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SERVICE DATE – JANUARY 22, 2013

## SURFACE TRANSPORTATION BOARD

### DECISION

Docket No. MCF 21050

#### NORTH AMERICAN CHASSIS POOL COOPERATIVE, LLC—POOLING APPLICATION

Digest:<sup>1</sup> This decision approves a motor carrier pooling application filed by the North American Chassis Pool Cooperative, LLC (NACPC). Under the terms of the pooling agreement, NACPC members would combine resources to acquire and contribute international intermodal chassis to existing chassis pools.

Decided: January 17, 2013

By application filed on December 4, 2012, the North American Chassis Pool Cooperative, LLC (NACPC), seeks approval of a proposed joint venture operating and pooling agreement filed in accordance with 49 U.S.C. § 14302 and the Board's regulations at 49 C.F.R. part 1184. The Board will grant the application.

#### BACKGROUND

NACPC is a limited liability company, currently comprising 10 motor carrier members: California Multimodal, LLC; Containerport Group, Inc.; Devine & Son Trucking Co. Inc.; Eagle Systems, Inc.; G & P Trucking Company, Inc.; Intermodal Cartage Co., Inc.; Reliable Transportation Specialists, Inc.; Tennessee Express, Inc.; Tri-Modal Distribution Services, Inc.; and Triple G Express, Inc. According to NACPC, each motor carrier is authorized to transport general commodities. The carriers conduct principally regional operations in various parts of the country.

NACPC members seek to pool resources to acquire and/or lease international intermodal chassis used to transport marine containers and to contribute these chassis to existing chassis pools operated and managed by Consolidated Chassis Management (CCM),<sup>2</sup> which manages six regional pools across the country, and other contributory chassis pools. NACPC states that contributors to a CCM pool (or similar contributory chassis pools) can draw any chassis from the

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> CCM is owned by Ocean Carriers Equipment Management Association, Inc., an association formed by 20 ocean carriers in 2005.

pool, regardless of ownership of the chassis. This contributory pool model thus eliminates duplicative costs and maximizes use of limited space at port 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 pool (including logistics, billing, inventory, supply, maintenance and repair, and repositioning of the chassis), but usage arrangements are determined between the chassis contributor and its user.

According to NACPC, chassis in the CCM pools are contributed primarily by ocean carriers, which have traditionally provided chassis at lower charges to motor carriers than for-profit chassis leasing companies. However, NACPC states that many ocean carriers are starting to exit from the ownership of chassis in these contributory pools, partly due to increased liability for intermodal equipment providers, including the pool provider responsible for maintenance and repair of equipment. NACPC states that chassis leasing companies, which account for ownership of approximately two-thirds of chassis in the United States, are acquiring chassis formerly owned by ocean carriers exiting from chassis ownership. NACPC seeks to preserve the existing contributory CCM model by acquiring and contributing upgraded and refurbished chassis to these pools, thus ensuring the continued economical and efficient operation of these pools for NACPC members and other eligible users.

The terms of the pooling agreement provide that the members would: contribute resources (in the form of capital or chassis) to establish NACPC and fund its operations on an ongoing basis; share information regarding NACPC acquisition of chassis and determine appropriate specifications for chassis to be acquired; agree on programs to negotiate for and to acquire chassis, insurance, chassis upgrades and support services on the best terms and to obtain favorable chassis financing; undertake joint management, control and accounting for usage of NACPC chassis; pool the cost of ownership, operation, maintenance, and refurbishing of chassis; establish and assess appropriate user charges to, and establish criteria for usage of chassis by, NACPC members and non-members; determine to which chassis pools to contribute and the number of chassis for each pool; interact with chassis pools regarding usage and charges for NACPC chassis; and establish and/or manage new or existing pools as opportunities develop. This pooling model would be implemented on a national basis to support the international intermodal chassis network.

NACPC's pooling agreement provides for two classes of membership: Class A, which is limited to motor carriers and whose members are entitled to both governance and financial rights; and Class B, which is open to both motor carriers and other entities, such as shippers, and whose members are entitled only to financial rights. The pooling agreement defines governance rights as the right to participate in the operation, management, or affairs of NACPC and the right to vote in the election of board members and other significant business and affairs. Financial rights entitle members to share in profits, losses, and distributions and to receive interim and liquidation distributions. NACPC anticipates that other motor carriers could be added as Class A members, and the pooling agreement provides for admission of additional members. NACPC states that it would operate on a cost pass-through, not-for-profit basis, with charges for chassis

usage based on covering its ordinary and necessary expenses and sustaining its operations on an ongoing basis, including funding future chassis acquisition. Under the pooling agreement provisions, NACPC notes, motor carrier members would continue to operate independently and would be free to acquire chassis for their own use. NACPC states that the effective date of the proposed agreement is January 23, 2013 (50 days after the application was filed), or earlier, pending Board approval.

NACPC submits that its pooling agreement would promote competition and benefit shippers by ensuring the availability of lower cost chassis supplies in CCM pools and similar contributory pools to all users, including non-NACPC members, at lower rates. NACPC further asserts that the ready availability of lower cost chassis in contributory pools would allow motor carriers to compete better with one another, as contributory pools eliminate the need for motor carriers to invest in their own large chassis fleets (and facilities) or to lease chassis at higher rates from chassis leasing companies.

#### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 14302(a), Board approval is required before motor carriers of property may “pool or divide traffic or services or any part of their earnings.” Under § 14302(c)(2), prior to the effective date of the agreement, the Board must determine whether the agreement is of major transportation importance and whether there is substantial likelihood that the agreement would unduly restrain competition. If the Board determines that neither of these two factors exists, the Board is required to approve the agreement without a hearing.<sup>3</sup>

The Board finds that the proposed transaction is not of major transportation importance. NACPC’s 10 current members account for a very small percentage of the estimated 7,000 motor carriers that provide intermodal transportation of marine chassis in the country.<sup>4</sup> Moreover, NACPC states that, collectively, its members currently own or lease on a long-term basis approximately 2,400 chassis, a small fraction of the estimated 565,000 chassis in the United States that are used for international shipments, most of which are owned by chassis leasing companies and ocean carriers.

The Board also finds that the agreement would not unduly restrain competition. As noted above, NACPC members would continue to operate independently and compete with one another, as well as be free to acquire chassis for their own use. Nothing in the pooling arrangement would prevent non-NACPC members from seeking authorization for similar

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<sup>3</sup> Otherwise, the Board must hold a hearing under 49 U.S.C. § 14302(c)(3) to determine whether the agreement “will be in the interest of better service to the public or of economy in operation and will unduly restrain competition,” and the Board may impose such terms and conditions as it finds “just and reasonable.”

<sup>4</sup> See Application at 4.

pooling arrangements or from contributing individually to chassis pools. Furthermore, the pooling arrangement, which currently involves less than 1% of chassis in the country, would not appear to restrain competition unduly in the market for international intermodal chassis, given the dominant market shares held by ocean carrier leasing companies (65%) and ocean carriers (32%).<sup>5</sup> Rather, the pooling agreement would allow for a new entrant into, and perpetuate the existence of, contributory chassis pools, which provide an efficient, economical way of making chassis more widely available to users and serve as competitive alternatives to chassis leasing companies.

The proposed transaction would not result in collective ratemaking. NACPC states that it would be establishing charges for the use of its chassis in CCM pools or similar contributory pools on a cost pass-through, not-for-profit basis, and that it would not be collectively setting transportation rates.

Moreover, the terms of the agreement appear to be just and reasonable. 49 U.S.C. § 14302(c)(2). The agreement outlines the members' plan to implement what appears to be an efficient chassis supply pooling model. The agreement provides for the admission of additional members and describes the procedure for the management of contributions, capital accounts, allocations, and distributions. The agreement also contains provisions that ensure that motor carriers would continue to operate independently and be allowed to acquire chassis for their own use. The Board has not received any comments suggesting that the terms of the agreement are unjust or unreasonable.

Because we find, on the basis of the record presented, that the proposed agreement would not be of major transportation importance and would not unduly restrain competition, the Board approves the proposed agreement without hearing. The Board will retain jurisdiction to require submission of additional information should the Board find it necessary in the future. If the Board finds at any time that the transaction has become of major transportation importance or likely to unduly restrain competition, the Board retains the power to suspend operation of the pool during the pendency of a public hearing concerning the criteria set forth in 49 U.S.C. § 14302 and to impose such terms and conditions, if any, as are just and reasonable.

In anticipation of motor carriers and other entities joining and withdrawing from NACPC, NACPC has requested that the Board institute a streamlined notification procedure for the addition or withdrawal of members to minimize additional formal applications each time a member seeks to join or withdraw. NACPC cites the process prescribed in Trailer Train Co.— Pooling of Car Service with Respect to Flatcars, 5 I.C.C.2d 552, 605 (1989), which authorized non-applicant carriers to join the approved pooling agreement through a notice describing the carrier, identifying the pool (by docket number), and showing that the carrier agrees to be bound by the terms of the approved pooling agreement. We find NACPC's request to be reasonable.

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<sup>5</sup> See Application at 18.

Accordingly, entities seeking to join NACPC shall file with the Board a notice that includes a description of the carrier (including, but not limited to, the number of international intermodal chassis owned or leased by the carrier and a copy of the carrier's current federal motor carrier authority), reference to this proceeding's docket number, and a showing that the carrier agrees to be bound to the terms of the approved pooling agreement. Any member seeking to withdraw from NACPC shall file notice with the Board as well.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The pooling agreement proposed in this application is approved and authorized.
2. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.