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Dear Mr Carey

**Model Clauses for Track Access Agreements :
Access Rights and Moderation of Competition**

Thank you for the opportunity to comment on the proposed model clauses for Schedule 5 and the arrangements for Moderation of Competition. Connex has been a member of the working group that has been looking at the Schedule 5 Model Clauses. We are broadly content with the proposals for the revised Schedule 5 and believe that it is now fit for purpose. Having devised a suitable template, we feel that negotiating with Railtrack the detail to complete it is likely to be difficult as in some areas the revised template is more prescriptive and demanding than previously. This response and comments detailed below are made on behalf on Connex UK Transport and Connex South Eastern.

Chapter 2

Access rights definition in Schedule 5

Connex welcomes the replacement of pathing time cap with maximum journey time. We agree that is sensible to have all references to journey time in one schedule.

We share ATOC's concern over the loss of firm rights where an operator adds stops to a train service. This will not encourage operators to be flexible when devising the timetable with Railtrack.

Chapter 3

Change of rights over time

We generally support the need to amend operator's rights to make optimum use of the network over a period of time. However we are concerned over the introduction of permanent mandatory removal of rights. Of particular concern would be the ability for Railtrack to be able to remove rights for performance reasons. We feel that Railtrack could abuse this and are not in a position to understand the affect that their decision may have on customers. For example Railtrack may seek to withdraw a service which conveys large numbers of customers without any thought as to how those customers will be able to travel. The resultant increased loadings on other services might in fact make performance worse. This scenario has already occurred and only after considerable work were we able to persuade Railtrack to accept an alternative solution that significantly reduced the affect on our customers.

It is not clear from the proposal when in the timetabling process that an application to remove rights would be initiated.

Chapter 4

Moderation of Competition

In noting the Regulator's proposals we do not feel that at the present time the Rail Industry and in particular the SRA has a clear view on future rail versus rail competition. In reality much potential for competition is severely limited by the capacity of the network. We have a concern that the proposed policy including the Access protection payment is a methodology to enable competition on a congested piece of the network by removal of long established services. We do not feel that this could always be in the customer's interest particularly where a new service might cease to operate if it became uneconomic for the new operator to continue its operation. Customers would then face the loss of a service unless the original operator reinstated the service although this may not always be possible.

We support the proposals that investment should be protected from competition that compromises its viability.

We support the view that competition that is merely abstractive and does not provide new journey opportunities for customers should not be permitted.

We agree that the existing system based on specified point to point flows should continue. The concept of protection to be flexible in duration has merits and we would support it but have concerns that it could make administration over complicated.

Chapter 5

Methodologies for compensation

Of the two options the value-based approach would be better suited to adequately compensate a TOC.

We do however have concerns over the complexity of the calculation for compensation and the additional administration work involved.

We have concerns over the confidentiality of disclosing revenue information and feel this should only be disclosed as part of a commercial negotiation with the operator proposing the introduction of the competitive service or with Railtrack or SRA where they have initiated the loss of rights. We do not support the option shown in paragraph 5.8.

Chapter 6

Implementation

We support the proposal to include the arrangements and specific protected flows in the network code.

The method of paying compensation through revisions to Track Access charges would seem to be the preferred choice although Railtrack should not be party to details of how the compensation was calculated where the request was initiated by another TOC or the SRA.

Yours sincerely

Howard Read
Access and Specification Manager