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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

October 9, 2003

Bryant L. Van Brakle, Esq.
Secretary
Federal Maritime Commission
800 North Capitol Street, N. W.
Washington, D.C. 20573

Dear Mr. Van Brakle:

The American Maritime Congress (AMC) is an association of U.S.-flag ship operating companies with vessels in the international and domestic shipping trades.

On behalf of our members, we are submitting comments in response to several petitions filed with the Federal Maritime Commission (FMC) requesting changes in the regulation of **Non-Vessel Operating Common Carriers (NVOCCs)** under the Shipping Act of 1984, or, more specifically, the Ocean Shipping Reform Act of 1998 (OSRA), now part of that act. These petitions are: **P3-03**, filed by United Parcel Service (UPS), **P5-03**, filed by the National Customs Brokers and Forwarders Association (NCBFAA), **P7-03**, filed by Ocean World Lines (OWL), **P8-08**, filed by BAX Global Inc. (**BAX**), and **P9-03**, filed by C.H. Robinson Worldwide, Inc. (**CHRW**). Our focus in these comments will be on the UPS petition

Under OSRA, Vessel Operating Common Carriers (**VOCCs**) were granted the right to negotiate confidential service contracts; NVOCCs were prohibited from exercising this privilege. This point was emphasized with great clarity during consideration of OSRA in the Congress. During the **floor** debate, Senator Slade Gorton offered an amendment to allow NVOCCs this privilege as well (in short, the same relief sought by UPS). It was discussed at some length on the Senate floor and then rejected by a vote of 72 to 25. Thus, this proposal was explicitly presented to and then rejected by the Senate.

With this in mind, there is no question as to legislative intent or as to the ability of the FMC to grant the UPS petition through administrative action. The FMC has no statutory authority to 'grant the relief requested by UPS based on the deliberate decision of Congress in 1998 on this very issue.

In addition, we would note that this relief is unnecessary. There is no evidence that NVOCCs have been disadvantaged under the existing regulatory regime. Furthermore, NVOCCs can change to a VOCC simply by acquiring or chartering ocean transport assets (after all, UPS has its own massive fleet of trucks and **aircraft**; why not vessels?) **If**, as we note below, the FMC moves on with a further regulatory proceeding, we would elaborate on all these points in more detail.



Although we strongly believe that NVOCCs should not be given the relief they request, and certainly not in the manner proposed by UPS, we do recognize that there may be solutions short of outright relief (for which there is no legal basis) that could be explored in a future FMC rulemaking process. The NCBFAA petition has proposed one such solution in its "rate range" concept.

The issues raised in these petitions have broad implications for U.S.-flag carriers and for OSRA itself. The petitions should not be granted outright. If the FMC believes that the issues raised in these petitions deserve further consideration and a subsequent rulemaking consistent with its authority under the law, then we recommend that the Commission move forward with a notice of inquiry or an advance notice of proposal rulemaking.

We thank you for and appreciate your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gloria Cataneo Tosi". The signature is written in a cursive style with a large initial "G".

Gloria Cataneo Tosi
President