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Dear

Review of ORR criteria and procedures for the approval of track access contracts – a consultation document

This letter with attachment provides the Network Rail response to the consultation paper on criteria and procedures for the approval of track access contracts.

We believe that ORR's proposals represent the right direction in which the industry should be moving and is consistent with the need for the industry (operators, Network Rail and other industry stakeholders) to aim to resolve matters together wherever possible. The C&P proposals will bring greater clarity to the negotiation and approval of track access agreements, but the proposed approach also brings with it a number of issues which Network Rail is concerned about:

- transfer of administrative burden from ORR to the parties
- prospective financial risk arising from increased risk of entering into inappropriate contracts
- reputational risk associated with the transfer of responsibility.

This places importance on ensuring that the emerging policy is implemented in an industry efficient way with the necessary criteria, transitional arrangements and timings being agreed in advance. The proposal to implement such changes in October 2007 raised concerns from

industry parties at the recent workshop hosted by ORR. The level of workload associated with imminent contractual changes leading up to December 2007 (e.g. East Midlands refranchising) would suggest that October is too soon and a date in early 2008 should enable a smooth transaction.

The attachment sets out in detail our response to the consultation.

Our key issues are:

- **A proportionate response** – We believe a selective/proportionate approach would be a move in the right direction but, to date, ORR has given a lot of attention to detailed legal drafting. If it were suddenly to draw back from the level of checking then there would be a risk that incomplete or ineffective contracts could be submitted and approved. Transitional issues therefore need to be given careful consideration.
- **Extending the scope of general approvals** – The consultation proposals are silent on whether the scope of general approvals should also include extensions to the term of contracts. Given the implications of contract term extensions Network Rail recognises that there may be complexity associated with future capacity decisions. This may be an area for examining through the proposed workshop development process.
- **Alignment** – Network Rail supports this direction of change and believes that attention to key processes, including the need to better align Part D and applications will be required and that applications for certain types of contract need a longer timescale than more straightforward ones.
- **Setting deadlines** – We believe, overall, that introducing deadlines could be beneficial in the circumstances envisaged by ORR (e.g. busier routes). In light of industry experience regarding “informal” deadlines it will be important to apply careful consideration when defining the parameters to ensure that there is a balance between consistency and flexibility for extenuating circumstances.
- **Restructuring of the C&Ps** – Network Rail supports this proposal as it will help Network Rail and industry parties by bringing together the sources of advice into a single point. Given that it would cover both passenger and freight businesses, it will be important to recognise differences in the single document.
- **Overarching regulatory framework document** – ORR’s proposal for a web based framework document consolidating existing published information and new/emerging directions will provide a useful tool for the industry and Network Rail supports the development of this document.
- **Other policy changes** – Network Rail welcomes the opportunity to review number of other contractual issues within the scope of the work on emerging policy for C&P.

Overall, therefore, we support much that is proposed in the document. We believe that further discussion is needed on these issues and would appreciate the opportunity to be involved in such discussions.

We do not wish any part of this response to remain confidential.

Yours sincerely

Ian Marlee
Head of Regulation and Contract Services
Network Rail

**Review of ORR's criteria and
procedures for the approval
of track access contracts – A
consultation paper**

Network Rail's response

May 2007

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Summary

This document constitutes the Network Rail response to the Office of Rail Regulation's consultation on ***Review of ORR's criteria and procedures for the approval of track access contracts - A consultation paper.***

The document seeks industry views on suggested changes to the way in which access contracts are agreed and ORR's approach to approving them. Network Rail welcomes the opportunity to comment on the ORR consultation.

C&P consultation – ORR approach

Network Rail acknowledges that this consultation document represents the first stage of a programme of work which ORR envisages running over the next few months.

In 2005 ORR consulted the industry on Criteria and Procedures for the approval of access contracts, and as part of that consultation it became clear that there was need for a broader review. We have responded to the recent consultation document on Access Options, and this document details our views on the wider issues that influence the development of track access agreements.

ORR has declared that its aims for this consultation are to:

- ensure that network capacity is allocated in the public interest
- ensure that the terms of the relationship and the associated processes incentivise and facilitate a public interest outcome
- encourage the industry to take greater responsibility for the terms of the contracts and of the industry contractual codes
- reduce timescales and
- seek means of removing unnecessary requirements, reducing the costs of the process, and focussing effort where it generates most value.

ORR confirms that in the future it is its intention to focus more on:

- any area of disagreement and disputes between the parties in section 17 and 22A applications and
- the impact on other stakeholders

We agree with the thrust of the proposed changes and think that they will bring benefits, but believe that the transition will need to be managed carefully in terms of greater responsibility to the industry.

C&P Context – Industry relationships

The principles upon which we would expect access contracts and C&P to develop need to take account of:

- The relationship between the operators and Network Rail as defined within Access Agreements and the Network Code which are subject to the regulatory processes

- The relationship that operators have with the DfT as defined within franchise agreements.
- The relationship that Network Rail has with the DfT as defined by the “regulatory contract”, and our role in relation to leadership in performance, planning and projects.
- The need to have the flexibility to do the right thing for the industry while maintaining a level of stability. To ensure balance, anything that impacts on one of these relationships should be able to be reflected in the other.

In particular, the following issues need to be considered in the context of these relationships:

Contractual processing – The ORR proposal involves a greater level of control and processing for Network Rail, with the ORR developing a more reflective role. Any such transfer of responsibility to the industry parties brings a risk to the associated timescales and will transfer administrative burden from ORR to the industry.

Freight issues – There is a need to resolve outstanding freight issues, e.g. scope for contract convergence to more clearly define and simplify infrastructure capability obligations

Industry consultation – The intention that there should be a greater responsibility on Network Rail to ensure effective consultations. It is vital that we have the right tools and data to do so. Operators are currently reluctant to share these with us

Conflicting rights – Need to consider capacity allocation issues and processes in the light of any changing responsibilities

Key Issues

The following section sets out our answers to the specific consultation questions. Our key points are:

- **A proportionate response** – ORR proposes that the degree of scrutiny it will in the future apply to submissions should be proportionate to:
 1. the nature and complexity of the application
 2. the impact that the contract is likely to have, particularly on other stakeholders
 3. the quantum and nature of the rights being sought, and
 4. any departure from the model contract

ORR intends to provide guidance on the parameters and would continue to monitor applications to observe whether systemic problems arise.

We believe a selective/proportionate approach would be a move in the right direction but, to date, ORR has given a lot of attention to detail legal drafting. If it were to suddenly draw back from the level of checking then there would be a risk that incomplete or ineffective contracts could be submitted and approved. The proposed transfer of activity would most likely mean that there will be a greater need for Network Rail and operators to resolve any process issues prior to submission, including the need to consider appropriate additional assurance processes to be developed and put in place. This could also require the

strengthening of existing processes and a higher level of support and training. Therefore the key issue is about the need to be clear on when and how to transfer to the new responsibilities.

- **Extending the scope of general approvals** – ORR proposes a more flexible approach for submissions facilitating more straightforward and minor timetable changes. This would involve changes to parameters of general approvals, in terms of the extension of the scope and timescales. The document also envisages the potential to extend the scope further by allowing a general approval to apply for the first year of a refranchised operation, and also cover changes to schedule 5 which apply for 1 timetable year.

The consultation proposals are silent on whether the scope of general approvals should also include extensions to the term of contracts. Given the implications of contract term extensions Network Rail recognises that there may be complexity associated with future capacity decisions. This may be an area for examining through the proposed workshop development process.

- **Alignment** – The consultation document identifies the Working Timetable, RUS activity and the passenger refranchising processes as significant industry processes which impact on the regulatory environment. ORR proposes that closer alignment will lead to a reduction in the duplication of effort for the industry parties and a reduction in the amount of detailed checking required by the ORR

Network Rail supports this direction of change and believes that attention to key processes, including the need to better align Part D and applications, will be required and that application for certain types of contract need a longer timescale than more straightforward ones.

In general, we believe therefore that the concept of aligning approval of access rights with other industry processes is good. Consultation, in particular, could be streamlined and we support, therefore, ORR proposals to reduce the number of industry consultations. However, we recognise that this transfer of responsibility from ORR to solely Network Rail will require carefully managing.

- **Setting deadlines** – ORR proposes to establish deadlines and parameters for submission of applications. It states this as particularly appropriate in situations where more than one operator is looking for similar/conflicting rights.

We believe, overall, that introducing deadlines could be beneficial in the circumstances envisaged by ORR (e.g. busier routes). In light of industry experience to date with “informal” deadlines it will be important for careful consideration when defining the parameters and to ensure a balance between consistency and flexibility in extenuating circumstances.

- **Restructuring of the C&Ps** – There are currently separate C&P documents for both the freight and passenger businesses. The revised approach provides the opportunity to consolidate the ORR guidance into a single document.

Network Rail supports this proposal as it will help Network Rail and industry parties by bringing together the sources of advice into a single point. Given that it would cover both passenger and freight businesses, it will be important to recognise differences relating to these in the single document.

- **Overarching regulatory framework document** – ORR’s proposal for a web based framework document consolidating existing published information and new/emerging directions will provide a useful tool for the industry and Network Rail supports the development of this document.
- **Other policy changes** – The consultation proposes that a number of other contractual issues should be included within the scope of the work on emerging policy for C&P and it is anticipated that they will be addressed as part of the system of workshops that will be part of the consultation process. These include access charges, charter services, performance regimes, expression of access rights, network capability, hearings, information requirements, safety and Network Code.

Overall, therefore, we support much that is proposed in the document and we believe these will bring greater clarity to the negotiation and approval of track access agreements. However, the proposed approach also brings with it a number of issues which Network Rail is concerned about:

- potential transfer of administrative burden from ORR to the industry
- prospective financial risk arising from the risk of entering into inappropriate contracts
- reputational risk associated with the transfer of responsibility

This places importance on ensuring that the emerging policy is implemented in an industry efficient way with the necessary criteria, transitional arrangements and timings are agreed in advance (through further workshops for example) The proposal to implement such changes in October 2007 raised concerns from industry parties at the recent workshop hosted by ORR. The level of workload associated with imminent contractual changes leading up to December 2007 (e.g. East Midlands refranchising) would suggest that October is too soon and a date in early 2008 should enable a smooth transaction.

For ease of reference, the numerical references in this document, relate the comments directly to numerical headings within the consultation document.

Responses to Specific Questions

You are invited to comment on the issues set out above [*i.e. the main issues on which the review should focus, viz. level of regulatory scrutiny, setting deadlines for applications, restructuring of C&Ps, completion of outstanding policy changes*] and in particular, whether you have other issues/areas of concern or comments on the relative priorities we should give them (*paragraph 2.6*).

Network Rail believes that the overall approach seems appropriate, as it aims to ascertain scope for handing greater responsibility to industry, and to establish industry views on appropriate regulatory focus and priorities.

However, we also draw attention to our response to the recent consultation on Access Options because this document details our views on the wider issues that influence the development of track access agreements and we believe that this perspective will be important in developing proposals within this consultation to ensure the development of a fit for purpose regulatory framework. Network Rail believes that it is important to ensure that the contractual framework enables there to be flexibility to do the right thing for the industry while maintaining a level of stability. To ensure balance, anything that impacts on relationships between the industry players may need to be reflected in other industry relationships.

As regards the issues listed, those identified by ORR appear to be relevant, but we would also add that there is the need to consider the capability allocation issues and processes relating to the management of conflicting aspirations in the light of any changing responsibilities.

We note that paragraph 2.46 refers to ORR currently updating the model TAAs and removing errors. Given that the present version appears to be that of October 2004, Network Rail believes that a more continuous and visible process of updating should be considered.

Do consultees agree the principle of ORR providing a more selective and proportionate response to applications and that the focus of our consideration should be on the areas set out in paragraph 2.11 above [*viz. nature/complexity, impact especially on other stakeholders, quantum/nature of rights, departures from model contract*]? (paragraph 2.14)

We believe the selective/proportionate approach would be a move in the right direction but to date ORR has given a lot of attention to legal drafting, format, grammar and punctuation. If ORR is to draw back from the level of checking then there is a risk that incomplete or ineffective contracts could be approved. There will be a greater need for the industry parties to resolve any process issues prior to submission. This could require a higher level of support and training. Therefore the key issue is the need for there to be a clear and agreed timescale and robust process for transfer to the new process.

Experience shows that the model clause templates have been adopted by industry parties and has reduced the scope for extensive bespokeing. This has potentially reduced the occasions where extensive and protracted consultations have been needed to fully understand the impact of such changes.

The use of model contracts also allows for easier comparisons of rights and helps establish a level playing field between train operators (e.g. by having the same structure for Schedule 8).

The fact that the second round of franchises could lead to larger geographically based train operators means that there are potentially less operators affected by any proposed applications and this can lead to more focussed consultations.

Nevertheless, it is likely that there will always be circumstances arising that lead to a degree of bespokeing of contracts and through the workshop process it will be important to understand these in terms of likelihood and materiality. This work will need to identify where risks can be mitigated through:

- Improved C&P
- Possible modifications to model contracts
- Identification of areas where it is considered that there should be a reasonable degree of flexibility to accommodate some model clause departures
- The development of new criteria (within C&P) to facilitate such flexibility, e.g. a clear definition of what is meant by “material departures from model clauses”. This would avoid differing interpretations by either party which could lead to a dispute.

We would welcome consultees' views on these proposals [*viz. extending general approvals to enable a more flexible approach to applications relating to straightforward / minor timetable changes*], and in particular:

- (a) do you agree the proposed timescales and scope for general approvals [*i.e. passenger contract amendments extended from 90 days to 6 months, changes that have gone through industry approval such as Part F, short-term limited amendments to Schedule 7, short-term amendments to Schedule 2 routes*]?

In the Network Rail response to *Criteria and Procedures for the Approval of Passenger Track Access Contracts: Fourth Edition – A consultation paper dated (February 2006)* the following comments were made regarding general approvals.

General Approvals

Paragraph 3.5 – 3.7 It would be helpful to emphasise that the short term timetable change general approval route is only open to train operators with an existing track access contract and cannot be used for completely new contracts. Furthermore, Network Rail notes the drafting in these paragraphs but would suggest that the Passenger Access (Short term Timetable Changes) General Approval 2004 could usefully be extended to a period longer than the existing 28 day limitation. We would recommend that by extending the limitations in line with the freight arrangements, this would allow a reduction in supplementals to address short-term rights.

We reiterate our belief that the passenger general approval should be extended beyond 28 days to x days in order bring it into line with freight.

Network Rail believes that there is scope to include changes to the details of the parties under the general approval mechanism. These would include, for example, telephone number amendments and certain amendments to Schedule 8, e.g. for berth offset changes.

We also propose, in the interests of clarity and continuity, that any routes included in contracts should be clearly stated as 'subject to route clearance' – as per the model Schedule 5. This will ensure the parties engage on the suitability of infrastructure in advance of trains moving.

(b) do you agree the revocation of STAGA?

In reviewing this question, Network Rail has identified that this mechanism has not been activated for some time. We believe this reflects the fact that the provisions have been effectively superseded by the general right to Spot Bid for up to six months in the freight model contract. This provision has been incorporated in most, if not all, recent freight contracts.

(c) do you think that there is scope for even wider use of general approvals [to reduce number of minor applications – e.g. first year of franchise operation, or 1 year changes to Schedule 5 tables]? (paragraph 2.22)

While Network Rail fully supports the spirit of this proposal, the reality is that timetable development often goes on right up to T-12 due for example to:

- TOC budgeting timescales
- The knock-on effects of other TOCs changing aspirations / bids within their access rights envelope
- TOCs' responses to their own stakeholders. TOCs are not just constrained by ORR approval timescales.

We recognise that there may currently be a mismatch between the timetabling and contract approval processes, which needs to be addressed. If the timetable is not finalised in time for Network Rail to agree rights before the ORR deadline for submission, then the general approval mentioned in 2.17(a) could be used.

In principle this is a welcomed change and has the potential to reduce an element of administrative burden for the parties managing track access agreements.

The consultation paper states that this approach will remove constraints upon the timetable development process and that more robust and workable timetables would be expected as a result. There are several other constraints that drive the timetable offer date (i.e. TOC passenger timetable production, National Rail Timetable and Working timetable production) therefore there is a risk of overestimating the potential impact of the proposed change.

Consultees are invited to comment on our proposals for achieving greater alignment with industry processes [“embedding ORR processes within those of the industry” – timetable development, RUS development, franchising] and to say whether there are any additional industry processes which we should consider (paragraph 2.28).

Timetable Development

In the Network Rail response to *Criteria and Procedures for the Approval of Passenger Track Access Contracts: Fourth Edition – A consultation paper dated (February 2006)* the following comments were made regarding alignment with industry processes.

Under the heading of Application Timescales, we noted that there are currently perceived inconsistencies between Part D timescales and submission timescales. This was further developed in our response.

Timescales

Paragraph 3.37-3.46 Network Rail notes the timescales in these paragraphs however there continues to be a perceived mismatch between these and Part D timescales. Network Rail suggests that this guidance could be developed to require contracts meeting certain criteria to be submitted earlier in order that more straight forward agreements may be able to be submitted later.

Paragraph 3.43 Network Rail notes the timescales referred to within this paragraph however suggests that greater clarity is required to address the references to Major Changes as defined in Part D.

This supported our view that there was a need to align Part D and applications better, and that application for certain types of contract needed a longer run in than more straight forward ones.

In general, we believe the concept of aligning approval of access rights with other industry processes is a good one. Consultation, in particular, could be streamlined by relying on one ‘round’ to cover both the timetable changes and the contract changes, rather than 2 or 3 as at present. As for refranchising, one matter that sometimes bedevils the approach taken by a successful franchise bidder is that they are rather inclined to demand contractualisation of any and all services forming parts of their bid, even though these may not be physically achievable, or may cut across others pre-existing rights. More clarity of requirements at an earlier stage would resolve this.

RUS development

In general we believe that it is important that to recognise that a RUS may provide an alternative mechanism for effectively determining how capacity can be effectively utilised to meet various different markets such as freight, long distance and commuter services.

The Network Rail response to the recent *Access Options – A consultation paper* published by the ORR made the following comments:

Network Rail believes that in most cases access options will not be necessary and the more usual regulatory protections should suffice. Also, in many cases securing industry support for utilisation consistent with such investment through the RUS process should provide sufficient certainty for investors. However, we recognise that for relatively large scale, complex projects access options may be appropriate so as to reassure funders of projects that their proposals have been considered by the industry and the ORR and that they will be granted the first option to use the capacity necessary to justify their investment.

This highlights the fact that Network Rail sees the RUS process as a key activity which will impact with other recognised industry processes.

Franchising

With the development by Network Rail of Route Plans and RUSs discussions now take place about the implications for new franchises. This process needs to be strengthened further to ensure stronger consistency between RUSs and franchise aims. The refranchising process may, in future, need to be preceded by an industry process aimed at identifying services aspirations with respect to open access operators. In the last year this activity was undertaken by ORR because of the capacity allocation issues.

The industry will need clarity as to whether this responsibility will remain with ORR or whether it will transfer across to Network Rail as part of the aim for greater alignment.

We believe that the combination of the above processes facilitate greater alignment than existed previously but if strengthened will ensure more consistency and effectiveness for industry parties.

Consultees' views are invited on our proposals to place more onus on the industry to resolve areas of disagreement at an earlier stage through a preapplication consultation [by Network Rail, pursuant to Network Code or a code of practice] and to reduce ORR's involvement in that process (paragraph 2.35).

In processing applications with train operators, Network Rail currently often undertakes informal discussions with affected industry parties to resolve issues in advance of submitting applications. Network Rail, therefore, supports the proposal for there to be a preapplication "formal" consultation and agrees that there is scope to avoid duplication if Network Rail were to run the consultation. However, we would need to be in a position to obtain any requisite information from consultees. This may affect the appropriate mode of setting up these arrangements, if this needs to create both-ways obligations – it would point to the Network Code rather than a code of practice.

The effective use of a process of preapplication consultation may therefore require ORR to set clear guidelines for the industry to determine the appropriate level of consultation required for any given track access agreement / sectional appendix.

Consultees' views are invited on the principle of establishing a process for setting deadlines and parameters for the submission of applications [*in specified circumstances, e.g. where little spare capacity*] (paragraph 2.38).

Although C&P are currently silent on deadlines, in recent years ORR has provided informal guidance on timescales for submitting applications and has encouraged the industry to comply with these deadlines. The evidence is that in many cases the industry has struggled to meet the guidelines already set down by ORR and in view of this Network Rail believes there needs to be further careful consideration about how proposed deadlines (within C&P) should be set and in what circumstances these should apply. To minimise the risk that effective negotiations could be prematurely guillotined by “artificial” deadlines (which could result in sub-optimal outcomes and increased likelihood of “last minute” Section 17 applications), it will be particularly important to ensure that there is consistency and that processes exist to identify and deal with extenuating circumstances. Subject to this approach, we believe, overall, that introducing deadlines could be beneficial in the circumstances envisaged by ORR (e.g. busier routes).

Consultees are invited to comment on our proposals to adopt a ‘one-stop shop’ approach [*including the aggregation of freight and, passenger C&Ps + guidance*], including the development of an overarching regulatory framework document [*proposed structure given*] (*paragraph 2.48*).

Network Rail welcomes the proposal to consolidate passenger & freight C&Ps, guidance and related material. For it to be effective, it needs to be supported within a clear and accessible structure.

We agree that this should reduce duplication and also make it easier to reference current regulatory policy. Publishing the document on the ORR website has the benefit of secure version control and there would be further benefit to the industry if the document were to be supported by an on-line archive that provides a catalogue of updates made to the document. Such a facility should make it easier to reference contractual guidance and reduce the likelihood of disputes due to differences in understanding during contract negotiation.

In addition, we believe that aspiring new operators would appreciate clearer guidance and easier navigation around the industry’s contractual framework and this could facilitate the timely negotiation of consistent agreements.

We note that the consultation document refers to adopting a ‘one stop shop’ approach. This has specific meaning for Infrastructure Managers in European Directive 2001/14/EC, so it may be appropriate to adopt another term.

Consultees are invited to comment on the issues set out above [*viz. access charges and PR08; enhancements and incremental charges such as rebate mechanism; charter services longer term model contract to be developed by Network Rail by 01.07.2008; performance regime (separate consultation; explanation of expression of passenger rights; developing definition of network capability; ORR hearings; ORR information needs from applicant; safety and track access process; updating C&Ps for Network Code reform*] and in particular let us know whether there are any other related issues/areas that they believe we should be looking at (*paragraph 2.50*).

Network Rail recognises that these issues are likely to affect the criteria and procedures when they are resolved. The industry is already engaged in a number of these and our specific comments are as follows:

Access charges and PR08 – This should include schedule 4/ P&G charges and policy on these in relation to open access operators

Enhancements and incremental charges such as rebate mechanism

Workstreams are in place.

Charter services longer term model contract to be developed by Network Rail by 01.07.2008 - ORR has previously indicated that they have been developing such model contracts for 2007. For Network Rail to take on this activity will require progress to date to be shared so that output requirements can be confirmed and appropriate timescales agreed that reflect relevant priorities.

Performance regime – The industry is currently involved in the review of Schedule 8 and Network Rail actively participates in the industry working groups.

Explanation of expression of passenger rights – Network Rail notes the intention to redraft the passenger C&P and is keen to input to that process.

Developing definition of network capability – Network Rail has committed to the delivery of the infrastructure capability programme which comprises two main parts – a recovery plan and an improvement plan. This activity is taking place within agreed timescales and regular progress meetings are booked with both ORR and the train operators.

ORR hearings – Network Rail supports to proposed approach to hearings.

ORR information needs from applicant – Network Rail would welcome greater clarity of the information requirement in relation to the potential performance impact of proposed new services. It is recognised that a considerable amount of time is spent by the parties on dealing with performance issues following submissions therefore a clear set of guidelines would assist in these situations.

Safety and track access process – We confirm that safety is a continuing imperative when considering the allocation of track access rights.

Updating C&Ps for Network Code reform – Network Rail expects that any changes resulting from the review of Parts D, G and J should feature in the C&P document.

Specifically in relation to 2.50(g) – Network Rail has found that providing performance modelling has had issues in the past, as such modelling is time-consuming and expensive, and it unclear which party should be responsible for funding. A possible way forward might be for rights to be approved for a ‘trial’ period (as suggested in paragraph 2.20) and extended if performance is satisfactory.

Drafting Issues

- Definition of “SRA” should be removed and the abbreviation “SRA” replaced with “Secretary of State” in the other places where it appears, i.e.:
 - Clause 1.1 Definitions
 - Clause 14.2
 - Schedule 7 paragraph 1 (definition of “Incremental Costs”)
 - Schedule 7 paragraph 3.2
 - Schedule 10 paragraph 4.7(a)
 - Schedule 10 paragraph 4.7(b)
 - Schedule 10 paragraph 4.7(c)
 - Schedule 10 paragraph 4.7(d)
 - Schedule 10 paragraph 4.8
- Clause 1.1: definition of “the Regulator” should be moved so that it is in the correct place alphabetically
- Schedule 5 paragraph 1: the definition of “Alternative Specified Equipment (Timing Load)” should be altered to read: “means, in relation to a Service, a Timing Load to which the Train Operator has Contingent Rights;”. The revised definition is clearer, and has been approved by ORR in recent freight track access agreements.
- Schedule 7 paragraph 1: the definition of “Rates” appears to be superfluous as the term is not used in the Schedule
- Schedule 7 paragraph 2.7.4: the EC4T uplift provision does not work because it relies on the IIEC index for the month to 31 March being available in time to calculate the uplift for the following day (1 April) each year. ORR is aware of this issue. To resolve this, Network Rail’s preference is for an EC4T uplift provision similar to that in the passenger model contract being used, although ORR have directed an alternative solution (a retrospective adjustment) in the June 2007 EWS track access agreement and have also proposed that alternative for the Freightliner Heavy Haul agreement.
- Schedule 8 paragraph 2.2 – there is a reference to Condition H11 of the Network Code. That Condition has now been repealed. It is suggested that a reference to the Railway Operational Code may be preferable.

There are also a number of other changes (which have been proposed by ORR in recent contract directions) linked to the introduction of the Railways and Other Guided Transport Systems (Safety) Regulations 2006. Strictly speaking, these are not glitches, and ORR is no doubt aware of them.

A typographical error in the passenger model clause contract has been pointed out to me that might not have been picked up elsewhere.

In clause 9 of Schedule 8 which describes how to calculate the Network Rail Performance Sums, under the calculation of the NRWAML, there is a definition of the MLNR as "...the Minutes Late allocated to Network Rail in respect of each Monitoring Point in that Period, in accordance with paragraph 8;"

However, when you refer back to "paragraph 8", this relates to the "Allocation of Minutes Late to the Train Operator".

It is apparent that the definition of the MLNR should be "the Minutes Late allocated to Network Rail..... in accordance with paragraph 7" i.e., "Allocation of Minutes Late to Network Rail" and not paragraph 8 as stated in the contract.