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J. MICHAEL CAVANAUGH
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April 8, 2004

VIA HAND DELIVERY

Honorable Bryant L. VanBrakle, Secretary
Office of the Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

Re: Petition of FedEx Trade Networks Transport & Brokerage, Inc.,
Petition No. P4-04 – Corrected Comments of United Parcel Service

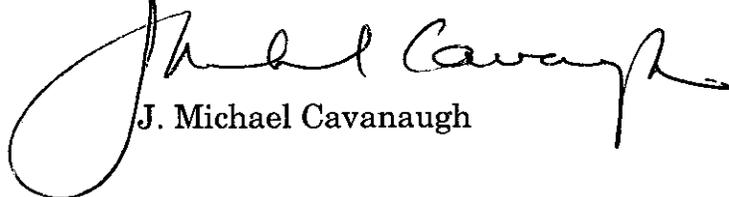
Dear Mr. VanBrakle:

Enclosed for filing please find an original and 15 copies of the corrected version of UPS's April 2, 2004 Comments to Petition No. P4-04.

If you have any questions, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP


J. Michael Cavanaugh

JMC/pnc
Enclosures

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BEFORE THE FEDERAL MARITIME COMMISSION

COMMENTS OF UNITED PARCEL SERVICE
IN RESPONSE TO PETITION OF
FEDEX TRADE NETWORKS TRANSPORT & BROKERAGE, INC.
PETITION No. P4-04

April 2, 2004

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United Parcel Service ("UPS"), which has filed its own Petition No. P3-03 under Section 16 of the Shipping Act of 1984 (the "Act") requesting an exemption granting service contract authority, hereby comments on the petition of FedEx Trade Networks Transport & Brokerage, Inc. ("FedEx").

UPS supports the petition of FedEx, as it supports the similar petitions of other Ocean Transportation Intermediaries ("OTIs") and their associations seeking Section 16 exemptions to provide service contract authority or tariff publication relief.'

Competitive Benefits Exemptions Sought by Petitioners Are Obvious

UPS agrees with FedEx that the exemptions sought by Non Vessel Operating Common Carriers ("NVOCCs") satisfy the statutory requirements of Section 16 of the Act, as the result would be an increase in competition, both horizontally and vertically, without any detriment to commerce. No party commenting in response to any of the petitions has denied this fact. Virtually all the commenting parties, including numerous large and small NVOCCs, forwarders, brokers and their associations, as well as the American Trucking Associations, the U.S. Department of Justice and the U.S. Department of Transportation ("DOT") support the petitions in principle. Most importantly, shippers, who would benefit from the increased number of shipping options and forms of contractual arrangements available in U.S.-foreign ocean trades, are strongly in favor of the exemptions.

The sole basis for the opposition to the petitions from Vessel Operating Common Carriers ("VOCCs") is their expressed concern that the result would be increased competition from NVOCCs. Ironically, in taking this position, the VOCCs concede that the petitioners have met their burden under Section 16 of the Act to show that the exemptions would not impair competition or be detrimental to commerce.

¹ Petition Nos.. P5-03, filed by National Customs Brokers and Forwarders Association of America, P8-03, filed by BAX Global, P9-03, filed by C.H. Robinson International, PI-04, filed by Danzas/DHL and P2-04, filed by BDP international.

Accordingly, the Commission must ask whether the purpose of Section 16 of the Act, and the overall concept of the Ocean Shipping Reform Act ("OSRA") is to improve competitive conditions for the ultimate benefit of shippers, or to protect VOCCs from competition to the detriment of shippers.

UPS also agrees with FedEx regarding the comments of American President Lines ("APL") and their study prepared by Reeve & Associates, entitled "Important Questions Raised by Petitions to the Federal Maritime Commission Concerning Non Vessel Operating Common Carriers and Service Contracts" (the "Reeve Study"). As FedEx correctly notes (Petition No. P4-04, p. 5), the Reeve Study merely proposes a set of counterintuitive propositions about the competitive effects of expanding competition between VOCCs and NVOCCs.

Act Soon. Not Slowly

FedEx, like UPS, while seeking its own exemption on the merits presented, supports the proposition of a rulemaking to promulgate standards for which NVOCCs would be eligible for service contract authority (Petition No. P4-04, p. 2). There is no reason why the Commission cannot deal with this matter in its entirety in a thoughtful and efficient manner in a relatively short period of time. FedEx correctly observes that APL's suggestion for a protracted, layered process involving extended weighing of preliminary questions, followed by some sort of fact-finding investigation, then followed by a rulemaking proceeding is transparently designed to stall the process and maintain its protected position as long as possible (Id. at p. 5). A simple, accelerated rulemaking proceeding would be more than sufficient to explore and address the hypothetical questions raised by APL, which, as shown above, are both irrelevant and easily resolved in the negative by common knowledge of economic principles.

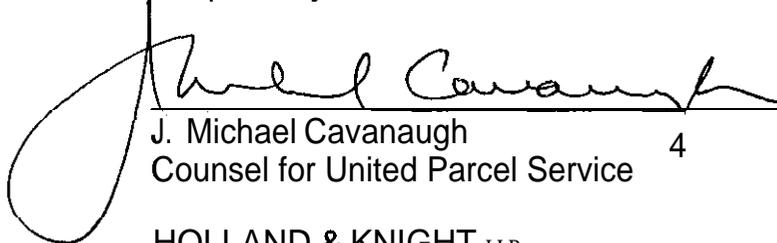
The preliminary questions presented have been clearly known since UPS filed Petition No. P3-03 nine months ago in July 2003. All parties have commented exhaustively upon the legal issues. A rulemaking, by its very nature, is a competitive and adversarial process in which no doubt the VOCC interests will present all factual information they consider necessary to protect their position, as will the other parties. It is difficult to conceive what an "investigation" would produce in addition to that process, or why the two processes could not be conducted simultaneously.

Conclusion

For the reasons so well stated by many diverse parties in all areas of the industry, the time has come for action on the exemptions sought. As noted by the DOT, "the purpose of economic regulation is to protect competition, not competitors" (DOT Comments, p. 10, citing to Brown Shoe Co., v. United States, 370 U.S. 294, 320 (1962)).

Independently of the criteria that may be adopted in any rulemaking, large NVOCCs such as FedEx and UPS have shown they are well qualified for an exemption granting service contract authority. Accordingly, the Commission should act upon these NVOCC petitions without waiting for completion of a rulemaking.

Respectfully submitted,



J. Michael Cavanaugh
Counsel for United Parcel Service

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April 2, 2004

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CERTIFICATE OF SERVICE

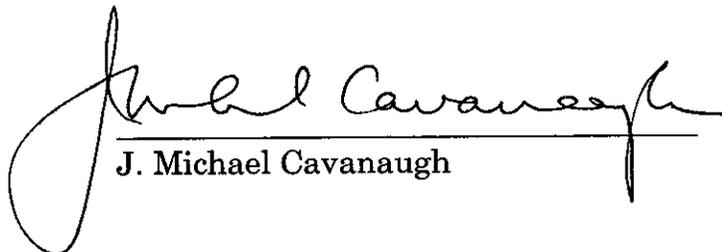
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I hereby certify that on this 2nd day of April 2004, a copy of the foregoing Comments of United Parcel Service in Response to Petition of FedEx Trade Networks Transport & Brokerage, Inc., Petition No. P4-04, was sent via first-class mail, postage prepaid, to the following:

Warren L. Dean, Jr., Esq.
Thompson Coburn LLP
1909 K Street, N.W., Suite 600
Washington, D.C. 20006-1167



J. Michael Cavanaugh