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Dear Sir

**NETWORK CODE REFORM PHASE 2: UPDATE AND EMERGING  
CONCLUSIONS: CONSULTATION**

Porterbrook Leasing Company Ltd wishes to express its views on the Network Code Reform Phase 2 via this consultation.

Porterbrook is entirely in agreement and supportive of the major theme of the Network Code system, that of ensuring the optimum economic solution for key interfaces and an efficient outcome from a whole industry perspective.

The principal issue of concern to Porterbrook, however, is the proposal to enable Network Rail to make proposals for Vehicle Changes and ultimately (subject to approval) to require them under part F of the Network Code.

It should be noted that there is currently a mechanism in place for vehicle changes suggested by Network Rail. This is via System Interface Committees and the RSSB Board. It would seem premature to implement a change to the Network Code when the current mechanism has not, as yet, proved problematic. However if the current mechanism is not seen as adequate, the consultation proposal must address a number of issues.

It is implicit but not made explicit that Network Rail will be required to pay for the change and where appropriate compensate parties affected by the change (in the same way that this applies to operators who wish to make a change) . Porterbrook would welcome an explicit confirmation of this. If this was not the case Porterbrook would strongly oppose this proposal as Network Rail could then demand any change to a vehicle which owners and or operators would be obliged to pay for. This is neither equitable nor is it likely to produce efficient allocation of resources or optimum cost for the industry.

Given that Network Rail will be paying appropriate compensation for a vehicle change which has gone through this process, Porterbrook may be exposed to a residual risk as a consequence of the change. For example, where Network Rail require an item of equipment fitted which has a 10 year life, Network Rail may pay for the equipment and its installation; the maintenance costs of the equipment and the operating costs, but this arrangement is only likely to last for the duration of the franchise in place at that time. Thus if a new operator takes over part way through the 10 year life, the trains will be more expensive by virtue of increased maintenance and operating costs for the remainder of the ten year life and there will also be the need to renew the equipment when it is life expired. These factors must be included in the compensation that Network Rail must pay.

Currently there is no requirement in place for Network Rail to deal directly with Porterbrook. Indeed it is argued in some quarters that this direct contact is specifically excluded by parts F and G of the Network Code which requires the change to be effected through the Track Access Agreement. Porterbrook believes that this is an unsatisfactory situation. Network Rail should be obliged to have a direct relationship with the vehicle owner where vehicle change is involved. This would be the mechanism by which compensation would flow. It must also be recognised that this contractual arrangement is entirely independent of the leasing arrangements in place with the operators of the vehicles and it is this contract and not the lease which defines the parties rights and obligations. Such an arrangement could lead to a more efficient change process. Network Rail could contract directly with Porterbrook to carry out the change on its vehicles. The efficiency of this arrangement has already been demonstrated by the programmes for fitting TPWS and OTMR.

Where Porterbrook are not involved in such changes, there is an increased risk that sub-optimal arrangements (e.g. those for GSMR) may be put in place.

It should be noted that the compensation regime put in place must also cover unforeseen cost. For example if Network Rail requires a measure which unexpectedly results in wheel life reducing, operators and owners must be compensated.

Whilst it is essential to ensure that the right contractual and compensation arrangements are in place, it is also crucial to ensure that the vehicle change proposed is sensible and will reduce whole industry costs. Porterbrook is not convinced that Network Rail can be relied upon to ensure that a vehicle change they propose will always have this outcome. If we do not believe the change proposal to be sensible, we will oppose it, but the suggestion in the consultation document is that Network Rail will be able to (subject to appeal) require the change. It is vitally important that any change which is opposed is subject to independent technical review and should only proceed if the outcome of that review is favourable.

Whilst the proposal for Vehicle Change is the principal issue of concern to Porterbrook there are other matters which deserve comment.

- Porterbrook is entirely happy that Network Rail has a role to play in new train specification in order to ensure the least whole life cost to the industry solution. However, it must be clear that Network Rail's competence in this area only extends so far. They are not expert train designers.
- It is obvious that Network Rail also has a fundamental role in the introduction of new trains. However the attitude of successive infrastructure controllers to date has been negative where the difficulties of new train introduction have been the focus rather than the benefit. This attitude must be changed for one whereby Network Rail does all it can to facilitate the introduction of new trains which are, of course, the future of the industry.

It would be helpful for Network Rail to set out how it proposes to fulfil its existing network licence obligations in respect of facilitating introduction of new trains, particularly in respect of third parties.

- Another aspect of the introduction of new trains is their being treated as a vehicle change by the Network Code. As those introducing a change (as defined by the code) are required to pay for any consequential work other parties need to do, infrastructure controllers have insisted on costly changes to vehicles when either no action is necessary or the least cost solution for the industry would be infrastructure alterations. Network Rail should be required to implement the least cost solution to the industry.
- Network Rail should also be required to provide accurate and timely information about the infrastructure (indeed this should be freely available to industry members at all times). Current experience indicates that they are still not in a position to do this.

I hope you have found Porterbrook's views in this consultation process useful. Obviously, if you require clarification of the points made, please do not hesitate to contact me.

Yours sincerely

TIM GILBERT  
**Engineering Director**

cc: RIA