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**BEFORE THE
FEDERAL MARITIME COMMISSION**

COMMENTS OF

**FEDEX TRADE NETWORKS
TRANSPORT & BROKERAGE, INC.**

**IN SUPPORT OF THE PETITION FOR
RULEMAKING**

Commission Docket P8-03

**REPLY OF
FEDEX TRADE NETWORKS TRANSPORT & BROKERAGE, INC.
IN SUPPORT OF
THE PETITION FOR RULEMAKING**

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TRANSPORT & BROKERAGE, INC.**

October 10, 2003

**BEFORE THE
FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.**

Petition No. P8-03

**REPLY OF
FEDEX TRADE NETWORKS TRANSPORT & BROKERAGE, INC.
IN SUPPORT OF
THE PETITION FOR RULEMAKING**

I. Introduction

FedEx Trade Networks Transport & Brokerage, Inc. (“FedEx Trade Networks”) hereby replies in response to the Commission’s invitation to submit views on the petition of BAX Global Inc. (“BAX”).² The petition asks the Commission to initiate a rulemaking to amend its regulations and permit qualified third-party logistics companies, such as non-vessel operating common carriers (NVOCCs)³ to enter into confidential service contracts with their customers in the same manner as ocean common carriers. The petition offers three criteria for determining those entities that should qualify for the requested service contract authority. As explained in these comments, FedEx Trade

¹ FedEx Trade Networks Transport & Brokerage, Inc. is a subsidiary of FedEx Corporation and a licensed Ocean Transportation Intermediary (“OTI”) by the Federal Maritime Commission (Commission OTI License No. **0738N/F**; Organization No. 018021). FedEx Trade Networks publishes an electronic tariff that may be found at <http://www.plustariff.com> and maintains the required financial responsibility amounts as established by the Commission. FedEx Trade Networks provides both export ocean height forwarding and non-vessel-operating common carrier services under its Commission license in U.S. foreign commerce.

² Federal Maritime Commission Notice of Filing, Petition of BAX Global, Inc. for Rulemaking, Petition No. **P8-03** (served Sept. 16, 2003).

³ The term “third-party logistics provider” used by BAX in its petition refers to either (1) licensed OTIs acting as NVOCCs or (2) foreign-domiciled NVOCCs registered with the Commission. Further, “third party logistics provider” as used herein refers to companies providing a combination of international transportation services, e.g., export freight forwarding, shipment consolidation and **deconsolidation**, and inland cargo pick-up and delivery.

Networks endorses the underlying procedural and substantive bases of the BAX petition and supports the timely initiation of a rulemaking on this important regulatory and commercial topic now confronting both the ocean shipping public and industry.

II. Reply

Service contract authority for well qualified NVOCCs is essential to ensure the seamless flow of international cargo, where that flow involves U.S.-foreign transportation by water (whether in whole or in part). Unfortunately, the current U.S. regulatory scheme governing ocean shipping does not permit *any* NVOCC (even the most qualified and established) to offer service contract rates to its customers. Accordingly, all NVOCC transportation must be provided to the public under rates made available in the NVOCC's applicable tariff schedule. FedEx Trade Networks agrees with the comments made by BAX and **others**⁴ regarding the dynamic changes that have occurred in the international ocean-shipping marketplace since enactment of the Shipping Act of 1984 (the "Shipping Act")⁵ and the Ocean Shipping Reform Act of 1998 ("OSRA").⁶ These changes require

⁴ United Parcel Service, Inc. ("UPS") filed a petition with the Commission on July 25, 2003, requesting exemption authority under Section 16 of the Shipping Act that would allow it to enter into service contracts. Similar filings followed UPS' petition **from** the National Customs Brokers and Forwarders Association, Inc. on August 8, 2003 (seeking blanket exemption for NVOCCs **from tariff-publication requirements**); Ocean World Lines, Inc. ("OWL Pet.") on September 8, 2003 (seeking expansion of the definition of freight forwarding "special contacts" to include NVOCC activities); BAX Global, Inc. on September 11, 2003 (calling for consolidation of the related petitions into a single **rulemaking**); and C.H. Robinson on September 12, 2003 (asking for an individual grant of service contract authority).

⁵ Pub. L. No. 98-237, 98 Stat. 67 (1984) (codified as amended, 46 U.S.C. app. § 1701 *et seq.* (2000)).

⁶ Pub. L. No. 105-258, 112 Stat. 1902 (1998).

the Commission to reevaluate the rules that prohibit NVOCCs from offering service contract rates to their customers.

The Commission's 2001 review of OSRA's first two years highlights the importance of confidential service contract authority.⁷ In that report, the Commission concluded that over 90% of shipments move under confidential service contracts in the major East-West and North-South trades.⁸ Shipper demand for confidential contract rates is a reality of the new commercial and regulatory environment brought about by OSRA. Additionally, the amount of trade press coverage⁹ and the number of petitions seeking confidential service contract authority show that the issue transcends the business or policy interests of any one company.

The flurry of petition activity on this issue shows that the Commission should promptly consider and resolve the matter. If the Commission fails to initiate a rulemaking on the issue, countless other NVOCCs seeking confidential service contract authority will file petitions. Accordingly, consolidation of the pending petitions and the

⁷ See *generally* Federal Maritime Commission, The Impact of the Ocean Shipping Reform Act of 1998 (Sept. 2001) ("OSRA report").

⁸ *Id*

⁹ See, e.g., R.G. Edmonson, *BAX Global Joins Petitioners' Line at Commission*, J. OF COM., Sept 4, 2003; R.G. Edmonson, *Feeding Frenzy*, J. OF COM., Aug. 15, 2003; R.G. Edmonson, *NVO to File Petition in UPS Dispute*, J. OF COM., Aug. 19, 2003; R.G. Edmonson, *UPS Tests Shipping Reform*, J. OF COM., Aug. 4-10, 2003, at 17; Philip James, *Is Anybody Harmed by Tariff Violations*, AM. SHIPPER, May 2003, at 96; Annu Mangat, *The Ocean Rules UPS Doesn't Like*, J. OF COM., July 28-Aug. 4, 2003, at 29; *NVOCC-GAC Seeks 'Parity' with Carriers*, AM. SHIPPER, May 2003, at 7 1.

initiation of a single rulemaking proceeding is the best way to resolve this issue and will allow the Commission to hear from all interested parties.

A. Interest of FedEx Trade Networks Transport & Brokerage, Inc.

FedEx Trade Networks Transport & Brokerage, Inc. is part of the FedEx Corporation group of companies and provides customs brokerage, international freight forwarding and NVOCC services, and other value-added domestic and international transportation services. FedEx Corporation provides strategic leadership and consolidated financial reporting for the group. In addition to FedEx Trade Networks, the group comprises: FedEx Express, FedEx Ground, FedEx Freight, FedEx Custom Critical, and FedEx Services. Globally, the FedEx companies employ over 210,000 people. FedEx Express, a U.S. air carrier, is the largest operating company in the FedEx family, handling approximately 3.3 million packages and documents every business day.

The FedEx History

Federal Express Corporation (known then as FedEx and now as FedEx Express) was incorporated in June 1971 and began operations on April 17, 1973 with the launch of 14 small aircraft from Memphis International Airport. On that night, FedEx delivered 186 packages to 25 U.S. cities from Rochester, NY, to Miami, Fla. In the mid-1970s, FedEx took a leading role in lobbying for air cargo deregulation, which finally came in 1977. These changes allowed Federal Express to use larger aircraft (such as Boeing 727s and McDonnell-Douglas DC-10s) and spurred the company's rapid growth. Today, FedEx Express has the world's largest all-cargo air fleet, with a total daily lift capacity of

more than 26.5 million pounds. In a **24-hour** period, the fleet travels nearly 500,000 miles while its couriers log 2.5 million miles a day – the equivalent of 100 trips around the earth. FedEx Express delivers to customers in more than 210 countries.

Throughout their existence, the FedEx companies have amassed an impressive list of “firsts,” most notably for leading the transportation industry in introducing new services for customers. FedEx originated the Overnight Letter and was:

- the first transportation company dedicated to overnight package delivery;
- the first to offer next-day delivery by **10:30 a.m.**;
- the first to offer Saturday delivery;
- the first express company to offer time-definite service for freight; and
- the first in the industry with money-back guarantees and free proof of performance, services that now extend to its worldwide network.

In 1990, Federal Express Corporation became the first company to win the Malcolm Baldrige National Quality Award in the service category. It also received International Standards Organization” 9001 registration for all of its worldwide operations in 1994, making it the first global express transportation company to receive simultaneous system-wide certification.

Today, FedEx Corporation is the premier provider of shipping and information services worldwide, and its companies function under the motto of “operate independently, compete collectively.” By operating independently, each company can

¹⁰ The International Standards Organization is a non-governmental network of the national standards institutes of 147 countries, on the basis of one member per country, with a Central Secretariat in Geneva, Switzerland which coordinates the system.

focus exclusively on delivering the best service for its specific market. Competing collectively under the trusted FedEx banner ensures that all of the companies benefit from one of the world's most recognized brands.

FedEx Trade Networks Transport & Brokerage

FedEx Trade Networks' origins date to 1913 when the company began operations as Customs broker C.J. Tower & Sons in Niagara Falls, New York. Since that time, FedEx Trade Networks has evolved into the largest-volume Customs entry filer in North America. Following its purchase by McGraw-Hill, Inc. in 1986, C.J. Tower & Sons became Tower Group International, Inc. ("Tower Group"). Three years later, the Tower Group began a series of acquisitions that increased its presence across the U.S., and it emerged as a leader in international logistics and trade information technology. FedEx Corp. acquired Tower Group and World Tariff Ltd. to create FedEx Trade Networks in 2000.¹¹ FedEx Trade Networks offers a portfolio of services that turns supply-chain management into a competitive strategy. FedEx Trade Networks' worldwide network solves transportation challenges every day in more than 100 **offices** in over 71 European, Asian, Australasian, Middle Eastern, and Latin American countries. The company specializes in door-to-door transportation services between importers, exporters, suppliers, **vendors**, carriers, and customers. FedEx Trade Networks customizes cargo

¹¹ In 2001, Caribbean Transportation Services (acquired by FedEx Corporation in 1998) was realigned as a freight-forwarding subsidiary of FedEx Trade Networks. As of July 21, 2003, Caribbean Transportation Services was transferred to FedEx Freight.

management service programs that provide visibility of cargo and the most cost-effective usage of ocean container space.

The company provides the following international ocean transport services: (1) full-container-load (FCL); (2) less-than-container-loads (LCL); (3) dry or liquid bulk shipments; (4) full or partial vessel charters, including refrigerated service or on-board cranes to handle heavy shipments to smaller ports; and (5) physical cargo and paper-consolidation programs to importers and exporters who purchase from multiple vendors. FedEx Trade Networks contracts annually with more than a dozen ocean carriers in both the trans-Pacific and trans-Atlantic trades.

FedEx Trade Networks, through World Tariff Ltd., offers customers the ability to estimate duties and taxes online with access real-time customs duty, tariff, and tax information for 118 countries. FedEx Trade Networks is leveraged to access the wide array of services offered by the other members of the FedEx family of companies and their subsidiaries. This provides FedEx Trade Networks' customers with multimodal, end-to-end transportation and global Customs clearance solutions.

B. The Issues Raised in the BAX Petition for Rulemaking are Appropriately Resolved Through a Single Rulemaking.

The BAX petition brings to the forefront of the Commission's regulatory agenda the need to address service contract authority for well-qualified NVOCCs.¹² Other

¹² FedEx Trade Networks agrees in principle with the arguments set forth in the BAX and UPS petitions regarding the sweeping commercial developments that have occurred in the international ocean shipping industry since passage of OSRA. FedEx Trade Networks further accepts the arguments made by

pending petitions also ask the Commission to address NVOCC service contract authority and/or tariff publication reform. Some petitions request the Commission to grant individual exemptions using its Section 16 exemption authority, but those petitions propose to grant service contract capability only to a particular company.¹³ Another petition asks the Commission to expand existing freight-forwarding rules to encompass NVOCC activities, thus permitting a form of contract authority.¹⁴ This recent activity beckons the Commission's attention and supports the initiation of a single, consolidated rulemaking to resolve the question of NVOCC service contracting authority.

The Commission should carefully consider the issue and the views from all segments of the shipping industry and begin a single rulemaking proceeding. FedEx Trade Networks agrees with UPS that service contracting authority should no longer be restricted across the entire NVOCC spectrum. However, it would not be practical or prudent for the Commission to consider this issue on an *ad hoc* basis, e.g., forcing individual NVOCCs to file exemption requests and await consideration and action by the Commission. Thus, the most practical and useful means for resolving this issue is for the Commission- to initiate a single rulemaking. FedEx Trade Network agrees that a rulemaking on NVOCC service contracts “. . . would promote efficiency by addressing

both BAX and UPS as to the pressing need to permit qualified NVOCCs to offer service contracts to their customers. See *generally* BAX Pet. at 2-6 and UPS Pet. at 8-24.

¹³ See *generally* UPS Pet. and Robinson Pet.

¹⁴ See OWL Pet.

the issues raised . . . and would preclude redundant and potentially inconsistent additional petitions from other NVOCCs seeking similar relief.”¹⁵

C. Only Qualified Companies Should Enjoy Confidential Service Contract Authority.

Should it decide to proceed with a rulemaking on this point, the Commission should establish well-developed and easily identifiable threshold criteria for providing the Commission and shipping public with “confidence that only qualified companies are granted this privilege.”¹⁶ Those criteria should respond to concerns that the Commission be able to monitor and regulate the NVOCC trade effectively. These concerns have been raised by Congress when crafting OSRA,¹⁷ and by the Commission when implementing it. Since the criteria proposed by BAX attempt to respond to these concerns, FedEx Trade Networks urges the Commission to consider them carefully in determining the required standards for NVOCC service contract qualification.

XII. Conclusion

The Commission can best serve the interests of shippers, NVOCCs, ocean common carriers, and the public by consolidating the pending service contract authority petitions (as well as any similar request filed in the future) into a single rulemaking proceeding. FedEx Trade Networks believes that the Commission has the statutory

¹⁵ BAX Pet. at 6.

¹⁶ BAX Pet. at 3.

¹⁷ UPS Pet. at 21-23; BAX Pet at 4; and OWL Pet. at 2, 15, and 26-27.

authority to grant this authority. In passing OSRA's amendments to the Shipping Act, Congress recognized that the Commission must exercise both flexibility and prudent oversight of the international ocean shipping community by predicting the growth, maturity, and stability of third-party logistics providers. The initiation of such a rulemaking proceeding would be the first opportunity for the Commission to demonstrate its new role in the post-OSRA environment.