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Dear Paul,

Model Clauses in Track Access Agreements

This letter sets out the views of GB Railways and Anglia Railways on model clauses in response to the Regulator's key issues document dated April 2000. We have not specifically commented on freight issues in view of our limited current operations in this area. We have no objection to the whole of this document being made available through the ORR website and in the ORR library.

Commercial purpose

We welcome the wider introduction of a commercial purpose clause since we feel it is important that Railtrack should be better motivated to manage the network risks particularly those connected with major enhancements which represent such a high proportion of franchise risks. We can understand why Railtrack may have concerns in this area but we strongly feel that the contract should ensure that risks are placed with those best equipped to manage them. In the case of Railtrack, most of these risks can be placed with their contractors.

This does mean that some obligations to the SRA contained within franchise agreements would be transferred to Railtrack. This will enable operators to deliver these obligations to SRA.

Access rights and capacity consumption

We support the introduction of a template specification of access rights and the possible A, B and C rights would be acceptable within a template Schedule 5. Having three levels of rights will make an already complex situation more complex and perhaps two tiers would be adequate. However, whilst "hardwiring" does limit capacity, it also represents a significant commercial advantage and any dramatic changes to the concept are likely to have serious impacts on certain operators.

For most operators it will be necessary to specify not only quantum and service frequency but also calling patterns and journey times. It should not be necessary for an operator to

have to justify service frequency and regularity particularly if there is currently a regular service pattern.

We also believe that the limited protection of journey times in Schedule 4 needs to be enhanced so that there is no possibility of serious deterioration and the consequent impact on any operators commercial position. All additions to journey times must both by maxima defined in the contract and the methods by which they are used by Railtrack. We believe that it is important that there is symmetry between the PSR, the Franchise Agreement and Schedule 5.

Sufficient protection needs to be provided in relation to "no net gain - no net loss" for major projects to ensure that this is actually delivered.

The Rules of the Route/Rules of the Plan process generally works well but this is facilitated by goodwill from the parties involved. We welcome the proposed review and suggest that it looks at the extent to which the documentation is self-contained as well as whether recent changes have been in the interests of the industry as a whole rather than a small number of parties involved. Whilst in general, this could be done by examination of the processes for a number of routes in detail rather than a national review, it is important to ensure that there is consistency with Track Access Agreements and it is necessary in our view that access rights cannot be subject to these rules without any limit.

We believe that the Rules of the Plan processes in general work well and would not welcome the change to the more complex Part G of Network Change.

It is hard to argue that operators should retain access rights which are unused for two years unless there is an explanation such as delayed delivery of rolling stock or completion of an infrastructure project. Indeed, it is important that there is some flexibility in view of the length of new franchises.

We would be concerned about Railtrack's suggested rights to acquire access rights with, compensation. A number of scenarios can be envisaged where the commercial interests of Railtrack and operators might be diametrically opposed in this area.

It is surprising that Railtrack do not warrant that capacity that they have sold is available and the suggested warranty is welcomed. It is our view that the workload in production of consolidated access agreements will be considerable and we wonder whether this represents the best use of potentially scarce resources.

Output statements

We strongly support the introduction of local output statements and are quite content for these to be on an operator basis. We also support the ATOC view of what these should contain. Track geometry is important for passenger comfort as well vehicle maintenance. This is measured by Railtrack regularly and discussed with operators so we do not see a problem here. Indeed, we could even agree lower standards than the present national track standards which are frequently not met by Railtrack as long as they are an improvement on the existing.

Operational performance has obvious impacts on what operators do and is best considered on a local basis. Again, this is measured and discussed already. There are

close links with linespeed and journey times which should be discussed through the Rules of the Route/Rules of the Plan process.

The inclusion of enhancements in local output statements should be uncontentious and would give extra comfort to operators. Operation and maintenance standards as well as timetable development standards can only be considered on a national basis.

We envisage that operators would enforce these provisions for local matters but expect that the regulator will wish to be involved dealing with matters of licence noncompliance.

Network enhancement

It is only reasonable that operators who pay for enhancements should have the ability to use them. Should circumstances change and the extra capacity not be used, we believe that it is normally in the public interest that spare capacity be used. We also support the suggested requirement for improving the standard of information provided on network change.

The suggestion that operators should have to contribute towards project costs would certainly present a problem for large schemes where the exposure and possible cash flow implications for a small operator would be a concern. We share the concern about "free-riders" but can envisage a number of cases where operators would be seriously disadvantaged by such a proposal. This presents a serious potential problem - having to pay for a project over which an operator has no control.

At present, we agree that it is too easy to block enhancements. Whilst we think that net losses should be compensated, there needs to be the ability for these schemes to be taken forward. This may mean of course that "white space" retained for performance purposes may have to be reduced or eliminated.

In theory, we support the greater clarity of the Railtrack five stage process but we have seen evidence of this causing increased bureaucracy and delays. Flows of information in both directions need to be improved.

Liability and remedies

We strongly support the suggestion of additional remedies for operational performance which is worse than the normal range. Whilst liquidated damages could present a remedy, it will be difficult to prepare a genuine pre-estimate of losses and we believe that an order for specific performance would be preferable. Should performance still not reach the "floor" level the injured party should be indemnified against extra costs and loss of revenue.

We believe that this concept should also extended to other areas of potential non-compliance rather than seeking liquidated damages. We do not think that self-help remedies would be appropriate.

Other issues

We believe that it might be useful if third parties had contractual rights through track access agreements as well as the operators rights being assignable to financial institutions. The responsibility for managing suppliers must clearly remain with Train Operators.

We support the concept of a standard of performance and agree with the draft wording provided. Our view is that information which is available within Railtrack or within an operator's organisation should be made available free of charge. We would not expect Railtrack to provide information where they would need to spend a lot of money with consultants in order to make it available.

We agree with the reciprocal provision of information and would be happy to provide information to Railtrack as well as receiving it from them.

The workload in making the changes to agreements must not be underestimated. It will not be easy to make changes of this magnitude but a big bang approach will stretch the resources of operators and probably Railtrack. We suggest that there are a number of non-contentious issues which could be implemented quite quickly. Other issues will need to be addressed as franchises are replaced.

If there are any questions, comments or queries, please contact me.

Yours sincerely,

Jim Morgan
For GB Railways Group Plc