company owned by OCEMA. Shippers, ocean carriers, railroads and motor carriers all have benefited from this initiative, which included CCM pool management services which are assessed on an "at cost" pass-through basis and serve to moderate the overall cost of containerized freight transport.

Contributory "gray pools" such as those managed by CCM allow users to draw any chassis from the pool regardless of ownership. The contributory pool model thus eliminates duplicative costs and maximizes the use of limited space at port and/or inland intermodal locations by obviating the need for a contributor to have its own chassis storage facility. It also ensures an adequate supply of chassis for all users. CCM manages the chassis in the pools (including logistics, billing, inventory supply, maintenance, repair and the repositioning of the chassis) but usage arrangements are determined between the chassis contributor and its users. CCM pools thus foster competition by allowing motor carrier users the ability to choose from more than one chassis provider in a particular pool i.e. to have "Open Choice".

As the evolution in the new chassis supply model has progressed, however, there is cause for concern that this successful gray pool model is being eliminated and replaced by unregulated chassis providers whose growing dominant control of equipment supply and interchange terms is serving to stifle the introduction of competitive chassis supply alternatives. Indeed, ocean carrier chassis sales in the last 2 plus years have been aggressively pursued by only a few well financed leasing companies and the resulting post-sale motor carrier chassis leasing terms are now highly restrictive with daily rental charges most often being dictated - not negotiated.

It is important to note that even though ocean carriers have decided to sell their chassis and not make them part of the container/freight delivery transportation contract, they still need to secure chassis to support their continuing containerized freight activities at marine terminals and intermodal rail operations. As a result, ocean carriers are often securing, as a part of their sales negotiations and arrangements with leasing companies or other buyers, a contractually assured supply of chassis for what is often very favorable or even below market terms. While from a business point of view this may appear to be a reasonable goal in the ocean carrier transition activities, motor carriers and shippers are concerned that the cost for these below market on terminal services are or will in fact transfer the differential costs indirectly to the motor carriers or other supply chain participants. Indeed, as referenced above, in some recent ocean carrier announcements motor carriers are advised that future chassis transport of their ocean containers must be with the leasing company / buyer designated by the ocean carrier at a rate already set in the purchase contract. Motor carriers that now must deal with these directives in most instances have no practical opportunity to select their chassis provider or shop for more competitive charges and terms.

We believe daily chassis rate competition can be sustained by ensuring that motor carriers have the ability to select their chassis provider and that the transfer of the chassis fleet from one mode to another is accomplished in a manner that provides fair treatment for all stakeholders in the container transport sector.

- **We recommend the Commission undertake oversight initiatives to facilitate - help define and guide the new chassis supply and deployment model. FMC's review and monitoring activities now underway will help ensure that the transfer of chassis supply from the traditional one mode (ocean carrier) model to the emerging multimodal (motor carriers, leasing companies, ocean carriers) model is accomplished within an economically transparent, responsible, predictable, and safety oriented framework that preserves and promotes competition and does not decrease transportation services.**
- **The evolving multimodal chassis ownership and deployment model obviously presents federal jurisdictional challenges due to the non-traditional and cross functional nature of the new chassis deployment system. FMC could help bridge the jurisdictional issue by providing the forum for chassis oversight activities bringing ocean carriers, chassis leasing and management companies, motor carriers and potentially the FMCSA and STB together to facilitate system development and ensure that the emerging model(s) do not cause substantial increases in transportation costs or decreases in transportation services or equipment safety.**

Chassis Roadability

Coupled with the uncertainties surrounding chassis ownership discussed above, the regulatory implementation of the Chassis Safety-Roadability law (Section 4118 of the **Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)** has unfortunately not yet resulted in assuring the availability of safe-roadable chassis in sufficient numbers to support the growing numbers of containers that must be efficiently moved through our ports' infrastructure. The IMCC has filed comments in various governmental proceedings and industry presentations which included the following:

- Overall program implementation has been slow and we believe that compliance with the key chassis safety mandates has not yet reached a level where the chassis that are moving on America's roads can be considered to be systematically maintained and repaired.
- The law's mandate that equipment providers provide safe "roadable" chassis for pick-up/ "interchange" with truck drivers is not being complied with or enforced and causes drivers to wait while the chassis is being repaired before they can leave the facility.
- As a result of chassis being deployed that are not Roadable, intermodal truck drivers continue to be charged during roadside inspections under the **CSA program** with equipment violations that are on the **chassis-vehicle # 2** - that we believe should instead be assigned to the equipment provider who under the law is the responsible party for ensuring chassis are roadable.
- Intermodal drivers are effectively being forced to leave the port and terminal drayage sector because their **CSA scores** are being unfairly elevated by chassis violations that will ultimately make them unemployable.
- Lack of a sufficient and predictable chassis resource will hinder port and terminal efforts to address port congestion related issues.

We are continuing to press FMCSA to take more aggressive regulatory actions to ensure compliance with the chassis safety requirements of the law. But in the context of chassis availability, it must be noted that in the short term increased enforcement could in some instances and at some locations reduce the number of chassis which can be legally utilized/deployed until chassis safety standard are met.

Another Roadability related issue involves organized Labor's assertion of a contractual right over chassis repair and maintenance (M & R) activities. Under the historic chassis model discussed above, chassis were owned by the ocean carriers and stored, repaired and maintained on port-terminal property by organized labor under contract. Under the evolving new chassis model, the ocean carrier/terminal/port/Labor contractual link is no longer prevalent – the equipment is more often owned by private third party leasing companies or motor carriers. Labor, however, still insists that it will repair and maintain the chassis equipment. Indeed, the International Longshoremen's Association (ILA) new master contract includes language that acknowledges their jurisdiction for chassis M & R and the west coast International Longshore and Warehouse Union (ILWU) negotiations which are underway likewise highlight chassis M & R repair jurisdiction.

While the large chassis leasing companies and pool operators have not generally sought to move their operations to nonunion M& R work (and there is plenty of repair work that is needed so that should not change anytime soon), in the future and even now for some smaller trucking company

chassis owners off premise nonunion repairs are an issue. How this will ultimately play out is unknown but truck traffic flow through the gates will likely be slowed by the unions at times when they want to highlight their M & R claimed rights.

Thank you.