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LONGSHORE &
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AFL-CIO



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October 10, 2003

Mr. Bryant L VanBrakle, Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Washington, D.C. 20573

Re: PETITION P3-03

RECEIVED
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FEDERAL MARITIME COMMISSION

Dear Mr. VanBrakle:

The International Longshore and Warehouse Union, AFL-CIO (ILWU) is writing in opposition to the petition filed by United Parcel Service, Inc. (UPS) for an exemption from the Shipping Act of 1984 to permit it to negotiate, enter into and perform service contracts. The ILWU represents longshore, warehouse, and maritime workers on the west coast of the United States, Hawaii, and Alaska. As a major stakeholder in the debate over maritime deregulation, the ILWU worked with Congress in fashioning a compromise that led to the Ocean Shipping Reform Act of 1998.

We submit that the Shipping Act does not give the FMC the authority to grant UPS or any other non-vessel ocean common carrier (NVOCC) the right to engage in confidential service contracts. The legislative history is clear. The Ocean Shipping Reform Act of 1998 allowed the existing rules for NVOCCs to continue which is to offer services pursuant to tariffs, instead of service contracts. Congress decided that service contracts require a service commitment that only vessel operating common carriers (VOCCs) provide. In fact, then Senator Slade Gorton of Washington offered an amendment to the Ocean Shipping Reform Act of 1998 that would have permitted NVOCCs to engage in service contracts. The Gorton amendment was rejected by the United States Senate by a sizeable 72-25 vote.

Arguments advanced by UPS for an exemption include the size of its company, assets held by the company, its base of operations, and its financial strengths. Congress did not determine to continue the existing regulatory requirements based on the various sizes or other attributes of particular NVOCCs. Rather, Congress acknowledged that vessel-

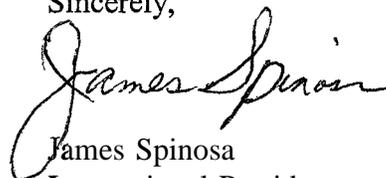
operating common carriers have made significant investments in vessels, terminals, containers and other equipment which enable them to make service commitments and NVOCCs by definition have not made the same investments in the maritime industry.

If the UPS petition and other similar petitions are approved by the FMC, it would serve as a disincentive to own and operate ships, contrary to the express policy of the United States government to foster a viable, healthy U.S.-flag ocean common carrier industry. On April 3, 1998 during the course of debate over the Gorton Amendment to the Ocean Shipping Reform Act of 1998, Senator John Breaux of Louisiana said, "Why actually own and operate ships if you could function in the same fashion as an ocean carrier without actually having to own or control any of the transportation functions or liabilities?"

The inability of NVOCCs to enter into service contracts has had no adverse impact on their ability to do business. In fact the number of NVOCCs has increased since the passage of the Ocean Shipping Reform Act of 1998. NVOCCs can and do contract with vessel operators to secure space at favorable rates. Nothing in the Act or regulations interferes with the NVOCC's ability to secure services from vessel operators.

Again, the International Longshore and Warehouse Union urges the Federal Maritime Commission to reject the UPS petition based on the express intent of Congress when the Ocean Shipping Reform Act passed and signed into law.

Sincerely,

A handwritten signature in cursive script that reads "James Spinosa". The signature is written in black ink and is positioned above the printed name and title.

James Spinosa
International President

JS/lm
Cwa39521