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Hon. Patrick Fuchs
Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Finance Docket No. 36873 – Union Pacific Railroad Company and Norfolk Southern Railway Company – Control and Consolidation

Dear Chairman Fuchs, Vice Chair Schultz, Member Kloster, and Member Hedlund:

As chief legal officer for the State of Mississippi, I submit these comments regarding the proposed merger of Union Pacific Railroad Company ("UP") and Norfolk Southern Railway Company ("NS").

Mississippi recognizes the potential benefits of the merger, including more efficient rail service, shorter transit times, and potentially lower transportation costs. These benefits could be significant for Mississippi's agricultural producers, manufacturers, and other businesses that depend on reliable freight transportation. We also recognize the importance of not only preserving competition but serving the public interest. The Applicants have proposed an Open Gateway Commitment and a Committed Gateway Pricing ("CGP") program to address the possible impact on existing transportation options. Both proposals have merit, but their effectiveness will depend on how they are implemented and enforced.

Our comments focus on ensuring that the Applicants' commitments provide meaningful protection for shippers and that the Surface Transportation Board ("Board" or "STB") has adequate mechanisms to address problems that may arise.

I. The Open Gateway Commitment Must Preserve Meaningful Competition

The Board's review of the proposed merger is governed by 49 U.S.C. § 11324 and 49 C.F.R. § 1180.1, which require consideration of the transaction's public benefits and its effects on competition. The Board has previously recognized the importance of preserving access to existing interchange routes, including in *Canadian Pacific Railway Limited—Control—Kansas City Southern*, Finance Docket No. 36500 (STB served Mar. 15, 2023).

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The Applicants' Open Gateway Commitment is intended to preserve existing interchange opportunities and allow shippers to continue using connecting railroads following the merger. Mississippi supports that objective. However, maintaining physical access to a gateway is only part of the equation. Competing railroads must also be able to use those gateways without unreasonable delays, discriminatory scheduling, or other service disadvantages that undermine their ability to compete. An interchange that remains technically open but becomes impractical or uneconomical to use offers little protection to shippers.

Mississippi therefore asks the Board to closely examine the terms of the Open Gateway Commitment and ensure that it includes enforceable protections against discriminatory treatment. Clear service standards, appropriate reporting requirements, and procedures for addressing complaints would help ensure that existing interline routes remain viable.

II. Committed Gateway Pricing Should Preserve Existing Competitive Options

Mississippi also sees potential benefits in the Applicants' proposed CGP program. As we understand it, CGP would provide qualifying shippers with an additional pricing option that may be lower than their existing rates. Our concern is that this new option should not come at the expense of lower rates or other competitive arrangements already available to shippers.

During our discussions with the Applicants, their representatives indicated that, for the life of the merger, CGP would supplement existing contracts and pricing arrangements rather than replace them. Mississippi asks the Board to ensure that this understanding is reflected in the proposed commitments. We recognize that transportation prices must be influenced by market conditions, but a pricing commitment that is made for the purpose of gaining Board approval and then expires shortly thereafter is not a commitment at all. Shippers should not lose meaningful competitive alternatives simply because the two railroads have merged.

Mississippi also asks the Board to examine the methodology used to calculate CGP rates. In particular, the Board should consider whether the proposed benchmark appropriately reflects competitive pricing, including whether Norfolk Southern's existing rates or a combination of both railroads' rates would provide a more appropriate comparison. We are not proposing a particular pricing formula. We simply ask that the Board ensure the program provides a genuine additional option without undermining lower-priced alternatives.

III. The Board Should Provide for Mediation, Independent Monitoring, and Continued Oversight

The Applicants have emphasized the Board's continuing authority to oversee the merger and address problems that may arise. Mississippi agrees that the Board will play an important role, particularly as the two railroads integrate their operations. However, even well-drafted commitments are of limited value if shippers cannot obtain timely relief when problems occur. Formal regulatory proceedings can be costly and time-consuming, particularly for smaller businesses.

Mississippi, therefore, asks the Board to consider an expedited mediation process for complaints involving interchange access, pricing, service, or compliance with merger conditions. Such a process could help resolve disputes before they cause substantial economic harm, while preserving the right to seek formal relief from the Board. The Board's major-merger regulations already contemplate procedures for resolving post-merger service problems and arbitration of certain disputes. See 49 C.F.R. § 1180.1(h)(3), (5). A dedicated mediation process could build upon those existing protections and provide access to a neutral arbiter to resolve disputes, particularly over vital interchange management issues.

We also ask the Board to consider appointing an independent monitor to assist with oversight of the Applicants' commitments. A monitor could review service and pricing data, identify potential compliance issues, and help bring disputes to the Board's attention before they become more serious.

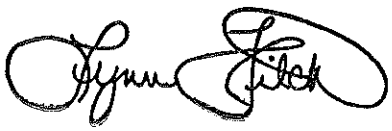
Finally, Mississippi encourages the Board to maintain meaningful oversight if the merger is implemented. The Board's regulations provide for post-approval monitoring and review of merger conditions. See 49 C.F.R. § 1180.1(g). Given the size of this transaction, continued attention to gateway access, competitive pricing, and service performance will be particularly important.

IV. Conclusion

Mississippi recognizes that the proposed merger may improve rail service efficiency. We also believe those benefits should not come at the expense of existing competitive transportation options. We, therefore, ask the Board to ensure that the Open Gateway Commitment preserves practical, nondiscriminatory access to existing interchange routes; that CGP supplements, rather than undermines, existing competitive pricing arrangements; and that appropriate mediation, independent monitoring, and oversight mechanisms are available to address problems as they arise.

Mississippi appreciates the Board's consideration of these comments.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 2026, I have caused the foregoing Opening Comments to be served electronically on all parties of record in Docket No. FD 36873 and Administrative Law Judge Soulikias.

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