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AMERICAN MARITIME CONGRESS  
Franklin Square, 1300 I Street, NW, Suite 250 West, Washington, DC 20005-33 14

October 9, 2003

Bryant L. Van Brakle, Esq.  
Secretary  
Federal Maritime Commission  
800 North Capitol Street, N. W.  
Washington, D.C. 20573

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P5-03 ✓  
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FEDERAL MARITIME COMMISSION

Dear Mr. Van Brakle:

The American Maritime Congress (AMC) is an **association of U.S.-flag** ship operating companies with vessels in the international **and** domestic shipping **trades**.

On behalf of our members, we are submitting comments in response to several petitions filed with the Federal Maritime Commission (FMC) requesting changes in the regulation of **Non-Vessel Operating Common Carriers (NVOCCs)** under the Shipping Act of 1984, or, more **specifically, the Ocean Shipping Reform Act of 1998 (OSRA)**, now part of that act. **These** petitions are: **P3-03**, filed by **United Parcel Service (UPS)**, **P5-03**, filed by the National Customs Brokers and **Forwarders Association (NCBFAA)**, **P7-03**, filed by Ocean World Lines (OWL), **P8-08**, filed by **BAX Global Inc. (BAX)**, and **P9-03**, filed by C.H. Robinson **Worldwide, Inc.(CHRW)**. Our focus in these comments will be on the UPS petition.

Under **OSRA**, Vessel Operating Common Carriers (**VOCCs**) were granted the right to **negotiate confidential service** contracts; NVOCCs were prohibited **from exercising this** privilege. This point was emphasized with great **clarity** during consideration of OSRA **in** the Congress. **During** the floor debate. Senator **Slade Gorton** offered **an** amendment to **allow** NVOCCs this privilege as **well** (in short, **the same relief sought** by UPS). It was discussed at some **length** on the Senate floor and then rejected by a vote of 72 to 25. Thus, this proposal was explicitly **presented to and** then rejected by **the** Senate.

With this in mind, there is no **question as** to legislative intent or as to the ability of the **FMC** to **grant** the UPS petition through administrative action. The FMC has no statutory authority to **grant** the relief **requested** by **UPS** based on the deliberate decision of **Congress in** 1998 on this very issue.

In addition, WC would note that **this** relief is unnecessary. There is no **evidence** that NVOCCs have been disadvantaged under the **existing** regulatory regime. **Furthermore**, NVOCCs can change to a **VOCC** simply by **acquiring** or chartering ocean **transport** assets (**after all**, UPS has its own **massive fleet of trucks and aircraft**; why not vessels?) **If**, as we note **below**, the FMC moves on with a **further regulatory proceeding**, we would elaborate on all these points in more detail.



Although we strongly believe **that NVOCCs** should not be given the **relief they** request, and certainly not in **the manner** proposed by **UPS, we do recognize** that there may be solutions short of outright relief (**for** which there is no legal basis) that could **be** explored in a **future** FMC rulemaking process. The **NCBFAA** petition has proposed one such solution in its **“rate range”** concept.

The issues raised in **these** petitions have broad implications **for U.S.-flag** carriers and for **OSRA** itself. The petitions should **not** be **granted** outright. If the FMC **believes** that the **issues raised** in these petitions deserve **further** consideration and **a** subsequent **rulemaking** consistent with its authority under the law, then we recommend that the Commission **move** forward with **a** notice of inquiry or an advance notice **of proposal rulemaking**.

**We thank you for and appreciate your consideration of our comments.**

Sincerely,



Gloria Cataneo Tosi  
President



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FACSIMILE TRANSMITTAL SHEET

TO: Bryant Van Brable, Esq. FAX NO: 202-523-0014  
Secretary, FMC

FROM: Gloria Cataneo Tosi  
President

DATE: 10/9/03

NUMBER OF PAGES (Including Cover): 3

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COMMENTS/INSTRUCTIONS:

Bryant - here is a copy of our  
comments. The will have original  
plus 15 copies hand-delivered to you  
tomorrow.

Thanks & warmest regards  
Gloria

If you do not receive all of the above noted pages, please call 202 842-4900. Thank you.