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Dear David

**Network Code reform phase 2: Update and emerging conclusions**

South West Trains is broadly supportive of the changes proposed in the Network Code reform phase 2 consultation although we have the following specific comments. We are content for you to publish this response on your website.

*Chapter 3 (Parts F and G) - paragraph 3.12*

**Views of consultees are sought on the objective in paragraph 3.11, and whether such an objective should be explicitly incorporated in parts F and G as the purpose of the relevant provisions.**

We believe that the objective should be incorporated and that the statement that the objective should facilitate in the most efficient and economic way be broadened to make clear that this will be achieved by taking whole industry costs into account.

*Paragraph 3.14*

This paragraph is silent on the question of what Network Rail should charge for the provision of information. This raises a fundamental question about Network Rail's role as custodian of the existing Network on the one hand and developer of the Network on the other. For example, SWT has in the past been required by Network Rail through the Part F process to fund surveys of Network Rail's infrastructure (the most recent example being platform gauging where we have wished to introduce an existing fleet type over part of the Network where it does not currently operate). We firmly believe that proposer's of vehicle change should not have to pay Network Rail to understand its own assets.

*Chapter 3 (Parts F and G) - paragraph 3.24*

**Views of consultees are sought on the propositions that:**

**(b) project specific facilitation contracts should be available once a project has been specified and the risk allocation defined and whether the existing arrangements are adequate; and**

ORR will be aware of the generally unfavourable comments made about Network Rail's attitude to risk through the recent Policy Framework for Investment consultation. It is worth reiterating the point that definition of risk allocation should not mean an automatic increase in the sponsor's costs as it does now.

*Chapter 3 (Parts F and G) - paragraph 3.30 and 3.31*

**ORR seeks views on:**

- (a) whether Part F of the Network Code should be changed:**
  - (i) to enable Network Rail to make proposals for vehicle change, and ultimately (subject to appeal) to require them;**

We have very real concerns about allowing Network Rail to propose changes to vehicles that they themselves do not operate or have any technical experience or knowledge of. We believe that this issue has arisen due to allegations about possible damage to track following the introduction of new trains. Given that new trains are built on the premise of compliance with group standards, then should the wheel - rail interface not prove to be as expected then group standards require changing. We would also expect for the effects on the infrastructure to be analysed in totality and not just be limited to those effects that cause Network Rail cost. If this proposal to grant Network Rail Part F proposal rights is to be adopted then the scope should be limited to occasions where there is a material disbenefit to the infrastructure or performance if the change is not made. As Train Operators are not funded for changes proposed by Network Rail we would expect Network Rail to fund the changes in entirety.

- (ii) to extend the definition of vehicle change to include vehicle operation; and**

In general terms we support this proposal however the word and notion of "operation" will need to be tightly defined - for example it should not include driving technique.

- (b) whether they see any merit of justification for the provision of a technical arbitration process in Parts F and G and, if so, the nature and scope of such a process, and its relationship with the existing dispute resolution mechanisms.**

We support the EWS proposal on the grounds that industry disputes should be resolved as far as possible by experts within the industry rather than by the courts. We do not believe that this presents the problems that ORR suggests. One method would be to appoint a suitable "Expert Determinator" funded equally by the parties in dispute - following the processes adopted for Journey Time Review in Schedule 5 of the Model Clause Track Access Contracts and ultimately subject to appeal to ORR.

*Chapter 3 (Parts F and G) - paragraph 3.34*

**ORR seeks views on its emerging conclusion that the separate F and G processes should be retained, but changes might be needed to ensure the processes work in parallel where appropriate.**

We strongly agree.

*Chapter 3 (Parts F and G) - paragraph 3.42*

**ORR seeks views on the emerging conclusions set out above, particularly:**

**(b) the right to seek to block a change being subject to specific criteria as set out in paragraph 3.38 above; and**

We believe that subpara (a) should be broadened to include a significant deterioration in performance of an operators services as a result of the change. Whilst an affected operator can be compensated through Schedule 8 we believe that it is unequitable for an "innocent" operator to suffer performance and therefore revenue loss as a result of the deliberate actions of other parties.

*Chapter 3 (Parts F and G) - paragraph 3.45*

**ORR seeks views on its emerging conclusion that there should be a mechanism for adjusting Network Rail's outputs by giving them the right to make changes to access rights subject to compensation, and appeal to ORR.**

Only if it does not put an operator in breach of a Franchise Agreement.

*Chapter 3 (Parts F and G) - paragraph 3.49*

**ORR seeks consultees view on our emerging conclusion that there should be bespoke arrangements for larger and more complex projects?**

We understand the difficulties imposed on the proposers of major cross industry schemes through the Network Change process, and in particular the requirement to have a significant number of industry parties in agreement prior to the scheme going ahead. However Network Change is currently the only protection operators have against changes (big or small) going wrong. Given that major pan industry changes can "make or break" operator's businesses it is imperative that there is adequate protection to affected operators in whatever system is agreed.

It is also worth noting that Network Change is not just about compensation, it is also about ensuring the best possible industry outcome through consultation. The TOC community has played a significant role inputting into these large projects (eg GSMR) affecting changes through the iterative process to the benefit of all. It is essential that this continues in whatever format is decided to ensure that the requirements of the operators and not just the infrastructure controller are incorporated into the design phase of schemes to prevent downstream problems.

*Chapter 3 (Parts F and G) - paragraph 3.52*

**ORR seeks views of consultees on the way changes to Parts F and G should be implemented.**

We believe that the drafting should be made by the industry (who after all have the best grasp of the detail involved) but it should not necessarily be led by Network Rail - better for the steering group

comprising all interests to procure the drafting and then recommend it to the industry.

*Chapter 5 (Part K - Information) - paragraph 5.12*

**ORR seeks views on the broad approach and specifically:**

- (a) **on whether ORR should be switching on Part K;**
- (b) **what the content of the annual information report, and the regular monitoring reports should be;**
- (c) **what provision should be made for specific information flows.**

We would wish to reiterate the point that the key criteria for information is that its provision should be simple, at no extra cost to the industry either aggregated in total or to individual parties and that the information provided should be readily understandable

Yours sincerely

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Contracts Manager