



ARRIVA Trains Ltd
Princes Exchange
Princes Square
LEEDS
LS1 4HY

Our ref:

14 February 2003

Tel 0113 280 6622
Fax 0113 280 5973
Email roger.cobbe@arrivatn.co.uk

Peter Ruback
Head of Network Regulation
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
LONDON
EC1N 2TQ

E-mail: peter.ruback@orr.gsi.gov.uk

Dear Mr Ruback

**Local Output Commitments and the Provision of Information – Draft Conclusions,
December 2002**

I make the following response to the above consultation document on behalf of Arriva Trains, referring below to the numbering of that document.

We welcome the proposals on Local Output Commitments and the Provision of Information, subject to the reservations expressed in this letter, and we support ATOC's response to the consultation document.

1. Local Output Commitments

1.1 General approach to the content of LOCs

We refer to our response to the Model Clauses Consultation in which we specifically supported ATOC's concerns as to the need to restructure the distinction between Non-operational Breach and Operational Failure. This restructuring should be reflected in the distinction between Class A and Class B LOCs to ensure that it is effective in practice. The role of Performance Orders should be considered as part of that restructuring.

We believe that the appeal criteria should be capable of amendment by the Regulator as informed by experience and practice over time.

1.2 Process for establishing LOCs

We believe that multi-party consultation in some form is essential for proposed LOCs and agree that route-based consultation should be encouraged. How else would the meetings arising from draft Condition L5.2(b) be organised in practice?

We suggest that draft Part L should be altered before implementation insofar as it may be affected by the introduction of the single European timetable change date.

We object in principle to the mechanism proposed for making changes in-year. This would undermine the contractual enforceability which is sought to be achieved by the introduction of LOCs.

1.3 Content of LOCs

We do not consider the delay-minutes local output commitment to be a sufficient initial measure of operational performance. Train operator performance is measured under current franchise agreements by reference to cancellations. The delay-minutes measure is welcome as an addition and may become the measure under future franchise agreements. However, at present, a commitment on Network Rail cancellations is also required to meet present franchise agreement commitments and incentives.

We cannot comment on the suitability of the proposed floor level as it is unrelated to the performance points in Schedule 8 and we do not know how Network Rail will arrive at the projected performance to which the 20% will be added. The floor level should be open to review if it proves to be inappropriate.

However, we think it is essential for the floor levels to be set at Service Group, rather than or as well as TOC, level in order to protect against/compensate for a catastrophic decline in performance on an individual route or Service Group resulting in a potentially permanent loss of traffic. If necessary the sensitivity level for Service Groups could be set a higher level than the TOC-wide floor.

We would wish the stewardship measures mentioned at paragraph 4.14 to be treated as Class A LOCs. Those measures are already being included in our informal LOCs and should become enforceable commitments.

Also, we require Network Rail's plans on the issues in paragraph 4.12 to be capable of being made enforceable commitments on certain routes to be specified, where appropriate. This is because individual routes are not regulated at the national level and the overall measure does not assist where a route deteriorates below the average or where we have agreed to give Network Rail additional maintenance access in return for improved quality. Disaggregation to the local level as contractually enforceable obligations would allow such local variations in standards to be addressed.

Subject to 1.2 above, we are concerned as to the impact of suspension and mandatory variation notices on our interests and will be alert to this issue in the drafting.

1.4 Draft Part L

We will need to consider the clarity and adequacy of draft Part L once the principles which should cover its drafting have been established. Changes would be required if the above points of principle were accepted.

By way of example, the diagram at paragraph 3.16 shows that a LOC should be produced annually and that the LOC for 2003-2006 will overlap with that for 2004-2007 and so on. Also, it states that the commitments for 2004-2006 should not be changed without good reason (and subject to appeal) when the second LOC for 2004-2007 is produced. This is not clearly expressed in Part L.

We suggest that draft Condition L3 is amended to read, "Network Rail shall issue a Local Output Commitment to the Train Operator by 28 February each year ...". This makes it clear that a LOC must be produced every year. There should also

be a further clear requirement that when succeeding LOCs are produced, the overlapping years should remain the same, with any variation being made in accordance with Condition L8 and subject to appeal under Condition L6.

2. Provision of Information

2.1 Provision of Information

We need the information to give us a long range view of the Rules of the Route, to enable us to plan ahead with confidence or at least foreknowledge and to discuss with Network Rail sufficiently far in advance any opportunities for enhancement.

2.2 Regular provision of information to train operators

We are satisfied with the Regulator's proposals, provided always that the annual and especially the quarterly reports are prepared in a user-friendly format and, in particular, that the quarterly reports highlight changes in the information provided on an ongoing basis.

However, as mentioned at 1.3 above, we require the stewardship and other measures to be dealt with as Class A LOCs rather than under Provision of Information.

2.3 Sharing information

While we agree that proactive provision of information should be encouraged to improve working relationships, this should be a voluntary, and not a contractual, obligation.

Subject to the above, we agree with ATOC that further work is required on these provisions, which work may go beyond what ATOC suggest. We should be grateful for some specific examples of the types of information Network Rail is likely to require from TOCs.

2.4 Draft Part K

We will need to consider the clarity and adequacy of draft Part K once the principles which should cover its drafting have been established. Changes would be required if the above points of principle were accepted.

By way of example, we are concerned with the obligation to provide Material Information in a timely manner after such information becomes available in draft Condition K3.3(b). Who decides what is Material Information? How is the TOC to know whether information is likely to have a material effect on Network Rail's operation, maintenance or renewal of the network? Could this obligation be complicated with confidentiality obligations to third parties?

I am happy for this response to be placed in the ORR Library and on its website.

Yours sincerely

Roger Cobbe
Group Development Director