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Dear Sunil,

MODEL CLAUSES FOR TRACK ACCESS AGREEMENTS

Thank you for giving us the opportunity to comment on Railtrack's response to the above consultation and the transcript of its meeting with the Regulator on 11 February. In the time available, I would highlight the following issues:

Schedule 5

We endorse the concerns expressed by several operators at the seminar last week at the suggestion that rights should be limited to quantum and frequency only. Journey time is a key ingredient of the product mix and one which over the years the industry has invested heavily in. Many of the proposed incremental outputs are expressed in terms of reductions in the "journey times specified in the Rules of the Route and the Rules of the Plan" and "the minimum achievable start to stop journey time", i.e. excluding pathing time. It would be folly to negate the investment in line speed improvements by allowing unlimited pathing time. If operators do not have clear contractual rights to fastest and average journey times Railtrack will simply be incentivised to sell more and more paths at the expense of an ever decreasing quality for those who lose out on the Decision Criteria. On the contrary, it should be incentivised to improve journey times by increasing line speeds and/or reducing pathing time.

Clause 6

Following the comments made by Tony Crabtree about the Clause 6.3.3 statement at the seminar, which we endorse, I think Clause 6 could usefully include something to the effect that in planning its maintenance and renewal activities Railtrack should be required to take the initiative in identifying and exploiting opportunities for low cost enhancements (perhaps defined as a percentage of the cost without the enhancement) within the basic access charge. This would be consistent with the suggestions on page 3 of Schedule 1 to the draft Incremental Output Statement dated December 1999. The commercial purpose clause could also include a presumption of a continuously improving network to underpin this.

Part G/Schedule 4

We note with concern Railtrack's suggestion of aligning the compensation provisions of Part G and Schedule 4 in favour of the latter and could not support this on the basis of the present Schedule 4 formula, which we have already commented on in response to the Periodic Review Incentive Framework consultation. Furthermore, however it is calibrated,

Schedule 4 can only take into account the effect of possessions on the day and not costs such as planning, route learning, the ongoing revenue losses for a period *after* major disruption and the costs (and benefits) associated with the permanent effects of a Network Change.

There are a number of reforms needed to the wording and/or operation of Part G, some of which I touched on at the seminar. Others include:-

- G1.8/1.9 Need clarification.
- G2.1(a)(i) The veto should only apply *to that/those aspects* which would result in a breach of an access contract: it should not scupper the whole proposal.
- G2.1(a)(iii) Delete "which cannot adequately be compensated under this Condition G2".
- G2.4(b) Needs clarification.

Consolidated agreements

Yes please! CD ROM would be a useful format for each TOC's own agreement, with a copy for each Railtrack Zone over which it operates, and internet access to those of other operators held in the ORR library.

Operation of ADRC

The Regulator asked at last week's seminar for comments on the criticisms of ADRC made at the meeting with Railtrack on 11 February. Our experience has mainly been of the Timetabling Sub-Committee, and we have found we find that the process generally works well if somewhat bureaucratically. With timetable disputes, the time factor does not always allow a satisfactory resolution out of court or preparation of a joint submission, and there may be some merit in George Muir's suggestion at the seminar of a "small claims court" or perhaps an internal mediation service to resolve some of the timetable disputes, as long as they do not involve issues of principle where case law needs to be established.

I hope these brief comments are helpful, and as usual we would be willing to expand on them or comment on any other aspects of model clauses or Part G you may wish to have our views on.

Yours sincerely

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