

Marshall Durbin

Marshall Durbin Companies

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Melissa Durbin
President

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July 11, 2006

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The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Ex Parte No. 575, *Review of Rail Access and Competition Issues – Renewed Petition of the Western Coal Traffic League*

Dear Secretary Williams:

This letter is being submitted by Marshall Durbin Companies for inclusion in the above referenced proceeding in response to the decision served on June 2, 2006 announcing that the Board will hold a public hearing on July 27, 2006 on the issues surrounding so-called “paper barriers,” the contractual restrictions placed on line sales and leases of rail lines from larger railroads to existing or newly created short line railroads.

Marshall Durbin Companies and several other rail shippers filed comments in this proceeding on March 8, 2006 describing the existence and effect of a paper barrier imposed by the Kansas City Southern Railway (“KCS”) on the 2000 sale of a 55-mile branch line in Waynesboro, Mississippi to a newly created short line called the Meridian Southern Railway. The March 8 comments followed comments submitted by Marshall Durbin Companies and several other rail shippers along the so-called “Waynesboro Line” on October 12, 2005 in STB Docket Ex Parte No. 658, *The 25th Anniversary of the Staggers Rail Act of 1980: A Review and Look Ahead*. These latter comments described in detail the line sale in question, the existence of the paper - as well as “steel”- barriers imposed by KCS on the sale, and the extremely deleterious effects this transaction has had on the Waynesboro Line and the business operations of Marshall

Durbin Companies and the local community in general. The factual assertions contained in the comments were un rebutted, and the circumstances along the line have not improved.

The poor state of the Waynesboro Line remains a critical issue for Marshall Durbin Companies. However, we are not seeking to testify at the July 27 hearing because we believe that (1) the two sets of comments above provide the Board with a thorough discussion of the facts relevant to this particular paper barrier; and (2) any additional information on this particular paper barrier and its effects must come from the KCS or the Meridian Southern Railway, in particular the specific language of the agreement and contractual restrictions imposed on the sale of the Waynesboro Line. As the Board has been informed by numerous parties in this proceeding, a key problem with paper barriers is that they are contained in agreements that are deemed confidential by the railroad parties, so the true scope and duration of their anti-competitive effect is not known by the rail shippers affected by them. Accordingly, in addition to the recommendations contained in its prior comments, Marshall Durbin Companies reiterates its request that the Board immediately commence a rulemaking and adopt standards for determining when "paper" and "steel" barriers are contrary to the National Transportation Policy by being unduly anti-competitive. Such rules should include the requirement that line sale agreements or leases containing contractual restrictions rising to the level of "paper barriers" be submitted to the STB and disclosed to affected shippers as part of the transaction approval process so as to permit an evaluation of their anti-competitive effect.

Sincerely,

A handwritten signature in dark ink, appearing to read "Melissa Durbin", with a stylized flourish at the end.

Ms. Melissa Durbin
President
Marshall Durbin Companies

Cc: The Honorable Senator Trent Lott
The Honorable Senator Thad Cochran
The Honorable Representative Gene Taylor