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Congress of the United States

House of Representatives

Washington, DC 20515-0507

September 10, 2003

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

RE: Petition P3 -03

Dear Commissioners:

I am **writing** in strong support of the United Parcel Service (UPS) petition that is currently pending before the Federal Maritime Commission (FMC). This petition seeks an exemption from the prohibition on Non-Vessel Operating Common Carriers (NVOCCs) from entering into confidential contracts with their customers. Due to **material** changes in the ocean shipping marketplace, the regulatory scheme that is presently in place no longer provides the protections that it originally intended and, at the very least, it does not allow for the unique operational characteristics of UPS. Therefore, I urge you to provide a more equitable balance between vessel operators and non-vessel operators by amending the policy set forth in the *Ocean Shipping Reform Act (OSRA)* revisions of 1998.

In the late 1990's, Congress determined that, in the interest of Vessel Operating Carriers (VOCCs) and ocean shipping customers, NVOCCs would be regulated differently than VOCCs. Based on the nature of the ocean shipping industry at that time, when most NVOCCs were small enterprises that neither owned ocean vessels nor the cargo being shipped, they decided that NVOCCs should operate under a published **tariff** system when dealing with their customers. The purpose of this stipulation was to protect shippers and to guarantee liability coverage. Given UPS' strong global transportation network and large **capital** base, including \$3.13 billion in 2002 revenues, the risk of nonperformance of service contracts in the manner Congress feared simply would not apply.

Furthermore, since the passage of the 1998 revisions, new competitive market forces have altered the state of the U.S. ocean shipping industry. An unprecedented rate of consolidation among international shipping **companies** resulting in the loss of U.S. flagged carriers combined with a contemporaneous increase in the demand for integrated logistics services have blurred the distinction between NVOCCs and VOCCs. In an effort to **sustain** their businesses, U.S. carriers have forcibly adopted new services and created integrated **logistics** companies that directly compete with NVOCCs. With approximately 300,000 TEUs of ocean freight transported **annually** and the **classification** of "carrier" in the surface and air freight industries, UPS sets itself apart from the non-asset-intensive intermediary companies targeted by this OSRA restriction, and is a vertically integrated competitor against **voccs**.

While **anticipating** dramatic changes in the ocean shipping industry with the passage of OSRA, Congress did not allow for the rapid market evolution that followed. However, protections were set in place when Congress granted the FMC exemption authority to exercise in the event that market disparities grew rampant and became threatening to an NVOCC. I urge your favorable consideration of **this** petition, as I am confident in your interest and ability to restore a level playing field between vessel operators and non-vessel operators.

Sincerely,

GEORGE MILLER
Member of Congress
7th District, California