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10TH DISTRICT, NEW JERSEY

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Congress of the United States  
House of Representatives  
Washington, DC 20515-3010

September 29, 2003

P3-03

Mr. Bryant L. VanBrakle  
Secretary  
Federal Maritime Commission  
800 North Capitol Street  
Washington, DC 20573

Dear Mr. VanBrakle:

It is my understanding that UPS has filed for an exemption from the prohibition on Non-Vessel Operating Common Carriers (NVOCCs) from entering into confidential contracts with their customers. Due to the operational characteristics of UPS and recent developments within the ocean shipping marketplace, the antiquated regulatory scheme governing NVOCCs should be revised. I write in strong support of the UPS's petition (P3-03) currently pending before the FMC.

During consideration of the Ocean Shipping Reform Act (OSRA) revisions of 1998, Congress carefully considered all aspects of the ocean shipping industry including the role of NVOCCs. Based on the nature of ocean shipping at the time, Congress determined that NVOCCs should be regulated differently than vessel operators. In the late 1990's, most NVOCCs were small enterprises that neither owned ocean vessels nor the cargo being shipped. In order to protect shippers and to guarantee liability coverage, Congress determined that NVOCCs should operate under a published tariff system when dealing with their customers.

However, the state of the U.S. ocean shipping industry has changed dramatically since passage of OSRA. There has been unprecedented consolidation among ocean carriers resulting in the loss of major U.S. flagged carriers. In an effort to offer customers a full range of services, these very same carriers have created vertically integrated logistics companies that now compete with NVOCCs.

UPS operates the most sophisticated, integrated, intermodal transportation network in the world, which includes air, rail and surface and NVOCC transportation, and is seemed a "carrier" in the surface and air freight industries. Furthermore, UPS makes significant annual capital investments to its asset-based transportation infrastructure. These facts

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alone set UPS apart from the companies that first raised concerns about the regulatory status of NVOCCs.

The UPS petition, citing the recent evolution of the ocean shipping marketplace, is precisely the reason Congress granted such broad exemption authority to the FMC. While anticipating dramatic changes in the ocean shipping industry with the passage of OSRA, Congress did not contemplate how fast or how smoothly the market could adapt to these changes. By granting this petition, the FMC will acknowledge these changes, level the playing field between NVOCCs and vessel operators, and ultimately benefit ocean shipping consumers around the world.

I respectfully request that FMC give the UPS petition its utmost consideration and render an equitable decision on this matter based upon the merits of the case.

Sincerely,

A handwritten signature in black ink that reads "Donald M. Payne". The signature is written in a cursive, slightly slanted style.

Donald M. Payne  
Member of Congress