Form FMC-2 (Rev. 07-89) **UNITED STATES GOVERNMENT** **FEDERAL MARITIME COMMISSION**

Memorandum

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FEDERAL MARITIME COMM

TO : Bryant VanBrakle **DATE:** January 12, 2004

FROM : Commissioners Harold J. Creel, Jr. and Joseph E. Brennan

SUBJECT : Summary of Oral Presentation of FedEx re P3-03, P5-03, P7-03, P8-03, and P9-03

This summary of an oral presentation, which took place on January 8, 2004 at 11:00 AM at the Commission's offices at 800 North Capitol Street, NW, Washington, DC., is being submitted to the Secretary of the FMC for submission into the record of the above proceedings.

Present for the Commission were:

Commissioner Joseph E. Brennan
Commissioner Harold J. Creel, Jr.
Steven Najarian, Counsel to Commissioner Brennan

Present for the presenters were:

Warren L. Dean, Jr., Thompson Coburn, LLP
Joseph Koslowski, Managing Director, FedEx Trade Networks
Steve DiNisco, Managing Director, FedEx Trade Networks
Penelope W. Register, Vice President and General Counsel, FedEx Trade Networks
David W. Spence, Managing Director, FedEx Express
Henry Wiseman, Senior Vice President, FedEx Trade Networks

The presenters made the following points:

The shippers using FedEx want to know the status of their cargo along the entire supply chain. This helps to reduce the shipper's inventory cost. The customer wants to be more efficient and wants FedEx to provide customized services.

90% of goods shipped in the liner trade are covered by service contracts. FedEx faces a competitive disadvantage by not being able to tailor contracts with its customers.

The petitioners are asking the FMC to treat the NVOs the same as the VOCCs with regard to service contracts. The FMC should still have access to NVO rate information.

There is vertical integration among foreign-based ocean common carriers. These companies have their own logistics companies. It is only natural for the parent VOCC to want the business of its subsidiary logistics company.

There should be a reduction in the administrative burden of maintaining tariffs, The administrative cost of tariff publication is especially burdensome on NVOs. VOCCs alone can use service contracts. There must be a level playing field if there is to be fair competition.

FedEx customers do not look up FedEx's tariffs. Most FedEx customers do not even know of FedEx's tariffs. Tariffs are no longer practical and do not serve the public interest. Tariffs merely increase FedEx's costs and make FedEx's rate information available to the public, which includes FedEx's competitors.

FedEx is a $23 billion company with 215,000 employees worldwide. UPS is a $30 billion company. FedEx has 684 cargo planes, which is more than UPS has. FedEx offers global cargo distribution. FedEx's acquisition of Kinko's will add 2,500 property locations to FedEx's portfolio. FedEx has invested heavily in intermodal. It is publicly traded and customer-based.

The Gorton Amendment was rejected because of the view 1) that NVOs were not sufficiently financially responsible to enter into service contracts and 2) that the law should benefit U.S. flag carriers. Today the facts behind both considerations have changed. NVOs are established and have assets. FedEx is asking for service contract authority only for companies that meet financial stability criteria Furthermore, there are virtually no U.S.-owned, U.S.-flag companies remaining to protect.

The ocean common carriers have consolidated. The U.S.-owned, U.S.-flag fleet has nearly vanished in the liner trade. There is a disincentive to registering vessels under the U.S. flag. Tax policy is one reason. A Treasury Department study released two years ago identified the disincentives to U.S.-flag registry.

NVOs, if given service-contract authority, would not put ocean common carriers out of business. FedEx sees VOCCs as partners and is not trying to put VOCCs out of business. The VOCCs will continue to be mainly port-to-port providers. The ocean carriers ***have*** positioned themselves for that.