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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM December 5, 2003

To: Bryant L. **VanBrakle**, Secretary

From:  Harold J. Creel, Jr., Commissioner

Subject: Petition No. P3-03, Petition of United Parcel Service, Inc. for Exemption Pursuant to Section 16 of the Shipuina Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts

On December 1, 2003, I met with representatives of United Parcel Service, Inc. ("UPS") to discuss the above-referenced petition and related petitions for relief currently pending before the Commission. The UPS representatives include: J. Michael Cavanaugh, Esq., counsel for UPS; Kathy Luhn, Senior Advisor, **TranSystems** Advisors; Thomas F. Jensen, Public Affairs Manager, UPS; and Michael G. Gargaro, Vice President, Global Ocean Freight Services, UPS. Also present was my counsel, David R. Miles.

As an initial matter, counsel indicated that UPS will be submitting additional written comments by January 16, 2004. UPS then described its emerging role in the ocean **freight** industry. About ten years ago, UPS started a logistics division in response to customer demands. More recently, UPS acquired the Fritz companies, a large, worldwide ocean transportation intermediary ("OTI"). This enabled UPS to operate as an OTI and to offer its supply chain solutions to its shipper customers. Ms. Luhn opined that this area will continue to grow as corporations downsize their internal transportation departments and seek outside, professional help. Mr. Gargaro also claimed that vessel operators are now entering the logistics market, no longer leaving small accounts for the forwarding industry.

Mr. Gargaro further claimed that UPS primarily serves small to medium-sized exporters, and that it cannot compete for larger customers because of the service contract "problem". Mr. Cavanaugh stated that shippers demand one-stop shopping and that the lack of confidentiality of their transportation rates is "deadly". He further stated that service contracts are the premier pricing platform in most trades.

Ms. Luhn contended that those involved in the negotiations over the Ocean Shipping Reform Act ("OSRA") thought that it would take 10 to 12 years for the industry to adjust to the changes. However, the anticipated changes have occurred much quicker - within two to three years. Ms. Luhn also noted that Congress chose the FMC as the place to go to address issues and Congress wrote the section 16 exemption authority as broad as possible.

The fate of the Gorton amendment to OSRA was also discussed. It was suggested that the Senator may have been merely fulfilling a commitment to raise the issue. Mr. Cavanaugh also noted that the nationality of some large **OTIs** was a concern of some senators and that many

vessel operators were U.S. companies. In the last five years, these roles purportedly have reversed.

Mr. Cavanaugh reiterated his position that there is no legal bar to the Commission's use of section 16 to grant the relief sought by UPS. While not opposing other petitions, he did note that some of the relief sought by others would not help LJPS. UPS further opined that it would meet any test the Commission might develop.