

Before the Federal Maritime Commission

Comments in Response to the December, 2011 Notice of Inquiry Regarding *Non-Vessel-Operating Common Carriers Negotiated Rate Arrangements; Tariff Filing Exemption*

Docket Number 11-22

Submitted by

FedEx Trade Networks Transport & Brokerage, Inc.

FedEx Trade Networks Transport & Brokerage, Inc. (FedEx Trade Networks) hereby submits these comments in response to the Federal Maritime Commission's (FMC) *Notice of Inquiry* regarding improving the usefulness of the Negotiated Rate Arrangement (NRA). FedEx Trade Networks is a large freight forwarder and non-vessel operating common carrier (NVOCC) providing transportation services worldwide. FedEx Trade Networks operates NVOCC affiliates which are separately licensed by and registered with the FMC.

FedEx Trade Networks appreciates the opportunity to submit comments. While FedEx Trade Networks supports the use of NRAs as an alternative to tariff filings, we believe that modifications to NRA requirements, as well as clarifications from the FMC, are needed in order to maximize the benefit sought when the FMC first authorized use of NRAs.

Modification to NRA rates

FedEx Trade Networks recommends that the FMC allow NVOCCs and shippers greater flexibility in making modifications to existing NRAs. Such flexibility will allow NVOCCs to more quickly respond to rapid changes in the ocean freight marketplace caused by general rate increases or increases in bunker charges by Vessel Operating Common Carriers (VOCCs). It is not unusual for these types of charges to fluctuate on a monthly basis or to be announced but not implemented.

Superseding NRAs

FedEx Trade Networks recommends that the FMC provide guidance on the consequences of multiple NRAs between an NVOCC and a shipper if there are overlapping effective periods, commodities and/or routes.

Termination

The Final Rule states that "...an NRA...could only be canceled by operation of law or by agreement of both parties prior to receipt of the cargo" (p. 11358). FedEx Trade Networks believes that either of the parties to the NRA should be able to terminate the NRA before the entire cargo is received, so that either party may terminate the NRA even after part, but not all, of the cargo has been received.

Affiliated parties

FedEx Trade Networks recommends that the FMC clarify that two or more affiliated NVOCCs may be parties to an NRA. The definition of "affiliates" is: "...two or more entities which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with or otherwise related to each other through common stock ownership or common directors or officers." 46 CFR 532.3(e). The Final Rule states: "...the Commission finds no reason to treat affiliates differently under NRAs than they are treated under NSAs" (p.11355). NSAs are permitted to be issued by two or more affiliated NVOCCs and the Final Rule clearly states that two or more shippers may be considered affiliates and be parties to an NRA. The same clarity should be added for affiliated NVOCCs.

Licensed vs. registered NVOCCs

The FMC specifically invited comments on extending the tariff filing exemption to registered (foreign, unlicensed) NVOCCs. FTN fully endorses the use of NRAs by all licensed and registered NVOCCs. Many U.S. licensed forwarders have overseas subsidiaries which share equally in the responsibility of servicing a shipper. As such, efficiencies could be achieved if such subsidiaries were able to fully participate in the use of NRAs.

The main concern of the FMC appears to be a possible lack of cooperation by the registered NVOCC in complying with a request for documentation by the FMC. Foreign NVOCCs are required to post substantial bonds with the FMC and such bonds may be the means by which the FMC enforces recordkeeping and record production requirements.

FedEx Trade Networks thanks the FMC for its consideration of these important modifications.