

TROUTMAN SANDERS LLP

A T T O R N E Y S A T L A W
A LIMITED LIABILITY PARTNERSHIP

401 9TH STREET N.W. • SUITE 1000
WASHINGTON D.C. 20004-2134
www.troutmansanders.com
TELEPHONE 202 274-2950

221474

Thomas W. Wilcox
thomas.wilcox@troutmansanders.com

Direct Dial 202-274-2913
Fax 202-654-5606

January 30, 2008

Via Electronic Filing

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

Re. STB Ex Parte No. 575 (Sub-No. 1), *Disclosure of Rail Interchange Commitments*

Dear Acting Secretary Quinlan:

The Marshall Durbin Companies ("MDC") respectfully request that the Board accept these brief comments in response to the Reply Comments of the Kansas City Southern Railway Company ("KCS") submitted in this proceeding on January 22, 2008 ("Reply Comments"). KCS's Reply Comments were directed solely at certain factual statements in MDC's Opening Comments. KCS does not in any way address or express an opinion on the Board's proposed rules, but its comments nevertheless affirm for the Board that its decision to adopt a policy of requiring disclosure of interchange commitments between Class I railroads and short line railroads is correct and appropriate.

Specifically, in the Reply Comments KCS states affirmatively that its "marketing agreement" with the Meridian Southern Railway ("MSR") "does *not* contain a paper barrier." Reply Comments at 4 (emphasis in original). However, KCS adds that "a confidentiality provision" prevents MDC or other affected parties from examining the actual terms of the agreement to verify that this is indeed the case. *Id.* Instead, parties outside the transaction are supposed to rely on KCS's characterizations of the agreement's purported terms. MDC submits that the Board's adoption of rules that require more liberal disclosure of the actual agreement to affected parties will prevent such one-sided, and ultimately meaningless representations in the future. MDC further submits that, had a more liberal disclosure requirement existed when MDC challenged the sale of the Waynesboro Line to the MSR in 2000, MDC would not have had to wait nearly 8 years to learn even the paraphrased details of the transaction contained in the Reply Comments, which in MDC's view raise more questions than they purport to answer.

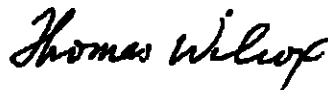
ATLANTA • HONG KONG • LONDON • NEW YORK • NORFOLK • RALEIGH
RICHMOND • TYSONS CORNER • VIRGINIA BEACH • WASHINGTON, D.C.

The Honorable Ann K. Quinlan
January 30, 2008
Page 2

The Reply Comments are also instructive because they highlight for the Board that the final disclosure rules should encompass production of all agreements directly relevant to the transaction and interchange commitment. In the Reply Comments, KCS admits that the transaction with the MSR was comprised of "a sale agreement and a marketing agreement." *Id*. These two agreements appear to be inextricably linked. Specifically, KCS also admits that "KCSR did not sell MDC [sic] track extending into KCSR's main yards in Meridian," *id* at 5, which means MSR presently cannot reach the outside world without first traversing KCS-owned track leading into the Meridian yard. Consequently, while the Reply Comments state that the marketing agreement does not prohibit direct interconnection with the Norfolk Southern Railway ("NS"), they also state that the MSR could only establish such an interconnection with NS "by acquiring land and building tracks." *Id* at 6. Moreover, while KCS represents that "each party has certain rights to terminate" the marketing agreement, *id* at 4, the lack of any present direct physical access to another railroad would seem to make the exercise of any termination rights by MSR problematic.

In conclusion, MDC submits that the Reply Comments affirm and provide additional justification for the Board's proposed rules, and that the final rules should ensure that the scope of the disclosure requirement includes all agreements that make up and/or have a direct bearing on the overall transaction and the creation of any interchange commitments.

Sincerely,



Thomas W. Wilcox
Counsel for Marshall Durbin Companies

Cc Counsel for KCS (via E-mail)