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September 9, 2015

The Honorable John Thune
Chairman, Committee on Commerce, Science and Transportation
United States Senate SD-511
Washington, DC 20510

Dear Senator Thune:

Thank you for your August 28, 2015 letter requesting information about the need for Congress to modify the deadline for implementation of Positive Train Control (PTC) in order to adopt a more realistic framework for PTC's safe and successful deployment. Specifically, you have requested that The Kansas City Southern Railway Company ("KCS") provide you any available information on (1) the issues and challenges that could arise if Congress does not extend the statutory deadline; and (2) the actions that KCS is considering or analyzing as a result of these issues and challenges. You have further requested information on the potential overall effects on freight and passenger transportation, including any economic effects and unintended consequences for safety if the December 31 deadline is not modified.

To date, KCS has undertaken substantial and costly efforts to implement PTC. Nevertheless, KCS, like all other freight carriers and most commuter and passenger carriers, will not meet the deadline for full implementation of interoperable PTC. KCS nonetheless is continuing to invest in PTC technology and is striving toward regulatory compliance as best it can. KCS has a strong safety culture and works closely with the Association of American Railroads (AAR), the Pipeline and Hazardous Materials Safety Administration (PHMSA), Federal Railroad Administration (FRA), our customers, our peers, and others to transport hazardous and other materials as safely as possible. KCS has been a Responsible Care® partner company since 1999 and collaborates with TRANSCAER®, a community outreach program designed to address community concerns regarding the transportation of hazardous materials through planning and cooperation.

With respect to your specific questions, it is difficult for KCS to determine the overall effects on freight and passenger transportation if the December 31 deadline is not modified, but it is very likely that without some modification of the current deadline the fluidity of the national rail system would be slowed. The impact on shippers, consumers and the national economy resulting from a slowdown in rail network fluidity could be significant. The same would likely be true for the KCS system and its customers. Reduction in the fluidity of the national rail system could also have the effect of diverting some traffic to highways, causing increased traffic congestion, increased air pollution and increased potential for big rig-car collisions.

FRA has stated that it is developing a plan which includes imposing unspecified alternative safety measures, as well as fines, on railroads until they complete installation of interoperable PTC systems. Because KCS does not know what specific actions FRA might undertake as a result of the industry's inability to comply with the PTC deadline if it is not modified, and does not know how other freight carriers who KCS interchanges traffic with or passenger carriers who operate over KCS track would respond, it is impossible to know precisely what effect the unworkable current PTC obligation and FRA's enforcement plans will have on KCS and on the national economy.

FRA has discussed developing alternative safety measures, and using all of its enforcement tools, including “prohibiting service on specific routes.” See FRA Report To The House and Senate Appropriations Committees, August 7, 2015, at pg. 14. FRA itself has commented that such actions could “result in sustained and disruptive impacts on the movement of freight and passengers in those locations until full implementation is achieved.” FRA Report at pg. 14. It is unclear at this time how these measures would be implemented, how they would work, and what consequences they might create; but it is clear that they could have a significant impact on the fluidity of the national rail system which would likely cause significant consequences for shippers, consumers and the national economy.

Shippers have expressed significant concerns about the potential effects of disruption of rail transportation due to measures to compensate for the delay in installing interoperable PTC. The American Chemistry Council, the Chlorine Institute, the National Association of Chemical Distributors, and The Fertilizer Institute stated in their June 19, 2015 letter to you that “[a]ny interruption in the delivery of [their] products would have significant economic and societal consequences, putting public health at risk.” Similarly, labor leaders from SMART Transportation and Transportation Communications Union/IAM have noted that if the commuter and passenger rails discontinue service so as to avoid substantial penalties, as some have said they would do if the deadline is not extended, “[s]uch decisions will cause significant disruptions in our nation’s rail network and put thousands of hardworking men and women in the rail industry, including our members, out of work through no fault of their own.” July 27, 2015 letter to the Senate.

Clearly, there is a risk that freight and commuter railroads could be forced, either legally or financially, to slow, modify or maybe even stop some service in the worst case. As just two examples, FRA has stated that it is considering prohibiting service on some routes, and BNSF said in a July 24 letter to the STB that it is considering whether freight or passenger traffic could continue to move on its lines requiring PTC after December 31. Such actions could have harsh impacts on the economy as a whole.

Until FRA announces the specific alternative safety measures that it says could result in the “sustained and disruptive” impacts that it mentions in its August 7 report to the House and Senate Appropriations Committees, which it apparently intends to undertake if the implementation deadline is not modified, and until KCS has had a chance to assess how the operational impact of those measures can best be managed, it is not possible for KCS to know precisely what effect the unworkable current PTC deadline will have on KCS’s operations. Those effects would depend on FRA’s actions, which could include significantly reducing operating speeds on all PTC routes or just on TIH or passenger traffic, changing routes and patterns of service, or other measures that are not specifically known at this time.

KCS would have to consider that the measures would likely remain in effect for several years, and would affect nearly 80 percent of KCS’s system if they apply to all lines to which PTC requirements apply by FRA regulation. These factors could affect everything about KCS’s operations, from reduced capacity because slowing trains would mean every locomotive and crew could haul freight fewer miles than at present, to security issues and possibly impacts on fuel use. Other significant issues, such as whether crossing gates lower too far ahead of trains operating at reduced speeds and whether that would cause more motorists to go around lowered crossing gates, would have to be considered.

KCS would have to determine how it could comply with potentially conflicting government requirements which, among other things, limit how long TIH cars can remain in yards, require routing of hazardous materials along prescribed routes, and require attendance of TIH cars moving to or through HTUAs. KCS would also have to take into consideration its contractual and legal obligations to move TIH and other traffic.

Beyond its operating response to whatever FRA does if the deadline is not modified, KCS would also have to consider how to compensate for the added costs associated with whatever measures FRA may impose; whether there are liability implications of operating without required PTC systems after the PTC deadline passes; whether it would remain feasible under FRA's limitations to continue to even transport TIH traffic; and contending with possible private lawsuits seeking to enjoin operation without interoperable PTC in place. Any of these potential effects could be quite disruptive for KCS and its shippers.

While whatever actions KCS may be forced to take in this situation would be decided upon solely by KCS, those actions of necessity would be affected by the individual initiatives of each of KCS's many connecting carriers who themselves would be deciding what they will do based upon their own individual decisions. Because over 80% of KCS' traffic interchanges with a connecting carrier, KCS is disproportionately impacted by the decisions of its connecting carriers which inevitably impacts the movement of interchanged traffic on KCS. These actions and others that may be needed in the future should this situation arise cannot be known with any precision until FRA's actions are known. Please note that the actions contemplated in this response are not an exhaustive list of everything that KCS may have to consider and implement in response to a failure to modify the PTC implementation deadline, but rather constitute KCS's thinking at this time.

KCS believes that it is imperative that Congress pass legislation to modify the current PTC implementation deadline, and strongly supported your efforts, and those of Senators Blunt and McCaskill, to include a PTC extension in H.R. 22 – Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act. KCS strongly encourages the House to likewise adopt legislation extending the PTC deadline. Without such modification, Congress would be incurring a very high risk of significant service and economic disruption.

KCS appreciates the opportunity to provide its views. If we can be of further assistance, please let me know or contact Warren Erdman, Executive Vice President – Administration and Corporate Affairs at 816-983-1454 or werdman@kcsouthern.com.

Sincerely,



David L. Starling