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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**EX PARTE NO. 677**

**COMMON CARRIER OBLIGATION OF RAILROADS**

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**STATEMENT OF BENJAMIN B. SLAUGHTER**

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My name is Benjamin B. Slaughter, and I would like to begin my statement by thanking the Board for this opportunity to appear before it. The issue I would like to relate is how my business has been unable to obtain common carrier rail service from Norfolk Southern.

I do business as McCullers Reload in Harnett County, NC. My business consists of reloading non-bulk commodities between rail and truck and providing storage of those commodities either after they arrive by rail until they are picked up by their consigned owner or, in a lesser number of instances, by storing commodities that arrive by truck and are to be reshipped. Mainly, these commodities consist of lumber and other forest products, pipe, and construction materials. They are loaded and unloaded on and from rail cars using mechanized front end loading devices.

McCullers Reload got its name from the fact that our original transload site was located at McCullers, NC. It was served by the Norfolk Southern Railroad or its predecessors and handled 800-1000 rail cars per year. Approximately three years ago, we had to discontinue use of the McCullers site because the original site was closed after a local college took the property under eminent domain for expansion purposes. In 2003 I purchased a 100-acre site in an area of Harnett County known as Chalybeate Springs, which is adjacent to a lightly used Norfolk Southern rail line. The Chalybeate site was not prepared to commence rail service. While steps were being taken to grade the property, prepare it for the construction of storage facilities, and for the installation of rail sidings, we used (and are still using) a six-acre site at Lillington, NC. The Lillington site has access to NS rail service, but is too small and otherwise unsuitable for storage purposes, which are an essential part of our business.

When merchandise arrives at the Lillington site, it is trucked eight miles at our expense to Chalybeate and held there for customer pickup or further shipment. This is an extremely inefficient manner of operation that is making us less competitive in the marketplace than formerly. Our annual volume of rail traffic is now reduced to 500 cars.

In 2003, on or about the date we purchased the Chalybeate site, we met on the site with the gentleman who was then General Manager of the NS east Carolina business unit to make plans for the installation of a switch connection and the related property grading so that internal trackage could be built from the connection into the property. The Chalybeate site had, in fact, previously been served by NS. In 2003, when I first began discussions with NS about reestablishing a switch connection on the 100-acre site, the NS rep-

representative with whom I met actually showed me draft plans for the installation of a switch connection.

In the ensuing years, I continued to hold discussions with NS representatives looking toward the installation of a switch connection. At the same time, we graded the 100-acre site for proper drainage and for the construction of storage facilities and actually used it to hold materials awaiting pickup, trucking from Lillington as mentioned above. Sometime between November 2006 and early 2007 (I don't recall the exact date) I and our construction engineer met with Norfolk Southern's engineer, its general manager, and a NS industrial development official to make final plans for the switch connection. Norfolk Southern stated that it wanted a Wye switch so that trains could enter our track from one direction and exit in another direction. I was told that the switch connection would cost approximately \$86,000 for each of the two Wye switches, or a total of approximately \$172,000 that our company would have to pay to Norfolk Southern. In early 2007, my engineer was told by the NS engineer that plans for the switch had been approved.

In June 2007, however, I received a highly distressing telephone call from the new general manager of NS' east Carolina business unit. In that call, he informed me that NS had decided to close the one and only grade crossing that provides vehicular access to the 100-acre site. A private, dirt road, on which we have an easement, crosses the NS track approximately 300 feet from the point at which NS had agreed to install the switch connection. There is no other road access to the site, so closing the grade crossing is the equivalent of closing our rail-truck transfer and storage business. Perhaps it was a coincidence, but contemporaneously with Norfolk Southern's notification to us that NS intended to close the access road grade crossing, Norfolk Southern announced plans for

the establishment of a large transloading facility, very similar to ours, 25 miles away from our facility, which will be highly competitive with our own business.

In July 2007, I had another conversation with NS' east Carolina business manager. This time he informed me that NS might allow our grade crossing to stay open if I could find three other grade crossings on NS to close. I related this demand to a Federal Railroad Administration representative, who told me it was not possible for an individual to close anyone else's grade crossing.

The Norfolk Southern announcement that it was, in effect, going to put McCullers Reload at Chalybeate out of business by closing the grade crossing came four years after Norfolk Southern first knew of our investment in that facility, and after we had been in business on NS for 18 years. By the time Norfolk Southern got around to telling us that they intended to close the grade crossing, we had spent \$4 million to develop the property, all of which occurred with the full knowledge and apparent blessing of Norfolk Southern.

At this point, NS has not closed the grade crossing, but they have advised me that, if we persist in trying to establish a switch connection with Norfolk Southern, we not only will have to pay the \$172,000 to install the switches, but will have to pay Norfolk Southern \$168,000 for the installation of grade crossing lights and gates. Why these precautions are necessary has never been clear to us, particularly as I have been led to believe that a government entity will pay for the installation of grade crossing warning and protective devices, so that the ultimate cost will not be borne by Norfolk Southern.

Even though the grade crossing is 300 feet from one of the proposed NS switches to our site, the crossing is not a busy intersection and does not have to be blocked to serve

us. Only two NS trains a day use the track, operating at 25 miles per hour or less and generally during daylight hours. The road is a private road subject to a 5 m p.h. speed limit, on which our company has an easement, and used only by vehicles entering and leaving the reload site. The crossing is level and can be seen from 1500 feet down the road. If rail traffic stays at 500 cars per year and each rail car generated four truckloads of merchandise, a total of 4000 loaded and empty trucks annually would cross the NS tracks, or an average of 15 per work day. The crossing does not have to be blocked to switch the facility; NS can park its train on one side of the crossing when switching the facility and detach cars that require switching. This same grade crossing has been used by business occupants for over 50 years, and I am not aware that a single grade crossing accident occurred.

Norfolk Southern, fully aware of this project for four years and having approved plans for the installation of a switch connection only a year ago, has so far provided our company with not one agreement or proposed agreement to implement the switch connection or grade crossing conditions that Norfolk Southern demands. I have been told explicitly by a Norfolk Southern employee of two conditions that Norfolk Southern intends to demand if it agrees not to remove the grade crossing and to install warning devices. First, I am told that Norfolk Southern intends to assess a fee of \$3,000 per year for maintenance of the grade crossing, and will demand 25 years' worth of maintenance fees in advance when the agreement is signed; in other words, \$75,000 in addition to \$168,000 for installation of the warning devices.

I have also been advised that Norfolk Southern intends to include in its grade crossing agreement a condition stating that it can close the grade crossing any time Nor-

folk Southern determines that the grade crossing no longer is necessary for vehicles to reach our property. Because Norfolk Southern has not provided us with any written agreements, I cannot determine whether that closure condition will be accompanied by a sufficiently objective standard, or if NS intends to refund any of our money if it does close the crossing. NS seems to be saying that, as a condition of a switch connection, we must invest approximately \$245,000 in a grade crossing that NS reserves the right to shut down.

As a small business operator, I know next to nothing about a railroad's common carrier obligations. But it does seem to me that, if a railroad has a duty to provide service on reasonable request, our company has made such a request and is a long way from getting service. We do not need rates from NS because the rates are paid by the shippers who originate rail traffic to our facility. What we do need is the ability to receive rail cars, and that ability has been thwarted by Norfolk Southern delays and by the threatened imposition of grade crossing requirements and restrictions that may or may not be reasonable or necessary. Unfortunately, we cannot be more definitive because NS has not been timely in responding to our request for implementation of this project.

Respectfully submitted,

/s/

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