(FEDERAL MARITIME COMMISSION)
(SERVED OCTOBER 6, 1987)
(EXCEPTIONS DUE 10-28-87)
(REPLIES TO EXCEPTIONS DUE 11-19-87)

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 1570

APPLICATION OF RICOH INTERNATIONAL SYSTEMS, INC.
FOR THE BENEFIT OF RICOH COMPANY LTD.

Application for permission to waive collection of freight charges aggregating approximately $1.1 million on 13 shipments granted.

Applicant, a non-vessel operating common carrier by water located in Japan, instituted a tariff with mainly per-container rates on copying and facsimile machines carried from Japan to various ports and points in the United States. Applicant intended that these rates be continued in the tariff from month to month, but due to a breakdown in communication with its U.S. tariff publisher, these rates were allowed to expire. The error subjected 13 shipments to additional freight costs.

The application, as originally filed, was deficient in several respects, lacking clear evidence as to applicant's intent and lacking proper new, corrective tariffs for four shipments. In addition, four shipments appeared to be misrated. Applicant has furnished additional evidence and proper new tariffs justifying the granting of the applications but leaving a few arithmetic calculations to be performed regarding the correct amounts of the waivers and other adjustments to the freight billings on four shipments. These calculations have been performed and applicant will be required to make the adjustments to the freight billings required on the four shipments involved.

Minor variances between the new, corrective tariffs and the originally intended rates on two shipments held not to warrant denial of the relief requested on those two shipments.

Joseph K. FitzGibbon and Michael J. Moser for applicant.

INITIAL DECISION[1] OF NORMAN D. KLINE, ADMINISTRATIVE LAW JUDGE

On July 8, 1987, Ricoh International Systems, U.S.A., a division of Ricoh International Systems, Inc. (Ricoh), a non-vessel operating common carrier by water located in Japan, filed an application seeking permission to waive approximately $1.1 million in freight charges in connection with 13 shipments of copying and facsimile machines which Ricoh carried from Tokyo or Yokohama, Japan, to various points in the United States.[2] The first eight of the shipments sailed from Japan between January 22 and 28, 1987. The second group of shipments consisting of five shipments sailed between April 11 and 13, 1987. The beneficiary of the requested waivers in each case is the shipper in Japan, Ricoh Company Ltd.

The application appeared to be well supported by relevant documents, for example, rated bills of lading, tariff pages, and calculations of the waivers for each shipment. There did not appear to be a problem regarding the time of filing of the application, July 8, 1987 being only 167 days after the date of the earliest sailing (January 22, 1987). Nor was there a problem regarding the requirement that there be no discrimination among shippers, ports, or carriers if

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[1] This decision will become the decision of the Commission in the absence of review thereof by the Commission (Rule 227, Rules of Practice and Procedure, 46 CFR 502.227).

[2] The aggregate amount of the waivers on the 13 shipments, as derived from the calculations shown in the original application, was $1,116,992.30, ranging from $5,831.55 on one shipment to $236,925.08 on another. However, because of a misrating on shipment No. 11 and incorrect ratings on shipments Nos. 3, 4, 5, the correct amount of total waivers will probably be somewhat higher, as I will discuss.

the application were to be granted because there was no evidence of any other affected shipment nor of such discrimination. However, the evidence was not clear as to the intention of Ricoh to file the intended rates prior to the January shipments and there were other problems with the application regarding the filing of the new, corrective tariffs on some of the shipments, some unexplained charges on three shipments, and an apparent misrating or mistake in billing on two shipments. I called the applicant's attention to these problems in a series of letters and by means of a conference held in my office during which applicant's files on the matter were examined. (See my letters to Mr. Michael J. Moser, dated July 31, 1987, September 4, 1987, and September 10, 1987.) In response to my letters and the matters raised at the conference, applicant has furnished answers, explanations and additional evidence sufficient to enable me to issue a decision without waiting for further refinements and adjustments. A description of the solution to the various problems now follows.

Evidence of Ricoh's Pre-Shipment Intent

The first major problem concerned the fact that applicant had not furnished sufficient evidence showing that Ricoh had intended to file the intended rates on the facsimile and copying machines prior to the January 22 through 28 shipments. Thus, as originally submitted, applicant stated that it had originally filed a tariff containing an Item 3000-1, in which were published the rates on the subject commodities, on December 21, 1986. As shown on the tariff page submitted with the application, these rates were to expire on January 20, 1987. (See Exhibit A.) Applicant stated that on February 6, 1987, it had

instructed its tariff publisher in the United States, Transax/Rates, to extend these rates at the end of each month for 30 days. (See Exhibit B, letter dated February 6, 1987, page 2 at "P.S.") This statement was sworn to by applicant's Director in New Jersey, Mr. Yukiteru Hata, and the portion of the letter cited indicated that there had probably been some type of oral agreement before February 6.[3] However, the evidence was simply too scanty for me to determine whether Ricoh had decided to extend the rates beyond January 20, 1987, prior to January 22, 1987, when the first shipment took place. If Ricoh made that decision after the shipment took place, of course, the application could not be granted as to the January 22 shipment, and if the decision had been made on February 6, the application would have had to be denied as to the first eight shipments because a carrier is not permitted to negotiate rates after shipments have taken place and retroactively apply such rates to the shipments. See, e.g., Farr Co. v. Seatrain, 20 F.M.C. 411, 416-417, reconsideration denied, 20 F.M.C. 663 (1978); Application of GEFA and Sea-land for SDS Biotech, 23 SRR 401, 403-404, and cases discussed therein (I.D., adopted in relevant part, 23 SRR 786 (1986); Application of Sea-Land for Alimenta (USA), Inc., 19 SRR 1111 (1979).

In response to my inquiry, applicant furnished further evidence consisting of Mr. Hata's sworn clarification of the original evidence to the effect that Ricoh had decided to have the rates in question in Item 3000-1 extended automatically and had made that decision prior to

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[3] Thus, the "P.S." line to the February 6 letter states: "Unless otherwise notified from us, please extend our tariff 3000-1 automatically at the end of each month as agreed so that the tariff shall be valid from the first day of the month." (Emphasis added.)

January 22, 1987. (See letter from Mr. Michael J. Moser to me, dated August 26, 1987, and Sworn Statement of Mr. Yuki Hata attached.) This statement and other evidence confirmed that the instructions in the February 6 letter referred to an earlier agreement.[4]

The New Tariff Problems

The second major problem concerned the fact that as to six shipments (Nos. 3, 8, 9, 10, 11, and 12) the new, corrective tariffs that were later filed appeared to be significantly different from the earlier intended rates that had been allowed to expire on January 20, 1987. In some instances a per-container (PC) rate was later filed with relatively small changes but, in other instances, the changes were more substantial or, in the case of shipments Nos. 10, 11, and 12, the earlier PC rate was later filed as per ton (W/M) rates. (See my letter dated July 31, 1987, cited above, pages 2-3.) Because the law (section 8(e)(2) of the Shipping Act of 1984) requires that "the common carrier . . . has, prior to filing an application for authority to make

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[4] In addition to the sworn statement of Ricoh's Director, Mr. Hata, that Ricoh had made its decision to extend the rates prior to January 22, 1987, the files also turned up a letter from Mr. Hata to its tariff publisher, Transax/Rates, dated December 24, 1986. The letter refers to a number of per-container rates which are involved in this application, which were, according to Mr. Hata's express instructions, to be made "effective from January 21, 1987. . . ." (See letter cited, page 2.) The letter of February 6, 1987, from Mr. Hata also obviously refers to an earlier agreement. This separate evidence corroborates Mr. Hata's sworn statement. Unfortunately, the person who set up the rating system is no longer with Ricoh and his files are incomplete. (See letter dated August 26, 1986, cited above, first paragraph.) I have no reason, however, to doubt Mr. Hata's sworn statement, which, as noted, is confirmed by earlier contemporaneous correspondence.

a refund, filed a new tariff with the Commission that sets forth the rate on which the refund or waiver would be based, "I asked for further explanations for the changes in the new tariffs. Furthermore, because shipments Nos. 9, 10, 11, and 12 occurred in April and applicant had time to file corrections to the new tariffs for those shipments, which would, in the case of the last three shipments, eliminate substantial discrepancies between the earlier intended PC rates and the later new tariff per-ton rates, I suggested that Ricoh might simply wish to refile the new tariffs in exactly the amounts originally intended. (See letter cited, page 3, second full paragraph.).

The answer to the new-tariff problem is that Ricoh filed corrections to the new tariffs for the four April shipments (Nos. 9 through 12) and by these corrections restored the rates exactly as originally intended. Thereafter, on September 8 and 15, 1987, still within 180 days after the first of the April shipments (which took place on April 11, 1987) Ricoh filed an amendment to its application for these shipments. (See letters amending application, September 8, 1987, and September 15, 1987, with attached corrective tariff page, 4th revised page 51-B, effective August 20, 1987.) There still remained, however, a slight discrepancy between the intended rates and the new tariff rates as regards shipments Nos. 3 and 8. However, these discrepancies are not, in my opinion, sufficient, under applicable case law, to deny the application.

The New Tariffs for Shipments Nos. 3 and 8

Shipment No. 3 involved a copying machine which was carried from Tokyo to Chicago, Illinois, on a ship sailing from Tokyo on January 23, 1987. The earlier rate, which had expired by mistake, was $3644 per 40-foot container. On my first review of the record, it appeared that this rate was later filed (as the "new tariff") as $3300 per 40-foot container, effective February 11, 1987, on 3rd revised page 60 of the Ricoh tariff. However, I later obtained 2nd revised page 60 of the tariff, effective January 28, 1987, which showed that Ricoh had filed the rate as $3,688.70 per 40-foot container. This is only a discrepancy of $44.70, or 1.2 percent, rather than what originally seemed to be a discrepancy of $388.70. Total freight collected on this shipment amounted to $9,336.35 under the original rate of $3,644 plus ancillary charges. The amount of the requested waiver for this shipment is $120,167.66.

Shipment No. 8 involved a copying machine which Ricoh carried from Yokohama to Irving, Texas, on a ship sailing from Yokohama on January 28, 1987. The earlier rate, which had expired by mistake, was $3340 per 40-foot container. When Ricoh filed the rate later, it was filed as $3200 per 40-foot container, a reduction of $140, or 4.2 percent from the original rate. (See 2nd revised page 62, effective February 20, 1987.) The amount of the requested waiver for this shipment is $56,469.85.

Because I am aware from previous special-docket cases that sometimes carriers do not refile negotiated or intended rates precisely as originally intended for commercial or other reasons and that applications have been granted in such cases, I asked Ricoh for explanations

for the above discrepancies. (See my letter dated July 31, 1987, page 3.) Applicant explained that Ricoh, in Japan, had believed that the original PC rates had already been on file when they made the relatively slight changes in the PC amounts, and the tariff publisher in the United States had not noticed that the new rates were not exactly as they had been before expiring on January 20, 1987. (See letter to me, dated August 26, 1987, cited above, third paragraph.) I acknowledged that the new tariffs filed for shipments Nos. 3 and 8 were substantially the same as the original intended rates, as contrasted with PC vs. per-ton discrepancies, so that the filing might satisfy the special-docket law. (See my letters dated September 4 and 10, 1987.)

The new tariff filed for shipment No. 3, as I have noted, represents a change of 1.2 percent in the PC rate compared to the originally intended rate. The new tariff filed for shipment No. 8 represents a change of 4.2 percent in the PC rate compared to the originally intended rate. The question arises therefore whether these discrepancies should disqualify the two shipments for relief. If disqualified, the shipper would pay additional freight (over $120,000 in No. 3, and over $56,000 in No. 8), a total exceeding $176,000. I do not find any reason for disqualification under these circumstances based upon previous decisions in such cases.

While it would, of course, be safer for a carrier to file a new tariff rate in exactly the same amount as the earlier intended but unfiled rate, this does not always happen. The Commission has allowed some flexibility in the new-tariff requirement in previous cases. The leading case in this area is, of course, Nepera Chemical, Inc. v. F.M.C., 662 F.2d 18 (D.C. Cir. 1981). In Nepera, the Commission had

denied an application because the carrier had filed a new tariff rate which varied from the originally negotiated rate. The variance amounted to $18.25 per container and was caused by a conversion from an old tariff to a new one and an arithmetic adjustment. The court held that there was nothing in the special-docket law or its legislative history which indicated that the new tariff to be filed which "sets forth the rate on which such refund or waiver would be based" must be "the exact promised rate without any allowance for minor mathematical variation." (662 F.2d at 22.) The court commented that the drafters of the legislation had never contemplated the situation in Nepera, in which a tariff conversion took place requiring a mathematical adjustment, and held furthermore that the statute, being remedial and designed to relieve shippers of the consequences of carriers' errors, ought not to be interpreted so narrowly as to defeat its purposes, especially when there would be no discrimination among shippers because the originally intended rate would be made available to all. (662 F.2d at 22 n. 11.)

If a carrier has failed to file a new tariff in any form, that is a jurisdictional defect and results in denial of an application. See, e.g., A.E. Staley Mfg. Co. v. Mamenic Line, 20 F.M.C. 642, 643 (1978), confirming 20 F.M.C. 385; Application of OOCL-SEAPAC for Asian Food Industries, 23 SRR 559, 560 (I.D., adopted, 23 SRR 791 (1986)). However, if the carrier files a new tariff which is changed from the originally intended rate in some slight amount for commercial reasons, the Commission, consistent with the decision in Nepera, has allowed applications to be granted. Application of PWC for Shintech, 21 SRR 1361, 1364 n. 3 (I.D. 1982, application later withdrawn). Sometimes the new tariff rate which is filed is significantly different from the

originally intended rate but is filed because of intervening general rate increases or because the original rate is no longer competitive or as in Nepera, because of a conversion from one tariff system to another. Furthermore, because of the time lapse, it is often the case that a rate that had by mistake dropped out of a tariff is now reinstated at the current level but while it was absent the tariff had undergone a number of rate increases. The result is that it is impossible to file one new tariff rate that will fit all previous shipments because at earlier times the rate, had it been in the tariff, would have changed to reflect the general rate increases. Therefore, for practical reasons, the new tariff rate is filed at the current level but the conforming tariff notice shows different rate levels. For a sampling of such cases, see Application of OOCL-SEAPAC for Asian Food Industries, cited above, 23 SRR at 560 n. 2. As shown in the case cited, in one case a new tariff was filed as $820 per 40-foot container whereas the originally intended rate was $900, a difference of 8.9 percent.[5] Other examples of similar variances can be cited which did not result in denials of the applications.[6]

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[5] The case in question is SD 1081, Application of Seawinds Limited for Pan International et al. (I.D. January 18, 1984; F.M.C. notice of finality, February 28, 1984).

[6] See, e.g., SD 927, Application of PWC for Lotte Co. (I.D. October 27, 1982; F.M.C. notice of finality, December 1, 1982) (new tariff filed as $90 as compared to originally intended rate of $82, a variance of 9.8 percent); SD 898, Application of PWC for Manville Export Corporation (I.D. April 8, 1982; F.M.C. notice of finality, May 17, 1982) (new tariff filed as $80 but conforming tariff notice published rates of $68 and $78 to cover periods before general rate increases took effect); Application of Japan Line for Nomura (America), 20 SRR 62
(Continued on following page.)

I conclude, therefore, on the basis of the many decisions cited, that the relatively slight variances between the new tariff rates and the originally intended rates as regards shipments Nos. 3 and 8 do not disqualify these two shipments for the relief requested and therefore do not require Ricoh to recover over $176,000 in additional freight for these two shipments from the shipper.

Misratings on Some Shipments

The third problem, which I pointed out in my letter to applicant dated July 31, 1987, concerned the fact that on shipments Nos. 3, 4, and 5, the shipper was assessed unexplained freight charges based on rates of $60, $48, and $63 per cubic meter, respectively, in addition to the sought per-container rates and applicable ancillary charges. There did not appear to be any tariff authority for these extra per cubic-meter charges. (See July 31, 1987 letter, cited above, at page 3,

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[6] (Continued from preceding page.)
(F.M.C. 1980) (new tariff filed as $77 rate due to general rate increase whereas original rate was $70; refund permitted on basis of $70 rate, a variance of 10 percent); Application of PWC for Mitsui and Company, 21 SRR 1275 (1982) (new tariff filed as $67 but waivers allowed on basis of $64 (4.7 percent variance) and other lower rates; Nepera cited); Application of U.S. ANEC Conference for Ford Motor Co., 23 SRR 1246 (F.M.C. 1986) (new tariff filed as $903 rate whereas original rate was $848, a variance of 6.5 percent, due to intervening rate increase, but held to correct the error involved); SD 1523, Application of TWRA for U.S. Gypsum (I.D., June 15, 1987, F.M.C. notice of finality, July 23, 1987) (new tariff filed as $1585 per 20-foot container whereas intended rate was $1450, a variance of 9.3 percent, because of intervening rate increase). An application has been denied, however, when the new tariff was filed as $235 compared to $220, the supposedly intended rate. However, the facts of that case show that the carrier had never intended the $220 rate to apply to the shipment in question. See Application of Hapag-Lloyd AG for Windsor Industries, 22 SRR 1579 (I.D., F.M.C. notice of finality, February 6, 1985).

last paragraph.) According to further information and evidence received, it appears that there were overflow portions of cargo in these three shipments and Ricoh used an overflow rule by which the overflow portions were rated under per-cubic-meter commodity rates because such a rating system would result in lower freight for the shipper than would result if the overflow portion had to be rated under a full per-container rate system. This type of rating system is fair to the shipper. The problem with it, however, is that, as Ricoh itself concedes, the system was borrowed from a rule contained in a conference's service contract and was not in Ricoh's tariff. (See letter from Mr. Michael J. Moser to me, dated August 26, 1987, and attached explanation at para. 3.) What Ricoh should have done, if it wished to waive collection of additional freight due under the applicable N.O.S. rate, was to rate the shipments under its own overflow rule which it had failed to have on file in its tariff, by mistake, but which it did eventually file, effective January 28, 1987, just after the three shipments sailed. (See 2nd revised page 60 to Ricoh's tariff and letter dated December 24, 1986, from Mr. Hata, Ricoh's Director, to Transax/Rates, requesting that the per-container overflow rule be filed effective January 21, 1987.) Ricoh must therefore re-rate the three shipments (as well as shipment No. 11, which is discussed below) using its own overflow rule and make appropriate adjustments in its account with the shipper and in the amount of the total waivers requested. Although Ricoh's overflow rule (shown on 2nd revised page 60 to its tariff) is not entirely clear on its face as to how it works, there is other evidence in the record which appears to explain the rule. (See Exhibit B, the February 6, 1987 letter from Mr. Hata to Transax/Rates at

page 2, paragraph (B).) I have applied the rule to the three shipments and have re-rated them accordingly, using the explanation provided in the letter cited. As recalculated, it appears that Ricoh has undercharged shipments Nos. 3 and 5 and overcharged shipment No. 4, leaving a net overcharge on the three shipments of $2,905.43. When added to the overcharge affecting shipment No. 11, discussed below, the total overcharge amounts to $3,905.61, which Ricoh must refund or credit to the shipper's account. The total amount of requested waivers increases by a corresponding amount. Except for the overcharge of $999.68 for shipment No. 11, which Ricoh has confirmed, these recalculations of freight due under the correct overflow system for shipments Nos. 3, 4 and 5, are subject to correction if Ricoh furnishes different calculations with explanations as to how its overflow rule was intended to apply. However, unless Ricoh furnishes such calculations and explanations, it shall refund or credit the shipper's account in the amount found above and report to the Commission as instructed below.[7]

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[7] I have recalculated the freight on the three shipments under Ricoh's overflow rule, as I understand it, as it was explained in the February 6, 1987 letter, as follows. Instead of applying per-cubic-meter rates to the overflow portions of cargo in each shipment, I applied the flat overflow rate of $1650 (shown on 2nd revised page 60). To this I added only the drayage charge shown on the bills of lading because the cited tariff page (at Note I) states that the per-container rates included currency, bunker, and destination delivery charges, but not the drayage charge. According to the explanation in the letter cited, the $1650 flat rate is used on overflow portions if the overflow portion multiplied by the commodity per-ton rate would be less than $3300. In shipments Nos. 3 and 5, the overflow portions times the per-ton rates are less than $3300. In shipment No. 4, it appears that the overflow portion was loaded into two containers and that if the total overflow portion (79.307 cubic meters) is divided by two, the freight for each would be less than $3300. Therefore, I have added $1650 twice. By these methods, I arrived at the following figures for (Continued on following page.)

The next problem, which I pointed out in my letter of July 31, 1987, concerned the fact that on shipment No. 11, the rated bill of lading showed Los Angeles as the incoming port on an intermodal movement to Newark, New Jersey. If so, the unfiled but intended rate was $1296 per 40-foot container. However, Ricoh actually charged the shipment a rate of $2000 per 40-foot container, which would be the intended but unfiled rate if the shipment, had moved via a Gulf port. (See letter cited at pages 3-4 and tariff page cited therein.) Moreover, according to Lloyd's Voyage Records (May 19, 1987), the vessel which carried shipment No. 11, the President Eisenhower, called at Los Angeles and San Francisco in late April 1987 but not at any other U.S. port, leaving for Yokohama after calling at San Francisco. According to the evidence, therefore, Ricoh has overcharged this shipment and must re-rate it using the proper rate of $1296 per 40-foot container and must also recalculate the amount of the requested waiver.[8]

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[7] (Continued from preceding page.)
total correct freight: $9,343, $11,585.44, and $18,108.28, for shipments Nos. 3, 4, and 5, respectively, compared to the actually collected freight of $9,336.35, $15,245.42, and $17,360.88, respectively. The net overcharge (credit to the shipper) for these three shipments amounts to $2,905.93. When the overcharge of $999.68 for shipment No. 11 is added, the total overcharge (credit) for the four shipments amounts to $3,905.61. The total amount of waivers increases by a corresponding amount. If there is a mistake in these calculations, Ricoh may correct them and explain to the Commission when it reports to the Commission.

[8] These calculations are relatively simple. By substituting the correct PC rate of $1296 for the incorrect rate of $2000, and adding the 42 percent currency surcharge and other ancillary charges shown on the
(Continued on following page.)

The last problem mentioned in my July 31 letter concerned the fact that on shipment No. 12 Ricoh was trying to apply a rate of $907 per 20-foot container, an intended rate to Dallas, Texas, whereas a Ricoh correction notice suggested the destination to be Irving, Texas, instead. I have since learned that the correction notice was typed incorrectly and should have read "Irving Door (Dallas)" instead of "Irving Door."

On the basis of the responses to my inquiries and the supplementations to the record, I find that there is no need to delay issuance of this decision. Now that the freight on shipments Nos. 3, 4, 5, and 11 has been recalculated to offset the rating errors made by Ricoh, the application can be granted subject to appropriate adjustments in the account with the shipper, as calculated above. If there is some error in these recalculations, Ricoh can make any necessary corrections and furnish explanations when it complies with the other instructions below because these corrections do not affect the merits of the application. Ricoh has satisfied all other conditions and corrected all

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[8] (Continued from preceding page.)
bill of lading for the shipment, the correct freight amounts to $2,535.32 (1296 plus 544.32 plus 135 plus 560). This is $999.68 less than the freight actually collected ($3,535.00). Ricoh has therefore overcharged the shipment by $999.68 and must refund that amount. The amount of the waiver on the shipment increases correspondingly from $25,327.49 to $26,327.17. (See my letter dated September 10, 1987, paragraph 3.) Ricoh has confirmed the overcharge of $999.68. (See letter dated September 28, 1987, from Mr. Hata to Transax/Rates, and attachments.) Incidentally, the $1296 rate to Newark via West Coast ports was filed as a new tariff, effective September 14, 1986. (See 5th revised page 51-B.)

other problems. (See my letter to Mr. Michael J. Moser, dated September 10, 1987, summarizing the problems then remaining.)[9]

Accordingly, subject to the following instructions and conditions, the application is granted.

The Tariff Notices

Ricoh shall file tariff notices for the commodities and destinations involved in the 13 shipments in appropriate places in its tariff as shown below. As will be seen, each tariff notice is made effective either as of the date of the original tariff-filing error (January 21, 1987) when that date is not more than 180 days prior to the filing of the original or amended application. This was possible for shipments Nos. 1 through 8, all of which sailed in late January 1987, and for which the original application was filed on July 8, 1987, less than 180 days later. For shipments Nos. 9, 10, 11, and 12, the effective date of the tariff notice was made as of March 19, 1987, which is 180 days prior to the filing of the amended application for these April shipments (September 15, 1987). For shipment No. 13, also an April shipment, the tariff notice was also made effective as of March 19, 1987.

The tariff notices are effective through the day preceding the effective date of the new, corrective tariff that was filed for each

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[9] As seen from the letter cited, I also inquired whether Ricoh carried for shippers other than Ricoh Company Ltd., i.e., whether it was a true common as opposed to a contract carrier. I was advised that Ricoh does carry for other shippers as its tariff would appear to indicate.

shipment and commodity affected. Because the new, corrective tariffs were filed on six different dates, it is necessary to file six separate notices. Thus, as will be seen, the tariff notice for shipments Nos. 1, 7, and 8 runs through February 19, 1987, the day before the new tariff was filed for those shipments; the notice for shipment No. 2 runs through February 10, 1987, the day before the new tariff was filed for that shipment; the notice for shipments Nos. 3, 4, 5, and 6 runs through January 27, 1987, the day before the new tariff for those shipments was filed; the notice for shipments Nos. 9, 10, and 12 runs through August 19, 1987, the day before the new tariff for those shipments was filed; the notice for shipment No. 11 runs through September 13, 1987, the day before the new tariff for that shipment was filed; and, finally, the notice for shipment No. 13 runs through May 18, 1987, the day before the new tariff for that shipment was filed.

The six tariff notices have been grouped by shipment and by the tariff page where the error occurred or the new tariff was filed. Each notice is to be filed adjacent to or underneath the pertinent tariff commodity item. Because of the varied commodity descriptions, destinations, and effective dates, it does not seem feasible to consolidate all of the notices on one page.

The six notices are patterned after the new, corrective tariffs that were filed but, where feasible, the notice may be filed underneath the rates on the new tariff page and incorporate those rates by reference. In two instances, for shipments Nos. 3 and 8, for reasons discussed previously, the tariff notices publish the originally intended rates rather than the slightly different new tariff rates.

The first tariff notice is applicable to shipments Nos. 1, 7, and 8, which sailed in late January 1987. The new, corrective tariff was filed effective February 20, 1987 (2nd revised page 62). The notice shall be filed underneath or near to the rates shown under "Note P" on the page cited and shall read as follows:

> Notice is hereby given, as required by the decision of the Federal Maritime Commission in Special Docket No. 1570, that effective January 21, 1987, and continuing through February 19, 1987, the rate on any shipment of the commodities subject to Note P moving to Spring Valley, NY, was PC 40 $3,300.00 and for shipments moving to Irving, TX, was PC 40 $3,340.00. This Notice is effective for purposes of refund or waiver on freight charges on any shipments of the subject commodities which may have been shipped during the specified period of time.

The next notice that shall be filed affects shipment No. 2, which shipment occurred on January 23, 1987. The error occurred on page 51 of the Ricoh tariff and the new, corrective tariff was filed effective February 11, 1987 (1st revised page 51-C). The notice shall be filed underneath the commodity item for fax machines and shall read as follows:

> Notice is hereby given, as required by the decision of the Federal Maritime Commission in Special Docket No. 1570, that effective January 21, 1987, and continuing through February 10, 1987, the rate on shipments of Fax Machines and Parts and Paper moving from Japan Base Ports to West Coast ports was $39.00 W/M. This Notice is effective for purposes of refund or waiver of freight charges on any shipments of the commodity described which may have been shipped during the specified period of time.

The next notice that shall be filed affects shipments Nos. 3, 4, 5, and 6, which all sailed in late January 1987. The new, corrective tariff was filed effective January 28, 1987 (2nd revised page 60). The

notice shall be filed just underneath the minimum rates and overflow rule shown on "Note I" on the tariff page cited and shall read:

> Notice is hereby given, as required by the decision of the Federal Maritime Commission in Special Docket No. 1570, that effective January 21, 1987, and continuing through January 27, 1987, the per-container rates shown above applied to shipments moving to Atlanta, GA, West Coast, and Newark, NJ. The per-container rate to Chicago, IL was $3644 per 40-foot container. These rates were subject to the applicable Minimum Rule and Overflow Rule. This Notice is effective for purposes of refund or waiver of freight charges on any shipments of the commodities subject to Note I which may have been shipped during the specified period of time.

The next notice that shall be filed affects shipments Nos. 9, 10, and 12, which shipments occurred in April 1987, and for which new, corrective tariffs were filed on 4th revised page 51-B of the Ricoh tariff, effective August 20, 1987. The Notice shall be filed just underneath the commodity item and descriptions shown on 4th revised page 51-B, as continued onto the following page of the tariff, and shall read as follows:

> Notice is hereby given, as required by the decision of the Federal Maritime Commission in Special Docket No. 1570, that effective March 19, 1987, and continuing through August 19, 1987, the per-container rates shown above in this Item applied to shipments of Copy Machines, Parts, etc., as described above, moving from Japan Base Ports to Atlanta, GA, Chicago, IL, and Dallas, TX via West Coast ports. This Notice is effective for purposes of refund or waiver of freight charges on any shipments of the commodities described which may have been shipped during the specified period of time.

The next notice that shall be filed affects shipment No. 11, which shipment occurred on April 11, 1987, but as to which Ricoh did not file the proper new tariff rate for shipments moving through West Coast ports to Newark, New Jersey, until September 14, 1987 (5th revised page 51-B of the Ricoh tariff) and for which, as discussed earlier, Ricoh filed an

amendment to its application on September 15, 1987. The notice shall be filed just underneath the previous notice and shall read as follows:

> Notice is hereby given, as required by the decision of the Federal Maritime Commission in Special Docket No. 1570, that effective March 19, 1987, and continuing through September 13, 1987, the per-container rate for a shipment of Copy Machines, Parts, etc., as described above, moving from Japan Base Ports to Newark, NJ via West Coast Ports, was PC 40 $1296.00. This Notice is effective for purposes of refund or waiver of freight charge son any shipments of the commodities described which may have been shipped during the specified period of time.

The sixth and final tariff notice affects shipment No. 13, which sailed on April 13, 1987. The new, corrective tariff for this shipment was filed on 2nd revised page 51-B of the Ricoh tariff, effective May 19, 1987. The notice shall be filed underneath or following the commodity item description for copy machines, etc., shown on the cited tariff page, as continued on the next tariff page, and shall read as follows:

> Notice is hereby given, as required by the decision of the Federal Maritime Commission in Special Docket No. 1570, that effective March 19, 1987, and continuing through May 18, 1987, the rate for a shipment of Copy Machines, Parts, etc., as described above, moving from Japan Base Ports to West Coast Ports, was $33.00 W/M. This Notice is effective for purposes of refund or waiver of freight charges on any shipments of the commodity described which may have been shipped during the specified period of time.

Additional Instructions

In addition to filing the above six tariff notices, Ricoh shall waive collection of additional freight for the benefit of the shipper, Ricoh Company Ltd., in the amounts shown on the application and supporting exhibits except for shipments Nos. 3, 4, 5, and 11, for which

Ricoh shall refund or credit the shipper with the amount of $3,905.61, as discussed above, to offset the misratings caused by the use of an unauthorized overflow rule and (for shipment No. 11) the use of an incorrect Gulf rather than an applicable West Coast intermodal rate. Ricoh shall report to the Commission of the action taken within the time period prescribed by the Commission in its order terminating this proceeding. If Ricoh believes that the recalculations of freight on shipments Nos. 3, 4, and 5, as performed above, are incorrect in any way, Ricoh may make corrections, if it furnishes appropriate explanations, and make the correct adjustments to its account with the shipper.

Norman D. Kline

Norman D. Kline
Administrative Law Judge

(S E R V E D)
(December 1, 1987)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 1570

APPLICATION OF RICOH INTERNATIONAL SYSTEMS, INC.
FOR THE BENEFIT OF RICOH COMPANY, LTD.

NOTICE OF ADOPTION OF INITIAL DECISION

The Commission on October 21, 1987, served a notice announcing its determination to review the initial decision in this proceeding served October 6, 1987. Upon completion of its review, the Commission now has determined to adopt the initial decision.

Applicant shall within 30 days, waive collection of charges and publish and file with the Commission tariff notices in the manner required by the initial decision and, within five days thereafter, furnish the Secretary with evidence of waiver along with a copy of the prescribed tariff notices.

By the Commission.

Joseph C. Polking
Joseph C. Polking
Secretary