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12 May, 2000

Paul Carey
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
LONDON
ECIN 2TQ

Dear Mr Carey,

Model Clauses for Track Access Agreements

Thank you for inviting comments on the consultation paper dated 19 April 2000. We welcome this opportunity to provide further input additionally to our response to the first consultation paper and our contribution at the seminars.

South West Trains endorses the Association of Train Operating Companies' response to this consultation paper. This letter emphasises specific concerns of South West Trains. In all other respects, we refer you to our previous response and to the ATOC submissions.

Commercial Purpose

South West Trains Limited
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A wholly owned subsidiary of Stagecoach Holdings plc

Access Rights

We support the proposal for a series of template Schedule 5s.

We strongly believe that these templates allow the Schedules to reflect the specific business needs and franchise obligations of each TOC. In particular, the package of Schedule 5 rights should be capable of reflecting the TOC's Passenger Service Requirements and commercial needs. It is our strong view that our Schedule 5 rights should include:

- Quantum of train slots
- Calling patterns (including provision for variation for first/last trains etc to reflect the PSR)
- Service frequency and service interval
- Journey time protection - maximum and average journey times to apply to all services and to a proportion of services (as now); the protection in Schedule 4 is insufficient
- Connecting times between services in certain cases.

There is a considerable risk that if Railtrack is not subject to such specific obligations, network output and efficiency will be impaired and the emphasis will shift to providing excuses at ADRC rather than getting the job done right first time round. There is also a risk that Railtrack will use greater Schedule 5 flexibility as a way of escaping network development. Where there is a case for trading an operator's core commercial rights in order to optimise network outputs, the process should be capable of dealing with the loss of value and increased risk to which that operator is subjected.

We endorse the ATOC view to retain the current two tiers of access rights.

We believe that it is appropriate for the Rules of the Plan and Rules of the Route to be subject to greater scrutiny. Changes to the Rules must not be allowed to erode the access rights of operators. As the volume of passengers using the network increases dwell times at stations (for example), Railtrack are likely to seek changes to the Rules of the Plan to reflect these extended dwell times. The case for such changes needs to be robust and there must be a process to permit such changes to be reversed if demand falls or if capacity enhancements eliminate a dwell time problem. Similarly operators must not be denied access through the Rules of the Route because of Railtrack's perpetuation of inefficient and capacity-hungry maintenance methods.

As mentioned in our first response, use-it-or-lose-it provisions must be capable of protecting London commuter TOC's exposure to the economic cycle (trigger points if rights are unused for two years may be insufficient). They should also provide a TOC who invests in network capacity the ability to use such capacity (or indeed to ensure it is not used where it is created for the purpose of securing an improvement in network performance).

We firmly believe that any trading must protect a TOC's right to plan its business with a reasonable degree of assurance. Therefore any trading of rights should only be with the TOC's consent and supported by a process of compensation which reflects both the commercial value of such rights and the contractual value of the same through the Franchise Agreement. Whilst we recognise the importance of ensuring that dominant positions are not abused, an operator potentially faces the double-whammy of losing the benefit of its rights in order to provide capacity for primarily abstractive competing services. It would be easier for operators to entertain the idea of more flexible rights if the competition regime provided greater certainty that the likely consequence of such flexibility being exercised was better network outputs and not more primarily abstractive competing services.

TOCs should be free to trade access rights without undue interference from Railtrack.

Output statements

We support and welcome the Regulator's provisional conclusion that there should be contractual obligations to produce and deliver local output statements using an operator-based approach. This is essential to prevent the poor output delivery which has blighted parts of the rail network since privatisation. The output statements should be reasonably challenging and comprehensive.

We refer you to our previous response and to the ATOC submission for details of the content of such output statements.

May I re-iterate our strong view that clauses requiring output statements for major stations, stations and depots should be developed without undue delay to prevent the continuing poor delivery our passengers suffer in respect of Waterloo CIS, for example.

Network enhancement

We strongly assert that there should be a presumption providing an operator who pays for capacity enhancement the right to that capacity (including the right to preserve that capacity as a performance buffer) and to benefit from the sale of surplus capacity. Operators must be protected from competitive entry on surplus capacity otherwise they will not invest. It is sensible and in the public interest to reserve white space as a performance buffer because the consequence of not doing so is either (a) worse punctuality or (b) a higher than necessary number of cancellations in order to create white space to attempt service recovery following disruption.

The Network Change process needs to ensure that outputs are delivered to a timescale and in a manner consistent with the basis for devising compensation and contributions. The Network Change process must ensure that representations can be made and taken account of but the delivery of benefits must not be inhibited by slack application of the process.

Liability and remedies

Railtrack's liability and the remedies available to operators must reflect the TOC's Franchise Agreement obligations. If we can lose our franchise as a result of three bad months of leaf-fall (or any other circumstance which is the responsibility of Railtrack), we must have a similar sanction on Railtrack. We should be entitled to seek specific performance on a local basis in the event of failure. Where it is a necessary part of securing such performance, this should extend to Railtrack being able to seek reciprocal performance from train operators. However this must not be allowed to be a substitute for expert train control and network management as a means of dealing with TOC on TOC delay.

We support the Regulator's provisional conclusion that there should be no force majeure exceptions to liabilities.

I hope that these comments are helpful. Please do not hesitate to contact us if you wish to discuss them or if you have any queries. We are happy for you to publish this letter in the ORR library and on the ORR website.

Yours sincerely

David Horne
Business Planning
Manager.