

Brian Hopkinson
Track Access Executive
Office of Rail Regulation
1 Kemble Street
London WC2B 4AN

18 July 2008

Dear Brian,

**CONSULTATION ON THE PROPOSED 22ND SUPPLEMENTAL AGREEMENT
TO THE TRACK ACCESS CONTRACT BETWEEN NXEC TRAINS LIMITED
AND NETWORK RAIL INFRASTRUCTURE LIMITED**

Thank you for your e-mail dated 20 June 2008 inviting the comments of English Welsh & Scottish Railway Limited ('EWS') on the above matter.

EWS understands from the application that NXEC Trains is not seeking to operate any further services on the East Coast Main Line ('ECML') over and above the quantum of services that it operates in the current timetable. NXEC Trains is, however, seeking to convert its existing contingent rights for six weekday return services between London Kings Cross and Leeds to firm rights.

The conversion of contingent rights to firm rights will inevitably limit the flexibility Network Rail has to move a particular service or extend its journey time in the timetable to ensure that capacity is being used efficiently so that other services can be accommodated. This is particularly pertinent with this application given that it is submitted under S22A and given the recent letter that EWS received from ORR advising of its request to Network Rail to produce an ECML capacity and performance report as a matter of priority in reaction to the large number of applications for capacity from passenger operators that cannot all be accommodated within the current timetable pattern. In its letter, ORR has indicated that it would need to take account of all of these (11) applications together once Network Rail's capacity and performance report has been completed on 19 September 2008.

Given the above, before it could signify its acceptance of these particular proposals, EWS would need to understand what Flexing Rights would be available to Network Rail should the existing presumably 'unlimited flex' contingent rights be converted into firm rights so that EWS can be satisfied that Network Rail would not be unduly constrained in being able to identify timetabling solutions to accommodate as many future aspirations of both passenger and freight operators within the existing infrastructure as possible.

English Welsh & Scottish Railway Ltd
Registered in England and Wales
Registered No : 2938988
Registered Office :
Lakeside Business Park, Carolina Way,
Doncaster DN4 5PN

Yours sincerely

Nigel Oatway
Access Manager

cc. Doug Thompson Network Rail