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Memorandum

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FILE TO THE SECRETARY
FEDERAL MARITIME COMM

TO : Bryant L. VanBrakle

DATE: December 9, 2003

FROM : A. Paul Anderson, Commissioner

PA

SUBJECT : Meeting Regarding Petition No. P3-03 - Petition of United Parcel Service, Inc. For Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts

On December 9, 2003, I met in my office with Mr. J. Michael Cavanaugh, counsel with Holland & Knight, LLP; Mr. Michael G. Gargaro, Vice President, UPS Global Ocean Freight Services; Mr. Thomas F. Jensen, UPS Public Affairs Manager; and Ms. Kathy Luhn, Senior Advisor, TransSystems Advisors, at their request, to hear UPS's reasons for filing the petition as well as their views of issues raised in comments responding to the petition. My counsel, Lucille A. Streeter, was also present. In the petition, UPS requests that the Commission grant an exemption under Section 16 of the Shipping Act of 1984 (the Act), to permit its wholly-owned subsidiary UPS Ocean Freight Services, Inc., a non-vessel operating common carrier (NVOCC), to use confidential service contracts with its shippers.

Mr. Jensen gave a brief overview of UPS operations. Mr. Gargaro followed with a discussion of UPS's NVOCC operations, and he noted that the company can include everything except ocean rates in their agreements with shippers, unlike vessel operating common carriers (VOCCs). He stated that the petition is designed to correct this inequity in the marketplace. Ms. Luhn stated that during the time when the Ocean Shipping Reform Act (OSRA) was being debated, the right to use service contracts was not granted to NVOCCs due to concerns about the availability of assets to back up their services. She noted that the industry has changed quickly since passage of OSRA, with large companies now contracting out their logistics work.

Mr. Cavanaugh stated that relief from tariff filing requirements would not solve UPS's problem, and that UPS wants its petition considered separately from any rulemaking that might be

undertaken. He further stated that the requirement from which UPS seeks exemption is that it must be a VOCC to use service contracts. Ms. Luhn stated that this is a regulatory issue and now is the time to address it. Mr. Cavanaugh stated that granting the exemption would meet the requirements of the Act, in that it would be good for competition and would not be detrimental to commerce. He stated further that the confidentiality of ocean rates afforded by service contracts is needed by shippers. Mr. Cavanaugh noted that UPS will be addressing comments to the petition in an additional filing. I concluded the meeting by thanking them and stating that the Commission has an open mind on the issues raised in their petition.