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October 10, 2003

Mr. Bryant VanBrakle, Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Washington, DC 20573-0001

RECEIVED
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C. AVIES PATL
President
FEDERAL MARITIME COMM

RE: Petition P3-03

Dear Mr. VanBrakle:

The Maritime Institute for Research & Industrial Development (MIRAIID) submits this letter in opposition to the petition filed by United Parcel Service (UPS) for an exemption from the Shipping Act of 1984 (Shipping Act) to permit UPS to enter into service contracts with its customers. MIRAIID is a non-profit association of United States-flagged vessel operators engaged in our Nation's foreign and domestic commerce. Consequently, we are keenly interested in proposals that may alter the existing regulatory framework of the international ocean shipping community. We wish to associate with the more detailed comments submitted by others in the maritime industry in opposition to the petition filed by UPS as well as those filed by the National Custom Brokers and Forwarders Association of America, Inc., Ocean World Lines, BAX Global, Inc., and C.H. Robinson Worldwide, Inc. Additionally, we would like to emphasize the following points as to why the petition submitted by UPS should be denied.

UPS, as a non-vessel-operating common carrier (NVOCC), has petitioned the Commission for the authority to negotiate and enter into confidential service contracts with its shippers. Under the current regulatory scheme of the Shipping Act, such activity is not authorized for NVOCCs. In fact, a review of the legislative history of the Shipping Act, as amended by the Ocean Shipping Reform Act of 1998 (OSRA), reveals that such authority for NVOCCs was specifically rejected by Congress during floor consideration of OSRA. Specifically, then-Senator Slade Gorton offered an amendment that would have authorized NVOCCs to enter into service contracts. That amendment, which addressed only that specific issue, was defeated by a roll call vote of 72 against and 25 for.

UPS could easily acquire the rights it seeks in the exemption petition simply by exercising a readily available commercial option - to operate ships, just as it operates

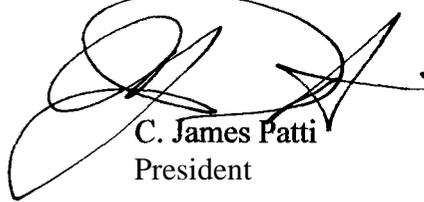


trucks and airplanes. By doing so, UPS would transform its status to a vessel-operating common carrier (VOCC). VOCCs are capable of offering service contracts. The UPS petition demonstrates that this would not be **difficult** to do at all. As the petition points out, UPS had corporate revenues in 2002 of \$3 1.3 billion, and operates a fleet of 88,000 vehicles and 581 aircraft. UPS's transportation assets cost more than \$25 billion, and it has a market capitalization of \$33.2 billion. UPS's continued investment in transportation assets is substantial, with average capital expenditures of \$2 billion per year. UPS, with its considerable resources, could certainly charter the necessary ocean transportation assets, thus qualifying as a VOCC eligible to engage in service contracting. This commercial alternative would obviate the need for an "exemption" under the law.

Additionally, Petitioner's request does not seek an exemption from an existing specific requirement of the Shipping Act. Instead, it is asking the Commission to grant it an **affirmative** privilege that Congress did not make available to NVOCCs under the Act, i.e., the right of vessel operating common carriers to satisfy their rate publication/filing obligations through the filing of service contracts and the publication of required essential terms. As a simple matter of statutory authority, the Commission is without power to grant the requested relief. MIRAID submits that the proper venue for seeking such authority is in the Congress, not the Federal Maritime Commission.

For the foregoing reasons, MIRAID urges the Federal Maritime Commission to reject the subject petition. Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. James Patti', is written over a large, loopy scribble. The signature is positioned above the printed name and title.

C. James Patti
President