

Steve Gooding
Director, Access, Competition and Licensing
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
London EC1N 2TQ

PHILIP O'DONNELL
DIRECTOR NETWORK POLICY AND
REGULATION

DIRECT 020 7654 6357
SECRETARY 020 7654 6316
FACSIMILE 020 7654 6010
EMAIL philip.o'donnell@sra.gov.uk

14 February 2003

Criteria and Procedures for the Approval of Passenger Track Access Contracts

I am responding to the Regulator's consultation document issued on 23 December.

Let me first say that the SRA finds this document generally excellent. It provides very clear and practical guidance to access applicants on what they need to do. Messages about the need for consultation with others are particularly welcome. Comments about the document should be read subject to this context, and are largely about questions of emphasis.

Chapter 2 contains a helpful section on the Strategic Rail Authority. While the point is picked up later in the document (paragraph 4.21), it would be worthwhile making explicit reference here to the SRA's duty to achieve value for money in its activities and that it has to operate within a budget approved by the Secretary of State, and to note that in considering proposed access rights (e.g. from open access operators) the Regulator will not only be concerned with his duty to facilitate the SRA in the furtherance of its strategies, but also to have regard to the financial position of the SRA.

Paragraph 2.17 refers to the Secretary of State's Directions and Guidance (D&G) in respect of the SRA's Capacity Utilisation Policy. The D&G set a number of objectives for the SRA (see Annex A) including "to secure progressive improvements in the performance of franchised passenger rail services". Working with the railway industry to achieve substantial lasting improvements in performance is elsewhere in the D&G described as an equal primary objective. The performance objective should therefore be referred to in your revised Criteria document. With the above in mind, the discussion of the factors to be balanced in determining access rights (paragraph 2.35 in the consultation document) should include the improvement of operating performance.

In chapter 3 (paragraph 3.45) you recognise the importance of consultation with potentially affected persons. It would be helpful if the Regulator made explicit reference to the SRA, and that he would expect Network Rail in developing access rights to take account of SRA policy for the utilisation of the network, including Route Utilisation Strategies. To reinforce the point, the very helpful diagram on page 43 could be modified to contain within the top right hand box "informal discussions with ORR", consultation with train operators and the SRA. The discussion of modelling, (paragraph 3.45) should also make explicit reference to performance implications.

While Chapter 4 includes reference to the SRA budget position, it is not referred to in the introductory section (paragraph 4.2) to the chapter. If the Criteria Document includes a similar listing, it would be helpful to the reader if the SRA budget were referenced. The discussion in paragraphs 4.3 and 4.4 on capacity allocation and capacity utilisation could helpfully also make reference to the SRA's concern to achieve value for money in the franchising process, and to comply with the budget approved by the Secretary of State. The latter point is particularly relevant in considering open access operator applications. In paragraph 4.12, "operational integrity" presumably encompasses robust performance. It would be helpful if the point were made explicitly in the Criteria Document.

The Regulator is understandably concerned about the firmness of operators' intentions, and robustness of plans. There may be some concern that the Regulator will not entertain proposals for access rights until the train operator is able to demonstrate that suitable rolling stock, having received all relevant approvals, is available and in sufficient quantity to operate the proposed timetable. The SRA does not think it is your intention to require such a hard test, and it would be helpful if the Criteria Document clarified that this is the Regulator's intention.

The discussion in paragraph 4.15 (b) and (c) appears to reference SRA budgetary concerns, where proposed new access rights are primarily abstractive in nature, and will result in additional calls on the SRA budget. It is our understanding that the ORR has previously indicated that it would not approve access rights that are primarily abstractive in nature. Assuming that is the Regulator's policy, it would be helpful if the point were reiterated in the Criteria when published.

The SRA recognises the importance of the points listed in 4.22. It would like to see specific reference in the Criteria Document to the Regulator requiring a statement indicating the consistency of rights sought with SRA National Network Route Utilisation Strategy and Route Utilisation Strategies, when available.

Paragraph 4.24 confirms that the Regulator will have regard to the costs and benefits of proposals for access rights. The SRA would wish to see those proposing new open access rights to have an obligation to demonstrate that the rights sought are not primarily abstractive in nature and will not have a detrimental effect on the SRA's budget. The parties should be required to do this via the application of the SRA's planning criteria.

There are a number of references to the Regulator considering access agreement submissions having regard to franchise agreement commitments. You are aware of the SRA proposals in its November 2002 Franchising Policy Statement, including the proposal for operating obligations. Following publication of the Criteria Document, the ORR and SRA will need to consider further the interface between the operating obligations and the specification of Schedule 5 of the track access agreement.

Paragraph 5.27, dealing with non-franchised passenger train operators standard charging regime, makes no reference to a contribution to the fixed cost of the network. The SRA believes that where it is possible for an operator to make such a contribution then the access

regime should allow that to be achieved. The SRA does not believe that the decision reached in respect of freight in the Freight Charges Review should necessarily apply to open access passenger operators, where these may be abstracting from franchised passenger revenues, or where there may be a significant economic rent. For example, the SRA does not consider it desirable that a private sector airport operator proposing a new rail link to an airport should necessarily enjoy a “free ride” on the back of infrastructure paid for by the tax payer.

I trust that the Regulator will find these comments helpful. The SRA looks forward to the publication of the revised Criteria Document.

Philip O'Donnell