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May 28, 2010

Karen V. Gregory
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Room 1046
Washington, D.C. 20573-0001

**Comments on NPRM: NVOCC Negotiated Rate Arrangements
Docket No. 10-03 / RIN 3072-AC38**

Agency: Federal Maritime Commission

Comments on NPRM being submitted by:

Gerald T. Becnel, Jr.
J.W. Allen & Company, Inc.

No previous comments have been submitted by J.W. Allen & Company in response to the NCBFAA's exemption petition in support of the NVOCC Negotiated Rate Arrangement exemption.

On behalf of J.W. Allen & Company, thank you for the opportunity to comment on the NPRM on the NVOCC Negotiated Rate Arrangements. For background purposes, J.W. Allen & Company, Inc. is a licensed freight forwarder, NVOCC and Customs Broker whose mission is to provide quality international transportation services. Established in 1932, our company has provided international transportation services for over 77 years. We have eagerly awaited the NPRM and are please to see that it sets the stage for a meaningful and warranted review of rate filings as pertained to the NVOCC community.

Comment 1 – The need for the exemption

Over the years, the scope of the international shipping industry has changed with regards to the agreement of NVOCC rates with shippers and the management of corresponding rate tariffs. NVOCC rates are privately negotiated in most cases direct with the shipper. Rapidly changing carrier rates and surcharges are a major driving factor for the private negotiation of rates between NVOCC's and shipper customers. Such rate Arrangements allow shippers to better manage their supply chain and control cost fluctuations that might be incurred otherwise.

The requirement for the maintenance of rate tariff filing places a burden on organizations both financially and administratively. Being a small company, J.W. Allen & Company does not have the opportunity to mitigate our costs through economies of scale as the volume of our NVOCC business does not enable us to do so. Fees are incurred by our company on a quarterly basis for general tariff maintenance with an additional fee assessed on an individual tariff filing basis. The quarterly maintenance fee is approximately \$237.00 usd with each individual rate filed incurring a \$15.00 filing fee. In the 2009 calendar year, J.W. Allen & Company incurred approximately \$1,500.00 in direct tariff filing related fees not including any internal processing and handling fees.

To the best of my knowledge throughout our tenure as an NVOCC, J.W. Allen & Company has never received a request from an outside party wishing access to view our rate tariff filings. Given the fact our rate tariff filings are of little interest, if any at all, with the rates on file being privately negotiated for specific shippers. One has to question if the purpose for which the tariff filing process was intended has outlived its' usefulness at the NVOCC level.

Additionally, most small and medium sized NVOCC's contract with other service providers to file rates and maintain that company's tariff for a fee. The companies performing this service also charge parties wishing to review tariff rates a user fee for access. The user fee only serves to hinder the ability of outside parties wishing to view tariff rates on file and / or filed on their behalf. The requirement for the payment of a user fee to view someone's tariff essentially acts as a deterrent by requiring a financial outlay to access rate tariff filing information. Such requirements and deterrents restricting access to filed rates brings into question the effectiveness of the tariff rate filing requirement with regards to providing parties with easy access to the information.

Comment 2 – Support for the proposal

J.W. Allen & Company, Inc. strongly supports the NVOCC exemption. While we recognize the need to document rate arrangements, numerous other existing electronic means already accomplish this task. In all cases, rates are communicated to shippers and agreed in writing by e-mail and / or fax prior to fulfilling the current rate tariff filing requirement. Routine procedures facilitate the written transmission and confirmation of rate arrangements between J.W. Allen & Company and our shippers so the "writing" requirement in the NPRM does not present an issue.

If required to formalize rate arrangements with our shippers, it would be easy for J.W. Allen & Company to add a notation to written communications indicating the exempt Negotiated Rate Arrangements are subject to the company's rules tariff. To facilitate the exemption, J.W. Allen & Company agrees to not institute an access fee while establishing an internal mechanism to monitor and store written NVOCC Rate Arrangement Negotiations with our shippers.

Comment 3 – Modification of the FMC’s Proposed Exemption Regulation

The exemption as proposed should be made available to all lawful NVOCC’s, including those NVOCC’s of foreign registry, not just licensed companies. The exclusion of some NVOCC’s from the proposed exemption as opposed to others is discriminatory in nature and would likely be challenged in a court of law. The exclusion of NVOCC’s of foreign registry would also likely be of concern to foreign governments who might seek retaliatory action against U.S. licensed NVOCC’s if unjustified burdens were left on registered NVOCC’s. Such retaliatory actions by other governments have been experienced in the form of tariffs levied on American products resulting from a dispute or perceived unfair practice or legislation adopted by the United States Congress.

Parties to NVOCC Negotiated Rate Arrangements should have the ability to amend rates at anytime provided their agreement to do so is memorialized in writing by both parties. The inability of the parties to amend rates hinders the parties’ ability to react to carrier rate fluctuations when dealing with a rate agreement covering multiple shipments. Flexibility on the part of all parties is required to enable the parties involved to effectively manage rate fluctuations given the volatile and ever changing nature of the ocean carrier rate environment.

The growth of the NVOCC community over time has changed the landscape and handling of international shipments. A large majority of NVOCC Negotiated Rate Arrangements are privately negotiated and shipper specific. As business processes and technologies change, the overall business environment develops and adapts to new technologies and methodologies with the international shipping industry being no exception. With regards to NVOCC Negotiated Rate Arrangements, the scope and handling of the international shipping business must be allowed to continue to develop and keep pace with the new technologies available. E-Mail and fax communications are internationally acceptable modes of communication and provide an established mechanism to facilitate the written requirement as noted in the NPRM. Both modes of communication provide an expedient and virtually instantaneous method of data transmission which further facilitates the need for flexibility on the part of NVOCC’s to efficiently and effectively service clients in the international shipping arena.

J.W. Allen & Company’s support of the NPRM regarding NVOCC Negotiated Rate Arrangements is based on recognition of the need for the development of tariff filing practices that reflect the current international shipping practices and standard business technologies and methodologies available.

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Thank you for the opportunity to submit comments on behalf of J.W. Allen & Company.

I declare under penalty of perjury that I have read the foregoing and it is true and correct to the best of my knowledge, information and belief.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald T. Becnel, Jr.", written in a cursive style.

Gerald T. Becnel, Jr.
President
J.W. Allen & Company, Inc.