



40 Melton Street  
London  
NW1 2EE  
Tel: +44 (0) 2075579183  
Fax: +44 (0) 2075579108

Richard Gusanie  
Track Access Executive  
Office of Rail Regulation  
1, Kemble Street  
London  
WC2B 4AN

14 August 2007

Dear Richard

**Review of ORR's criteria and procedures for the approval of track access contracts: the way forward**

This letter provides the Network Rail response to the Office of Rail Regulation's document, entitled *Review of ORR's criteria and procedures for the approval of track access contracts: the way forward*, which sets out the responses received from the earlier consultation document and ORR's proposed way forward and seeks industry views on the proposed approach and industry involvement.

Our response in May 2007 to the earlier consultation confirmed support to the overall approach of handing greater responsibility to the industry. We consider that such a move is not about the lessening of regulatory protection. Indeed, ORR's continuing role is vital in this area. We believe that the move in emphasis towards the industry working through issues and ORR being involved where necessary should bring benefits and yield more desirable outcomes for the industry. We believe that the "way forward" proposals provide an appropriate framework for development which should facilitate the smooth transfer of responsibility, improved guidance, and more fit for purpose processes and contractual framework.

We previously expressed concern about the potential transfer of administrative burden from ORR to the industry, the prospective financial risk arising that could arise if inappropriate contracts were entered into and the reputational risk associated with the transfer of responsibility. We are, therefore, pleased that the "way forward" confirms a progressively phased approach for the introduction of changes, including the development of appropriate guidance, processes and transitional arrangements through the engagement of an industry working group.

Network Rail believes that there is a significant amount of work to be delivered by ORR and the proposed industry working group if the proposed timescales are to be achieved. In particular, we believe that development of the proposed criteria and guidance and the consultation code of practice should be well in advance of the end of phase two in order to provide the necessary time (Network Rail and operators in conjunction with ORR) for testing and reviewing the criteria and guidance and for process development, resource assessment and any pre-implementation training required. We also believe that there may need to be an

intervening period between the end of phase two (1 January 2007) and the take up of new arrangements to take account of the time necessary to smoothly implement the new outputs and processes arising from phase two. Further detailed comments are provided in the following paragraphs.

### **Proportionate response to applications**

Network Rail strongly supports ORR's intention to incorporate clear materiality criteria and guidance within the revised C&Ps so that industry parties will understand the level of scrutiny required for applications. We also agree to the importance, through these arrangements, of putting in place the appropriate processes, skills and resources.

### **Flexibility on minor service changes**

The proposed extensions to the scope and timescales for general approvals are generally supported. As regards enabling additional rolling stock (subject to Part F processes having been undertaken) we believe that guidance should emphasise that the new rolling stock in question must be able to achieve the SRTs assumed in the working timetable.

The inclusion of additional routes in Schedule 2 through a general approval could lead to a risk that rolling stock within Schedule 5 may be used on such additional routes without having been specifically route cleared. To avoid this risk we believe that the general approval should require confirmation of the existence within the contract of the necessary route cleared rolling stock.

The consultation proposed that the extended scope of general approvals should provide for the inclusion of additional charges (e.g. related to later or earlier opening of a signal box) below a "threshold level" within Schedule 7. The ORR conclusions are silent on what is meant by "threshold level" or how it might be assessed and applied. We believe, therefore, that criteria should be developed for interpreting "threshold level".

As regards formal consultation requirements to be undertaken by Network Rail, we welcome the further clarification provided in 2.21 and 2.22 on when this should or should not be done. To ensure consistency of approach on this important matter of consultation, however, there would be real benefit if the guidance to be developed included how Network Rail and operators should interpret the phrase "more significant changes that could materially and adversely affect other train operators" (within paragraph 2.22).

### **Wider changes and changes to the model contracts**

Paragraphs 2.34 to 2.41 provide ORR's conclusions regarding amendments to model contracts that would enable minor service changes without the need for contractual amendment and approval. We note that ORR is to further consider whether there should be a provision for non-specified diversionary routes in recognition that the extended general approval proposals would enable flexibility anyway. We believe that the same is true as regards the proposal to allow contingent rights for any route-cleared rolling stock. Network Rail believes that the general approval alone may well meet such needs. We support ORR's comment in 2.41 that the details of how a spot bid provision would function should be reviewed and considered through the proposed working group.

### **Alignment with industry processes**

As regards the integration with the timetabling process, Network Rail recognises the obligation on all parties to work together to deliver a submission which reflects the relationship between the schedule 5 of the track access agreements and what is agreed in

the timetable. We agree that there could be scope for a Network Rail led consultation process around the timetabling activity, but if such an approach to obtaining rights became commonplace there could be increased difficulty in delivering contract compliance checking and also increased risks of conflicts arising with other contract applications for new rights. We believe that further discussion through the proposed working group would be beneficial.

### **Consultation arrangements**

We believe that a successful transfer of responsibility for consultation processes will need clear guidance and criteria to ensure that industry parties fully understand when this approach should apply and also to ensure that there is a smooth transition. We, therefore, support the proposal to develop a code of practice for inclusion in C&P.

### **Reform of C&P documentation**

As stated in our response to the consultation document, we support ORR's proposals and look forward to the opportunity to review the draft C&P document when it is published in September 2007.

### **Other policy changes**

We confirm that we are on target to complete the verification of published capability by the end of September 2007 and note that the revised C&Ps will set out that published capability should be taken into account in decisions on whether or not to accept applications for new access rights. As regards the proposals for performance regime parameters, we have received ORR's consultation document and will provide our response within the relevant timescale.

### **Transitional arrangements**

Network Rail welcomes ORR's proposals for transitional arrangements for a phased implementation and looks forward to working with the proposed working group to develop the arrangements. We note that phase two outputs are planned to be introduced by 1 January 2008, including the new consultation arrangements. However, these arrangements are dependent upon the phase two outputs hence a smooth transition to the new consultation arrangements will most likely require an intervening period to enable the efficient adoption and delivery of the new responsibilities. The length of this period will need to be assessed and will depend upon the level of mobilisation required for the new processes.

Yours sincerely

John Boon