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Dear Rob and Paul

Approval of the 24th TG Supplemental Agreement to the Track Access Agreement between Network Rail Infrastructure Limited and Stagecoach South Western Trains Limited

1. The Office of Rail Regulation (ORR) has today approved the 24th TG supplemental agreement to the track access agreement between Network Rail Infrastructure Limited (Network Rail) and Stagecoach South Western Trains Limited (SSWT) submitted to ORR on 15 September 2008 under section 22 of the Railways Act 1993 (the Act). The purpose of this letter is to set out the reasons for our decision.

Purpose of the agreement

2. The agreement enables SSWT to make Ancillary Movements of empty rolling stock between Wimbledon and Chart Leacon depots on behalf of Porterbrook by including a new route in Schedule 2.

Consultation

3. Network Rail carried out the industry consultation on this application. The consultation was for 14 days; we were content that this was sufficient due to the limited number of moves (11 return journeys) that SSWT plans to make. We were content that Network Rail had consulted all potentially affected parties. No issues were raised by any party.

Our review

4. Until recently, SSWT held rights to move empty rolling stock to and from Chart Leacon depot in its non-passenger track access contract, which expired on 31 July 2008.

This was a non-model clause agreement. In February 2008, we said to the parties that we would not be prepared to approve extensions in non-model clause format indefinitely. This agreement provides a short-term solution and will enable the parties to negotiate a model clause replacement for the non-passenger contract for the period commencing 1 April 2009 to cover such moves. We will consider the parties' application for approval of this contract in accordance with our criteria and procedures¹.

5. Under this agreement, the parties will not monitor the moves between Wimbledon and Chart Leacon depots under the Schedule 8 performance regime as Network Rail is satisfied that the risk of SSWT-caused TOC-on-TOC delays is low due to the number of moves planned, and as during the previous 10 years of operation under the non-passenger contract, the performance regime was not triggered. We are content to approve this arrangement on a short-term basis as we consider that the risk to Network Rail of these movements not being monitored under Schedule 8 is acceptable, due to the small number of movements planned and the duration of the proposed agreement. However, we would not necessarily expect to approve a similar arrangement in a future non-passenger contract.

Our conclusions

6. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular that relating to enabling SSWT to plan the future of its business with a reasonable degree of assurance (section 4(1)(g)).

7. Please find enclosed a copy of the approval notice together with a copy of the supplemental agreement. I am copying this letter and both documents to Ray Harris at DfT. Copies of the approval notice and the supplemental agreement will be placed on our public register and copies of this letter and the supplemental agreement will be placed on the ORR website. I am also copying this letter without enclosures to Steven Saunders at Network Rail.

Yours sincerely

Sam Gibbins

¹ Criteria and procedures for the approval of passenger track access contracts: fourth edition, May 2006, available at http://www.rail-reg.gov.uk/upload/pdf/288-pass_candp4ed.pdf.