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January 22, 2008

## VIA E-FILING

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

Re: STB Ex Parte No. 575 (Sub-No. 1)  
Disclosure Of Rail Interchange Commitments

Dear Acting Secretary Quinlan:

Pursuant to the Surface Transportation Board's decision issued on October 30, 2007 in the above captioned proceeding, The Kansas City Southern Railway Company ("KCSR") hereby files, via e-filing, its Reply Comments in the above captioned matter. If there are any questions concerning this filing, please contact me by telephone at (202) 663-7823 or by e-mail at [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com).

Sincerely,



William A. Mullins

Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Ex Parte No. 575 (Sub-No. 1)**

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**DISCLOSURE OF RAIL INTERCHANGE COMMITMENTS**

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**REPLY COMMENTS OF THE KANSAS CITY  
SOUTHERN RAILWAY COMPANY**

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**Attorneys for The Kansas City  
Southern Railway Company**

**Dated: January 22, 2008**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Ex Parte No. 575 (Sub-No. 1)**

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**DISCLOSURE OF RAIL INTERCHANGE COMMITMENTS**

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**REPLY COMMENTS OF THE KANSAS CITY  
SOUTHERN RAILWAY COMPANY**

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Summary

In comments filed in this proceeding on January 2, 2008, Marshall Durbin Companies ("MDC") repeated an accusation that it has made several times before - that the January 2000 agreement by which The Kansas City Southern Railway Company ("KCSR") sold Meridian Southern Railway, LLC ("Meridian Southern") a line from Meridian to Waynesboro, MS ("Waynesboro Line") prevents Meridian Southern from interchanging with Norfolk Southern Railway Company ("NS") at Meridian. MDC is wrong. KCSR's agreement to sell the Waynesboro Line to Meridian Southern does not prevent Meridian Southern from connecting with NS at Meridian if Meridian Southern decides to do that.

Background

In its October 30 decision in these proceedings, the Board set out its views regarding the reasonableness of interchange commitments (dubbed "paper barriers" by some) and requested comments on proposed new rules regarding their disclosure. KCSR joined in and supported the opening comments filed by the Association of American Railroads ("AAR"), but did not file separate comments.

MDC filed comments repeating assertions made previously against KCSR with respect to sale of the Waynesboro Line ("MDC's Comments"). MDC's Comments assert MDC's belief that KCSR's agreement to sell Waynesboro Line contains both a "paper barrier" and a "steel barrier" which are "a primary reason" that Meridian Southern cannot make enough money to upgrade the Waynesboro line. MDC's Comments at 3.

KCSR has not previously responded to MDC's accusations because it preferred not to engage in a public battle in what is essentially a business dispute between Meridian Southern and MDC. Yet, MDC's continued comments and Meridian Southern's silence in the face of those comments require KCSR to set the record straight. Accordingly, KCSR hereby replies to that portion of MDC's Comments.<sup>1</sup>

#### Discussion

The Waynesboro Line. The Waynesboro Line is a relatively long line that principally serves a single shipper in a lightly-populated area at the far southern tip of the line. The Waynesboro Line extends approximately 54.5 miles south from Meridian to Waynesboro, MS. Waynesboro, at the end of the line, is a community of about 6200 people, and is the largest town on the line other than Meridian. Assuming MDC's traffic figures in its comments are correct, MDC likely accounts for a significant portion of the traffic moving on the Waynesboro Line.

The Waynesboro Line is the northern portion of a line that previously extended from Meridian to Mobile, AL ("Meridian-Mobile Line"). The Meridian-Mobile Line was owned by the Gulf, Mobile & Ohio Railroad Company when it merged into Illinois Central Railroad to form the Illinois Central Gulf Railroad Company ("ICG") in about 1972. ICG sold the Meridian-

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<sup>1</sup> KCSR also joins in and supports the reply comments of the Association of American Railroads being filed today in this matter. Those comments address other aspects of MDC's Comments.

Mobile Line to Gulf & Mississippi Railroad Corporation ("G&M") in the mid-1980's. G&M sold the line to Southrail Corporation ("Southrail") in 1988.

In a heavily-contested abandonment proceeding that was filled with accusations that Southrail never really intended to operate the Meridian-Mobile Line and that Southrail was conspiring to downgrade the line and divert traffic, Southrail was granted authority to abandon the 75-mile portion of the Meridian-Mobile Line extending south from Waynesboro to Whistler Station, AL, near Mobile. Southrail Corporation- Abandonment – Between Whistler Station, AL and Waynesboro, MS, Docket No. AB-301 (Sub-No. 6), 7 I.C.C.2d 854 (1991). MDC participated in and opposed that proposed abandonment.

Southrail Corporation owned the Waynesboro Line when Southrail's parent, MidSouth Corporation, was acquired by Kansas City Southern Industries, Inc. (now Kansas City Southern) in 1993. After several years of trying to generate sufficient traffic and revenues to support its continued operation of the Waynesboro Line, KCSR chose to sell the line to a lower cost operator – Meridian Southern – rather than seeking to abandon the line. Meridian Southern and KCSR reached a negotiated agreement for sale of the line in January 2000. The Board approved the sale of the line to Meridian Southern, over MDC's opposition.<sup>2</sup>

In short,, the Waynesboro Line is in many ways typical of the type of low-density branch line that major carriers have found over the past 30 years that they cannot serve economically and have sold to short line operators in hopes that a lower cost structure and the ability of the short line carrier to target its resources on the particular needs of local shippers would preserve and improve service. Such a sale often is the preferred alternative to abandonment of the line by the major carrier.

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<sup>2</sup> Meridian Southern Railway, LLC – Acquisition and Operation – Line of Kansas City Southern Railway Company, STB Finance Docket No. 33854 (STB served Aug. 19, 2000).

The Alleged "Paper Barrier." When KCSR sold the Waynesboro Line to Meridian Southern, it entered both a sale agreement and a marketing agreement. The latter agreement contains a confidentiality provision that prevents KCSR from detailed discussion of its contents. However, KCSR can say what it does *not* contain. What it does *not* contain is a paper barrier.

A marketing agreement between a shortline purchaser and a selling Class I usually allows the Class I carrier to price through movements over its system and that of the shortline operator and provides the shortline a guaranteed level (or levels) of payment for some or all of the existing moves that historically had been handled by the Class I. This allows the shortline to determine whether the revenues that it determines that it needs to operate the line will be available to it, based on the historic traffic volumes and the fixed per car revenue provided by the marketing agreement.<sup>3</sup> Often such agreements also provide the shortline incentives for generating additional traffic that does not exist at the time of purchase, as well as other benefits.

KCSR would characterize its marketing agreement with Meridian Southern as generally fitting the foregoing description of a typical marketing agreement. The agreement is *not* perpetual, and each party has certain rights to terminate it. It does *not* call for undoing the sale of the Waynesboro Line to Meridian Southern if Meridian Southern connects to and interchanges with NS. It does *not* prohibit shipments being interchanged to NS. It does *not* require Meridian Southern to pay KCSR a significant fee if Meridian Southern does not interchange a certain portion of its shipments with KCSR. In short, KCSR's marketing agreement with Meridian Southern does *not* prevent Meridian Southern from handling traffic in connection with NS if Meridian Southern decides to do so. Neither does the KCSR-Meridian Southern sales agreement

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<sup>3</sup> Similarly, Class I's often have marketing agreements with each other in certain markets, giving one carrier the right to price the through service and giving the other a fixed division in order to facilitate sales of transportation services requiring involvement of both carriers to serve the market.

prohibit Meridian Southern from connecting to and interchanging with NS. Accordingly, KCSR submits there is no paper barrier in this matter.

**The Alleged “Steel Barrier.”** MDC asserts that in KCSR’s agreement with Meridian Southern, “KCSR [] retained ownership of a small segment of the physical track leading into the rail yard at Meridian.” MDC Comments at 3. In one respect, this is true – KCSR did not sell MDC track extending into KCSR’s main yards in Meridian.

KCSR did sell Meridian Southern a yard, referred to as South Yard, as part of the sales agreement. This enabled Meridian Southern to block cars, make up trains, and perform other normal yard functions.

KCSR did not sell Meridian Southern other yard facilities in Meridian that KCSR needs and uses, namely its Middle and North Yards. These yards are crucial to KCSR’s core business. The vast majority of the operations in those yards have nothing to do with Meridian Southern. Allowing another carrier access to those yards would impair their function and flexibility, and thus impact KCSR’s core business. Nevertheless, it apparently is these yards which MDC feels that Meridian Southern is entitled to use.

Effectively, MDC asserts that it, though not a party to the transaction between KCSR and Meridian Southern and not having any investment in either, is entitled to tell KCSR what it must sell and tell Meridian Southern what it must buy, regardless of the operational or economic issues of the deal, because of what MDC believes is good for MDC. KCSR suspects that MDC would not be willing to buy and sell its assets under similar constraints.

### **Conclusion**

MDC’s assertions in its comments are incorrect. KCSR is not preventing Meridian Southern from connecting to NS. The type of paper barrier about which the Board has expressed

concern does not exist to prevent Meridian Southern from connecting to NS. Neither should KCSR be required, through government regulation or fiat, to impair its operations by granting access to its yards simply to benefit Meridian Southern or MDC when doing so could harm KCSR's core business. Like other railroads, Meridian Southern can, so far as KCSR knows, establish a connection with NS by acquiring land and building tracks. KCSR's agreements do not prohibit Meridian Southern from doing so.

MDC operates its business in an isolated area which is difficult to serve profitably. Rather than attacking KCSR and incorrectly characterizing the KCSR/Meridian Southern line sale agreement and transaction, KCSR suggests that MDC's time and energy would be better spent trying to work with its existing carrier to find ways to improve service. If, as MDC asserts, service on the Waynesboro Line is so unjustifiably bad, MDC could explore purchasing and operating the line itself. MDC may find, if indeed it does not already know, that finger-pointing and accusations are much easier than operating a long branch line for the primary benefit of a single shipper.

Respectfully submitted,



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Attorneys for The Kansas City  
Southern Railway Company

Dated: January 22, 2008

**CERTIFICATE OF SERVICE**

I have this day served a copy of the foregoing Reply Comments Of The Kansas City Southern Railway Company upon all other parties of record by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

Dated: January 22, 2008



William A. Mullins

Attorney for The Kansas City  
Southern Railway Company