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November 9, 2005

215118



Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

RE: Government of the Territory of Guam. v. Sea-Land Service, Inc. *et al.*
STB Docket No. WCC-101

Dear Secretary Williams:

Please accept for filing an original and 11 copies of the "WRITTEN SUMMARY OF ORAL ARGUMENT" of Horizon Lines, LLC in the above referenced proceeding. Please acknowledge receipt and filing of the enclosed material by date-stamping the eleventh copy of the Reply and returning it to the individual making this filing for return to me.

If there are any questions concerning this filing, please contact me at 202-274-2863.

Yours very truly,

Leonard L. Fleisig

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. WCC-101

GOVERNMENT OF THE TERRITORY OF GUAM

v.

**SEA-LAND SERVICE, INC., AND
MATSON NAVIGATION COMPANY, INC.**



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WRITTEN SUMMARY OF ORAL ARGUMENT

Pursuant to a scheduling order of the Board issued on October 5, 2005, respondent Horizon Lines LLC ("Horizon") hereby submits this summary of argument that will be presented orally before the Board on 16 November 2005 by Jonathan Benner. The defendant carriers' positions in this case have been unified and there will unavoidably be some degree of overlap in their oral presentations to the Board. However, as noted in the submission of Matson Navigation Company, Inc. ("Matson"), the defendant water carriers, in the interest of economy and clarity of presentation, have divided the substance and allotted time of their presentations into two primary components.

Matson's summary accurately reflects the unified carrier position opposing the Government of the Territory of Guam's ("GovGuam") theory of the case. GovGuam asserts that there is a viable methodology for assessing the lawfulness and effecting meaningful remedies in the context of aggregate revenue generated by a multiplicity of commodity water carrier rates, without reference to the variety of factors that influence the level of each rate. Defendants submit that no such theory of action can yield

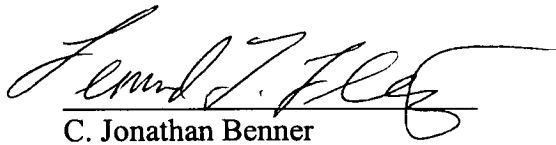
meaningful regulatory results, either as a matter of assessing rate lawfulness or as a predicate for the award of reparations or damages to shippers.

Horizon's portion of the oral presentation will focus on the joint carrier opposition to GovGuam's arguments concerning application of Federal Maritime Commission ("FMC") regulations developed to address time-limited General Rate Increase ("GRI") investigations under the Intercoastal Shipping Act, 1933, as amended. 46 U.S.C. app. 843 -845 (1988 and Supp. V 1993). Essentially, the argument will contend that the FMC's regulatory program was limited in its design to a particular, now defunct, statutory context that is not applicable here in any respect. We will refer to prior FMC case law, including that agency's recent disposition of a similar complaint filed by GovGuam in that forum, which makes clear that the ultimate measure of the lawfulness of rates and the remedies for unlawfulness are specific to particular commodities and to a myriad of physical and competitive factors that influence pricing of those commodities. We will assert that the use of FMC general revenue methodologies in a shipper complaint context, is, as the FMC has itself stated, inevitably "futile," "wasteful" and "irrelevant," both for the litigants and for the regulatory agency. Such methodologies will leave the parties without adequate indication of whether and to what degree any particular commodity rate actually paid by a shipper was unlawful. Horizon will present, to the extent time permits, a recapitulation of the carriers' earlier written position that the use of FMC methodologies, as urged on the Board by GovGuam, will have arbitrary results that are economically untenable in a two-carrier trade to a remote location served as part of other regulated services. In addition to legal arguments, we will rely to a large extent for this

portion of the carrier argument on the Verified Statement of Dr. Lawrence Kolbe,
attached to the joint Matson/Horizon filing of June 17, 2002.

Representatives of both carriers will be pleased to address any issues that
Members of the Board may have about any aspect of the proceeding.

Respectfully submitted:



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November 9, 2005