

**Network Rail Infrastructure Limited  
West Coast Trains Limited**

**APPLICATION FOR APPROVAL BY THE OFFICE OF RAIL REGULATION OF  
BEST ACHIEVABLE ACCESS RIGHTS FOR PASSENGER SERVICES  
TO OPERATE BETWEEN DECEMBER 2008 AND MAY 2009  
Made under Clause 11 of the West Coast Tenth Supplemental Track Access Agreement**

**Volume 1**

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## 1. INTRODUCTION

### General

- 1.1 This document is a joint application by Network Rail and WCTL for:
- (a) approval of "best achievable access rights" (BAARs) pursuant to Clause 11.12 of PUG 2; and
  - (b) confirmation that the BAARs (save for the Additional Train Slots) should be Firm Rights and the Additional Train Slots Contingent Rights for the purpose of the network code.
- 1.2 The purpose of this application is to ensure that WCTL has the access rights that it needs to sustain operation of the new Very High Frequency Timetable that will be effective from the Principal Change Date 2008. The rights sought in this application are consistent with those applied for under the PUG 2 replacement. The VHF timetable is recognised as delivering significant benefits to the entire industry. In order to deliver this timetable, Network Rail is undertaking extensive infrastructure works and the entire project represents considerable taxpayer investment.
- 1.3 The BAARs are rights to operate passenger services in the period commencing at 0200 hours on 14 December 2008 (on expiry of the tenth set of BAARs) and ending at 0159 hours on the Subsidiary Change Date 2009 (17 May 2009) (the "BAARs 11 Period").
- 1.4 The BAARs sought under this application provide for the step up in services contemplated by the Very High Frequency Timetable. They are a short term, interim set of rights which are intended to apply until, but to cease to have effect upon, longer term rights being approved by the ORR pursuant to the PUG 2 replacement.
- 1.5 The BAARs together with the Schedule 5A Rights reflect precisely the WCTL train slots to be included in the Working Timetable to apply during the BAARs 11 Period. That Working Timetable has been the subject of extensive consultation and validation. The BAARs, together with the Schedule 5A Rights, are also consistent with the SRA's timetable specification for WCTL in the WCML Strategy.
- 1.6 Network Rail and WCTL consider that there are exceptional circumstances in this case that justify ORR leading the consultation process and therefore Network Rail has not pre-consulted as might otherwise have been expected under the new code of practice. This approach has been discussed with the ORR. As explained later in this application, Network Rail and WCTL, while recognising that ORR must follow due process, request that the Eleventh BAARs are approved by 09 June 2008.

### Structure and contents of this document

- 1.7 This document is in two volumes: Volume 1 contains the application and a justification for it; and Volume 2 contains a draft of a document setting out the BAARs for which approval is sought.
- 1.8 The remainder of this Volume 1 is organised as follows:
- *Section 2* contains an executive summary of this application and the approval sought;
  - *Section 3* outlines the context in which the application is made;

- *Section 4* summarises Volume 2;
- *Section 5* contains an explanation of why ORR should give the approval sought;
- *Section 6* offers additional information which the parties expect ORR will require in order to make its determination;
- *Section 7* explains the process, originally sponsored by the SRA, followed in formulating the WCML Strategy (including the associated timetable) and underlines the fact that this application forms an integral part of the realisation of that Strategy; and
- *Section 8* details the timetable development and associated validation exercise undertaken to draw up the relevant Working Timetable, to verify that there is sufficient network capacity to accommodate the BAARs and to ensure that the proposed timetable is robust.

### **Nature of approvals sought, relevant application form etc**

- 1.9 This is an application for approval of BAARs which have been determined in accordance with the provisions of PUG 2. Accordingly, it is submitted that it is not a statutory approval under any of sections 17-22 of the Railways Act. Rather, it is submitted that it is an approval specifically provided for in the existing contract and that ORR derives its jurisdiction from the existing contract. These submissions, of course, were accepted by ORR in relation to each of the previous BAARs submissions.
- 1.10 The parties have again assumed, however, that ORR will wish to approach the application (particularly in terms of process) in a similar manner to the way it approaches applications under section 22 of the Railways Act for agreed amendments to an existing contract.
- 1.11 To this end, although the section 22 application form published by ORR has not been used (because it does not seem entirely applicable to the present circumstances), the parties have ensured that the information which appears relevant as required by that application form is contained in this document. This approach was adopted in relation to each of the previous BAARs submissions.
- 1.12 To assist ORR, the table below sets out where in this document ORR may locate the relevant information required by the application form.

<b>Section 22 application form requirements</b>		<b>Location in this document</b>
2.2	Contact details	1.16
2.3	Licence and railway safety case/certificate	6.1 – 6.3 and 8.3
3.1	Executive summary	Section 2
3.2	Departure from ORR's model passenger track access contract	6.5(a)
3.3	Duration of amendment	6.5(b)
4.1	Benefits	5.11 - 5.13
4.2	Congested infrastructure	6.6

Section 22 application form requirements		Location in this document
4.3	Adequacy	Section 8
4.4	Flexing rights	6.9 – 6.11
4.5	Protected rights and obligations	6.7
4.6	Journey time protection	6.8
4.7	Other limitations on flexibility	6.9 – 6.11
4.8	Specified equipment	6.15
4.9	Moderation of competition	6.5(c)
4.10	Franchise obligations	7.8
4.11	Public funding	6.12
4.12	Passenger Focus	6.13
4.13	Route utilisation strategies	6.14
5.1	Charges and performance	6.5(d) and 6.16– 6.17
5.2	Train operator performance	6.17
5.3	Facility owner performance	6.16
5.4	Performance regime changes	6.5(f)
5.5	Restrictions of use	6.5(e)
7.1	Associated applications to ORR	6.20
7.3	Side letters and collateral agreements	✕
7.4	Confidentiality exclusions	<b>Error! Reference source not found.</b>
9	Certification	1.17

## Glossary

1.13 In this document, the following abbreviations or terms have been used:

<b>Additional Train Slots</b>	means the Train Slots described in Appendix 2 to the BAARs Document in relation to which it is proposed that WCTL be granted Contingent Rights pursuant to this application;
<b>BAARs</b>	Best Achievable Access Rights established under PUG 2 Clause 11;
<b>BAARs Document</b>	the document contained in Volume 2 of this application;
<b>Bid</b>	has the meaning ascribed to that term in the network code;
<b>Contingent Rights</b>	means a right which is not a Firm Right and which is subject to the fulfilment of all Bids in respect of competing Firm Rights and any additional contingency specified in Appendix 2 of the Eleventh Best Achievable Access Rights Document (as contained in Volume 2);
<b>Day</b>	means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Volume 1 to any named day of the week, a Subsidiary Change Date or a Principal Change Date shall be to such period commencing or ending on that named day or Passenger Change Date, as the case may be;
<b>DfT</b>	the Department for Transport;
<b>Firm Rights</b>	has the meaning ascribed to that term in the network code;
<b>network code</b>	the Network Rail Track Access Conditions 1995 (as amended);
<b>Network Rail</b>	Network Rail Infrastructure Limited (formerly Railtrack plc);
<b>ORR</b>	the Office of Rail Regulation;
<b>Periodic Review</b>	the "Access Charges Review 2003: Final Conclusions" December 2003, ORR, London;
<b>PUG 2</b>	the Tenth Supplemental Agreement dated 8 June 1998 to the WCTL TAA between Network Rail and WCTL dated 30 April 1995;
<b>PUG 2 replacement</b>	a replacement of the existing WCTL TAA, including PUG 2, containing access rights until 2012, which has been negotiated between the parties pursuant to Clause 12 of PUG 2 and is currently awaiting approval from ORR;
<b>Railways Act</b>	the Railways Act 1993, as amended;
<b>SRA</b>	the Strategic Rail Authority;
<b>Schedule 5A Rights</b>	the rights as set out in Appendix 1 ("Schedule 5A: Additional Services") of the Thirtieth Supplemental Agreement (dated 04 December 2007) to the Track Access Agreement (Passenger Services) dated 30 April 1995 between Network Rail and WCTL;
<b>Virgin</b>	Virgin Rail Group Limited;
<b>WCML</b>	the West Coast Main Line;
<b>WCML Strategy</b>	the SRA's strategy for the West Coast Main Line published by the SRA on 16 June 2003 and entitled " <i>West Coast Main</i>

*Line Strategy- Refreshing a Prime National Asset"* (as supplemented and varied by the SRA and DfT's reports published in April 2004 and May 2006 respectively, each entitled "*West Coast Main Line: Progress Report*");

**WCTL**

West Coast Trains Limited; and

**WCTL TAA**

the track access agreement dated 30 April 1995 between Network Rail and WCTL as supplemented and amended, including by PUG 2.

### **Confidentiality**

1.14 ✂

### **DfT involvement**

1.15 With effect from 25 July 2005 responsibility for the specification, funding and sponsorship of the West Coast Route Modernisation Project transferred from the Strategic Rail Authority to the Department for Transport. The Department for Transport has been involved in discussions with each of the Train Operator and Network Rail in relation to this application. The DfT supports the making of this application.

### **Further information and contact details**

1.16 If ORR requires further information in relation to this application or has any questions concerning it, it should not hesitate to contact:

#### **Network Rail**

#### **WCTL**

**Contact Individual:** Duncan Welham

**Contact Individual:** Richard Miller

**Job Title:** Customer Relationship Executive

**Job Title:** Head of Infrastructure Contracts

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## Certification

- 1.17 I certify that the information provided in this application is true and complete to the best of my knowledge.<sup>1</sup>

.....	.....
Name:       Iain Coucher	Name:       Richard Miller
Date:                    2008	Date:                    2008
Job Title:   Chief Executive	Job Title:   Head of Infrastructure Contracts
For:         Network Rail	For:         WCTL

## 2. EXECUTIVE SUMMARY

### Context

- 2.1 Network Rail and WCTL entered into a passenger track access agreement on 30 April 1995 which has since been amended on a number of occasions, including in June 1998 by PUG 2. PUG 2 provided for Network Rail to upgrade the WCML to provide to WCTL improved line speeds, shorter journey times and increased capacity. In exchange, WCTL agreed to deliver new rolling stock, pay higher access charges and operate a minimum number of services.
- 2.2 It has been concluded that the project as originally conceived is no longer appropriate. Accordingly, the parties have renegotiated PUG 2 and the PUG 2 replacement is awaiting approval by the ORR.
- 2.3 The Phase 1 Schedule 5 access rights for WCTL under PUG 2 have not taken effect as intended. The BAARs sought under this application provide for the step up in services contemplated by the Very High Frequency Timetable.
- 2.4 ✂<sup>2</sup>
- 2.5 ✂<sup>3</sup>
- 2.6 Network Rail has undertaken a very significant amount of work to validate the December 2008 timetable. It is continuing discussions with affected operators to agree changes to accommodate WCTL's proposed Schedule 5 Rights. As a precautionary measure, the parties are now making this application to facilitate the delivery of the Schedule 5 Rights as it may form the basis on which Network Rail issues modification notices to the affected operators. The parties request that this eleventh BAARs submission is approved by 09 June 2008 to enable the modification notices, should they be required, to be approved by the ORR by 11 July 2008.

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<sup>1</sup> Persons certifying will note that it is a criminal offence to make any statement which a certifying person knows to be false in any material particular, or recklessly to make any statement which is false in any material particular – see section 146 Railways Act.

<sup>2</sup> ✂

<sup>3</sup> ✂

## **Contents of BAARs Document**

- 2.7 The BAARs Document comprises: a front end, extracts from the Working Timetable from 0200 hours on 14 December 2008 to 0159 hours on 17 May 2009 contained in Appendix 1 and a Table and accompanying text which proposes the grant of Contingent Rights to operate Additional Train Slots contained in Appendix 2.
- 2.8 The front end explains the context in which the BAARs Document is being entered into and confirms the application of the BAARs for the relevant period.
- 2.9 Appendix 1 contains timetable extracts detailing the WCTL services in respect of which Firm Rights are sought.
- 2.10 Appendix 2 contains a Table and accompanying text detailing the Additional Train Slots in respect of which Contingent Rights are sought.

## **Justification**

- 2.11 In considering this application, ORR must have regard to its duties under section 4 of the Railways Act.
- 2.12 It is submitted that the grant of this application is entirely consistent with ORR's aforementioned duties and firmly in the public interest. In addition, it is a further step towards the full realisation of the SRA's WCML Strategy and, accordingly, the utilisation of the infrastructure enhancements made as part of the WCML project.

## **Additional information**

- 2.13 The parties submit that this is an application for an approval of BAARs and not for approval of a new or amended access agreement. This is an important distinction and has a number of consequences.

## **WCML Strategy and DfT support**

- 2.14 On 16 June 2003 the SRA published its WCML Strategy (supplemented by the SRA and DfT's reports published in April 2004 and May 2006 respectively, each entitled "*West Coast Main Line – Progress Report*"). This followed extensive consultation with operators, stakeholders and the public.
- 2.15 The SRA has provided Network Rail with a specification of infrastructure and Network Rail intends to deliver those parts of the infrastructure specification required to support the exercise by WCTL of the BAARs.
- 2.16 ORR has assumed the WCTL December 2008 journey time outputs will be delivered for the purposes of the Periodic Review.
- 2.17 All parties, including the DfT, consider it to be extremely desirable that WCTL should have Firm Rights of a nature which support the continued delivery of the WCML Strategy between 0200 hours on 14 December 2008 and 0159 hours on 17 May 2009. The Firm Rights set out in the BAARs Document are designed to achieve this and, together with the Schedule 5A Rights, reflect precisely the train slots for WCTL to be included in the Working Timetable for this period which itself is a key step in continuing to deliver the enhanced outputs specified by the WCML Strategy.
- 2.18 This application is supported by the DfT.

## **Verification**

- 2.19 Network Rail has completed preparation of a 24 hour weekday, Saturday and Sunday Working Timetable for passenger operators and made good progress on an equivalent timetable for freight operators.
- 2.20 Network Rail continues to seek to satisfy freight operators' outstanding compliant bids (including those for overnight and weekend services) and plans to conclude this by 30 May 2008 when Network Rail will share with freight train operators a full 24 hour, 7 days a week timetable. This should enable freight operators to complete their understanding of the effects of the BAARs timetable on their businesses and therefore conclude any response they may have to it. Network Rail will also then be seeking to agree any resulting amendments to the freight operators' contractual rights, but if such agreement cannot be reached speedily, Network Rail is prepared to issue modification notices to the affected operators.

## **3. CONTEXT**

### **TAA**

- 3.1 Network Rail and WCTL entered into a passenger track access agreement on 30 April 1995. This agreement has been amended, with ORR's approval, on a number of occasions, including in June 1998 by PUG 2.

### **PUG 2 upgrade**

- 3.2 PUG 2 provided for Network Rail to upgrade the WCML to provide to WCTL, among other things, higher line speeds, shorter journey times and increased capacity. In exchange, WCTL agreed to deliver new rolling stock, pay higher access charges, run a minimum number of hourly services and share its gross passenger revenue with Network Rail. As ORR is aware, the upgrade was to be delivered in two phases: Phase 1, taking effect in May 2002 providing for some service enhancements; and Phase 2, taking effect in May 2005, offering the final improvements in journey times and increased capacity.

### **SRA's WCML Strategy and the Periodic Review etc**

- 3.3 Although the SRA assumed the role of client for the upgrade project, undertook a review of the upgrade as part of the development of its WCML Strategy, became the sponsor of the upgrade and took responsibility for the specification of the enhancement work on the WCML, this role was, as mentioned in paragraph 1.14 above, assumed by the DfT in July 2005.
- 3.4 However, as a result of the SRA review and funding decisions taken by the SRA, it has been concluded that the upgrade project as originally conceived is no longer appropriate. This continues to be the case, notwithstanding the transfer of SRA functions to the DfT. Accordingly, the parties agreed to negotiate and agree the terms of a PUG 2 replacement to submit to ORR under section 18 of the Railways Act.<sup>4</sup> The outcome of these negotiations has resulted in a PUG 2 replacement having been submitted to ORR on 03 April 2008 for approval.

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<sup>4</sup> WCTL and Network Rail have cooperated in the SRA's review and are keen to continue to implement that strategy albeit that the SRA's role in relation to the upgrade project has been transferred to the DfT. Each party's participation in this application and its entry into arrangements in relation to BAARs, are entirely without prejudice to, in the case of WCTL, all WCTL's rights and remedies under Schedule 4 of the WCTL TAA (or of any PUG 2 replacement) and/or Part G of the network code in relation to the restrictions of use, possessions, blockades or

- 3.5 ORR, of course, is already aware of the outcome of the aforementioned SRA review and for the purposes of the Periodic Review<sup>5</sup> assumed that the WCML Strategy would be broadly the basis of the outputs to be taken as the reasonable requirements of Network Rail's customers. In particular, journey times were reduced between London and Glasgow (and stations en route) from September 2004 and there were further reductions to and from locations North of Preston from 12 December 2005. In addition, further increases in capacity and journey time improvements are planned from December 2008.

### **PUG 2 renegotiation process**

#### *The current circumstances*

- 3.6 The Phase 1 Schedule 5 access rights for WCTL in relation to the Summer 2002 - Summer 2004 timetables have not taken effect.
- 3.7 However, and as referred to in the application for the first set of BAARs, an improvement in services was envisaged from the Winter 2004 timetable onwards commencing in September 2004 as set out in the WCML Strategy. ORR approved that submission and subsequently the second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth BAARs submissions. As a result, service improvements were introduced on each of 27 September 2004, 12 December 2004, 12 June 2005, 11 December 2005 and 09 December 2007. The parties are now making this further submission of BAARs (which carry forward the earlier improvements to the timetable and reflect additional improvements) to operate during the period between 0200 hours on 14 December 2008 and 0159 hours on 17 May 2009.
- 3.8 The PUG 2 contract provides for: (i) a renegotiation in certain circumstances if the outputs are not to be delivered; and (ii) modification of access rights, with regulatory approval, to address the requirement for a continuing timetable in the interim.
- 3.9 Details of the relevant provisions and how they operate in the current circumstances are set out below.

### **PUG 2 replacement**

- 3.10 As indicated above, the parties have engaged in a good faith negotiation of a PUG 2 replacement in accordance with Clause 12 of PUG 2. This has now been submitted to ORR for approval on 03 April 2008.
- 3.11 As explained later in this document, in developing the Schedule 5 Rights for the purposes of the PUG 2 replacement, Network Rail has undertaken a very significant amount of work to validate the December 2008 timetable that is consistent with the exercise of those rights. As part of that process, it has maintained a series of discussions with potentially affected operators to resolve any conflicts between their exercised rights and WCTL's proposed rights. Network Rail has been able to reach agreement with the majority of affected operators to accommodate WCTL's proposed Schedule 5 Rights. However in a limited number of cases, agreement could not be reached in time for the submission of the PUG 2 replacement. Network Rail is continuing discussions with affected operators, to agree changes to accommodate WCTL's proposed Schedule 5 Rights. As a precautionary measure, and on the basis that the PUG 2 replacement is now unlikely to be approved in time for the July

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other planned service disruption reflected in the Working Timetables appended to the BAARs Document. Each party reserves its position in relation to these matters.

<sup>5</sup> See chapter 7.

Timetable Offer Date, the parties are now making this application to facilitate the delivery of the Schedule 5 Rights as the BAARs may form the basis on which Network Rail issues modification notices to the affected operators. The parties request that this eleventh BAARs submission is approved by 09 June 2008 to enable the modification notices, should they be required, to be approved by the ORR by the 11 July 2008 Timetable Offer Date.

- 3.12 The approval now sought is for access rights having a duration from 0200 hours on 14 December 2008 to 0159 hours on 17 May 2009.

*Legal analysis*

- 3.13 The draft document in Volume 2 of this application recites the agreements which have been reached between the parties in accordance with the processes specified in Clauses 11 and 12 of PUG 2. In essence:

- (a) the parties have agreed that a "P1 Postponement Situation" has applied in respect of each Passenger Change Date from May 2002 up to and including the Passenger Change Date in May 2004<sup>6</sup>;
- (b) since a P1 Postponement Situation has applied for more than 2 Passenger Timetable Periods, a Failure Situation has arisen and Clause 12 applies;<sup>7</sup>
- (c) a Clause 12 renegotiation has been undertaken and a PUG 2 replacement has been submitted to the ORR and is awaiting approval;
- (d) in the meantime, for the reasons set out above, a "P1 Partially Successful Situation" may apply in respect of the timetable period commencing from 0200 hours on 14 December 2008<sup>8</sup> until and including the Day immediately preceding 0200 hours on 17 May 2009<sup>9</sup>;
- (e) the proposed BAARs require the approval of ORR under Clause 11.12 of PUG 2 because the rights (1) depart from the access rights of WCTL in the New Phase 1 Schedule 5 of PUG 2 and (2) do not fall within the Clause 11 Envelope defined in Clause 11.12(C) of PUG 2<sup>10</sup>; and
- (f) the BAARs are Firm Rights except to the extent that ORR specifies otherwise in approving them<sup>11</sup>. Accordingly, ORR is requested to approve all of the BAARs which are the subject of this application with:
  - (i) in the case of the Services set out in the Best Achievable Timetables contained in Appendix 1 to the BAARs Document, the status of Firm Rights; and
  - (ii) in the case of the Additional Train Slots, the status of Contingent Rights.

<sup>6</sup> See clause 11.2(B) on page 60 of PUG 2.

<sup>7</sup> See clause 11.2(D) on page 61 of PUG 2.

<sup>8</sup> Because some service improvement is expected to be available then, optimised via the SRA's strategy process - see clause 11.2(D) on page 61 of PUG 2.

<sup>9</sup> See clause 11.2(C) on page 60 of PUG 2.

<sup>10</sup> See clause 11.12 generally on pages 68-72 of PUG 2.

<sup>11</sup> See clause 11.12(D) on page 71 of PUG 2.

## **4. SUMMARY OF CONTENTS OF BAARs DOCUMENT**

### **Introduction**

4.1 The BAARs Document comprises:

- (a) a "front end";
- (b) Appendix 1 containing extracts of the Working Timetable; and
- (c) Appendix 2 containing a Table and related text detailing certain Additional Train Slots.

### **Front End**

- 4.2 This recites the context in which the BAARs Document is being entered into and, in particular, its relationship with PUG 2. It explains that, as required under Clause 11 of PUG 2, the parties have agreed the BAARs.
- 4.3 The document confirms that for the period from 0200 hours on 14 December 2008 to 17 May 2009, the access rights of WCTL are to be the BAARs.
- 4.4 The interim nature of the arrangements is made clear and the parties' respective positions etc. in relation to PUG 2 and the PUG 2 renegotiations are preserved.

### **Timetables**

- 4.5 Appendix 1 to the BAARs Document contains extracts of the weekday, Saturday and Sunday 24 hour Working Timetable detailing the WCTL services.

### **Table – Additional Train Slots**

- 4.6 Appendix 2 to the BAARs Document contains a Table and related text detailing WCTL's Contingent Rights to additional train slots.

## **5. JUSTIFICATION**

### **General**

- 5.1 In considering this application, ORR must have regard to its duties under section 4 of the Railways Act. It will need to weigh and strike the appropriate balance between those duties. It is submitted that the grant of this application is entirely consistent with those duties and firmly in the public interest. It is contended that in conformance with its statutory duties, ORR should accede to this application.

### **Improvements in railway service performance**

- 5.2 ORR must exercise its functions in a manner which promotes improvements in railway service performance<sup>12</sup>.
- 5.3 As explained elsewhere in this document, after extensive cross-industry consultation, the SRA has published its WCML Strategy. This is designed to provide optimum utilisation of capacity between users of the WCML for the benefit of passengers and

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<sup>12</sup> See section 4(ZB) of the Railways Act.

businesses and deliver an upgraded WCML which represents value for money. This also envisages rising levels of performance.

- 5.4 ORR has recognised the WCML Strategy and broadly assumed its implementation (with some rephrasing) for the purposes of the Periodic Review.<sup>13</sup>
- 5.5 The BAARs form an integral part of the realisation of that Strategy: they are a further step towards achieving the timetable (in terms of quantum, journey times, service pattern, etc.) and performance objectives set out in the strategy.
- 5.6 The parties have consulted the DfT on the terms of this Eleventh BAARs Submission and the DfT is in support of it.

### **Interests of users**

- 5.7 ORR must also exercise its functions in a manner which it considers best calculated otherwise to protect the interests of users of railway services.<sup>14</sup>
- 5.8 The rights of other WCML operators (passenger and freight) have been taken into consideration in the extensive consultation process undertaken by the SRA. Passengers' concerns have also been addressed through detailed discussions with relevant local authorities and RPCs etc. The conclusion of the consultation and discussions informed the SRA's publication of its WCML Strategy.
- 5.9 The BAARs are a fundamental component of the WCML Strategy which is designed to provide increased capacity for long distance passenger and freight services, as well as preserving and, where possible, increasing and improving provision for peak commuter services and other inter-regional links. It is also envisaged to improve WCML's overall performance reliability to enable both passenger and freight traffic to grow.

### **Promotion of rail and network development**

- 5.10 ORR must exercise its functions in the manner which it considers best calculated to promote the use of the network for the carriage of passengers and the development of the railway network.<sup>15</sup>
- 5.11 With effect from 27 September 2004, the WCML Strategy (of which the BAARs are an integral part) has seen an increase in capacity and an improvement in services.
- 5.12 The rights sought under this application represent significant benefits for passengers. They deliver the outputs contemplated in the various WCML strategy documents and realise the considerable investment made in both infrastructure and rolling stock and the associated very significant franchise value. In particular, this investment will see:
  - (i) a 32% step-up in the number of services to be operated by WCTL, providing an extra 13 million seats per year;
  - (ii) a 50% increase in services operating from London to both Manchester and Birmingham;
  - (iii) increased service frequency on the routes between London and both

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<sup>13</sup> See chapter 7 of the Periodic Review.

<sup>14</sup> See Section 4(1)(a) of the Railways Act.

<sup>15</sup> See Section 4(1)(b) of the Railways Act.

Liverpool and Glasgow;

- (iv) a new hourly service from London to Chester;
- (v) further reductions in journey times; and
- (vi) the reinstatement of a seven-day-per-week railway for core periods at weekends when the weekday off-peak service will be provided.

5.13 The parties therefore believe that it is in the public interest to approve the rights that are the subject of this application.

#### **Efficiency and economy**

5.14 ORR must exercise its functions in a manner which it considers best calculated to promote efficiency and economy on the part of persons providing railway services.<sup>16</sup>

5.15 It is submitted that the BAARs which the parties have agreed are in all the circumstances an efficient and economic measure and, of course, are to be viewed in the overall context of the WCML upgrade project in respect of which the DfT and ORR have taken various funding and other decisions.

#### **Connections etc**

5.16 ORR is also required to exercise its functions so as to promote measures designed to facilitate the making of journeys by passengers using the services of more than one operator.<sup>17</sup>

5.17 As explained elsewhere in this document, the BAARs should be seen in the context of the WCML Strategy. This is designed, amongst other things, to facilitate the making of inter-regional links.

#### **Business planning**

5.18 ORR must exercise its functions in the manner which it considers best calculated to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.<sup>18</sup>

5.19 In planning their businesses, the parties (and other users of the WCML) need to have the certainty which expeditious approval of the BAARs would afford.

#### **Network Rail's finances**

5.20 ORR is under a duty in exercising its functions to act in a manner that it considers will not render it unduly difficult for Network Rail to finance its activities.<sup>19</sup>

5.21 ORR, of course, has addressed funding issues in the Periodic Review applicable to the current control period.

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<sup>16</sup> See section 4(1)(c) of the Railways Act.

<sup>17</sup> See Section 4(1)(e) of the Railways Act.

<sup>18</sup> See Section 4(1)(g) of the Railways Act.

<sup>19</sup> See Section 4(5)(b) of the Railways Act.

## **The DfT's finances**

- 5.22 The parties understand that the DfT supports the continued operation of the improved timetable which the approval of this revised set of BAARs is intended to enable.

## **6. ADDITIONAL INFORMATION REQUIRED TO SUPPORT APPLICATION**

### **WCTL licence and operations**

- 6.1 WCTL holds a valid train operating licence under section 8 of the Railways Act and a European licence for the purposes of the Railways (Licensing of Railway Undertakings) Regulations 2005. It intends to operate the services itself.

### **WCTL safety case**

- 6.2 WCTL has an accepted railway safety case under the Railways (Safety Case) Regulations 2000 in relation to its existing services. WCTL is in the process of securing a safety certificate for the purposes of the Railways and Other Guided Transport Systems (Safety) Regulations 2006.
- 6.3 The safety case incorporates the safe operation of tilting trains (i.e. Class 390 and 221) at Enhanced Permissible Speeds and HST speeds as part of the services to be operated under the BAARs.

### **Additional information from section 22 application form**

- 6.4 As indicated elsewhere in this document, this is an application for approval of BAARs, not for approval of a new or amended access agreement. This is an important distinction as the access rights for which approval is sought are rights determined in accordance with the existing PUG 2 contract and are rights under that contract, not a new contract, from the date that they are approved by ORR, if this occurs.
- 6.5 For this reason:

#### *Model clauses*

- (a) the proposed BAARs do not require replacement of the commercial terms contained in PUG 2<sup>20</sup> and hence the issue of a model track access contract does not arise for the purpose of Section 3.2 of ORR's Section 22 application form;

#### *Duration of contract*

- (b) as the BAARs do not constitute a new contract, they exist as part of the existing contract as soon as they have been approved and so the duration of the existing contract is not being changed;

#### *MoC*

- (c) the proposed BAARs do not change the existing PUG 2 provisions in relation to moderation of competition;

#### *Charges and incentives*

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<sup>20</sup> Note however that a PUG 2 replacement is being negotiated, as indicated above.

- (d) no changes are proposed (as part of the process of determining best achievable access rights) in relation to the charges already contained in the WCTL TAA;

*Restrictions on use*

- (e) no proposals are included within the BAARs for changes to the arrangements for possessions and other restrictions on use already contained in PUG 2; and

*Performance regime changes*

- (f) no changes are proposed to be made to the existing Schedule 8 of the WCTL TAA.

**Congested infrastructure**

- 6.6 No parts of the WCML have been declared congested by Network Rail under regulations 23-25 of the Railways Infrastructure (Access and Management) Regulations 2005.

**Protected rights status**

- 6.7 WCTL is not seeking protected rights status for the BAARs (although such status has been sought in relation to the counterpart Schedule 5 Rights agreed and documented under the submitted PUG 2 replacement).

**Journey time protection**

- 6.8 The timetables appended to the BAARs Document afford journey times which the parties consider support delivery of the WCML Strategy.

**Limitations on flexibility**

- 6.9 The Working Timetable assumes various minimum dwell times and set intervals between services departing from stations of origin with an appropriate degree of "plus or minus" flex.
- 6.10 Earliest and latest times for train departures and minimum and maximum turnaround times are also implicit in the Working Timetable.
- 6.11 These various characteristics are required to deliver the WCML Strategy and to afford appropriate protection for WCTL and its passengers.

**Public funding**

- 6.12 The proposed services to be operated on the basis of the BAARs for which approval is sought are not publicly funded (other than by the DfT).

**Passenger Focus**

- 6.13 Passenger Focus was consulted as part of the timetable development process.

**Route utilisation strategies**

- 6.14 These BAARs are consistent with the information contained in the Route Utilisation Strategies for the North West, Scotland and Freight.

### **Specified equipment**

- 6.15 The Class 221 has secured route acceptance for passenger service at tilting 125 mph operation. The Class 390 has achieved route acceptance for passenger service at non-tilting 110 mph operation and for passenger service at tilting 125 mph operation.

### **Performance and reliability**

- 6.16 The Public Performance Measure (PPM) has remained steady over the past year, with the moving annual average standing at 85.9% at the end of Period 0901, compared to an MAA of 85.8% at the end of Period 0801.
- 6.17 WCTL is confident that it will have the drivers and other resources required to operate the services contemplated under this application. Class 390 fleet availability and reliability continue consistently to meet targets, although the loss of a trainset from service for the entire current timetable period due to the derailment at Grayrigg will present challenges. However, WCTL is confident that 46 trains will be consistently made available for start of service with a fleet reliability around 15,000 miles between service affecting failures.
- 6.18 WCTL has designed route contingency plans to mitigate performance issues that arise “on the day”. These include provisions for stepping up services to cover for a shortfall of up to 2 trainsets; general principles that provide guidelines for managing service during times of disruption; details of the interfaces with other operators; detailed route specific plans for managing line blockages; plans for the management of rolling stock shortages by depot; and temporary timetables for use in exceptional circumstances.

### **Corresponding Day**

- 6.19 In relation to calculating compensation payable under Schedule 4 of the WCTL TAA during the period of application of the eleventh set of BAARs, the parties intend to apply the “corresponding day” arrangements set out in Part 2 of Schedule 4 of the WCTL TAA.

### **Related applications**

- 6.20 This application is not being made in parallel with and it does not relate to any other current or proposed application to ORR, except for the applications which the parties have made for approval of a PUG 2 replacement.

### **Entire agreement**

- 6.21 ✕
- 6.22 Otherwise, the whole of the proposed transaction between the parties has been submitted with this application.

## **7. THE WCML STRATEGY**

### **WCML Strategy**

- 7.1 On 16 June 2003 the SRA published its WCML Strategy to provide for an optimum utilisation of capacity between users of the WCML and the process for carrying out the upgrade and renewal works to deliver the outputs required to provide this capacity.

This was supplemented by the SRA and DfT's reports published in April 2004 and May 2006 respectively, each entitled "*West Coast Main Line: Progress Report*".

### **Consultation process**

- 7.2 The WCML Strategy has been prepared following extensive consultation carried out over a number of months with operators, stakeholders, and the public. The SRA conducted many consultative meetings in public and privately with groups holding specific interests, including all operators using the WCML, RPCs and other significant user organisations.
- 7.3 Throughout the development of the WCML Strategy, care has been exercised to consider the rights of all existing users.

### **WCML Strategy and the Periodic Review**

- 7.4 In line with the revised governance arrangements for the WCRM project which are described in the SRA's WCML Strategy, the SRA provided Network Rail with a specification of infrastructure which Network Rail delivered such that the first set of BAARs were successfully introduced on 27 September 2004, the second set of BAARs on 12 December 2004, the third set of BAARs on 12 June 2005, the fourth set of BAARs on 11 December 2005, the fifth set of BAARs on 27 March 2006, the sixth set of BAARs on 11 June 2006, the seventh set of BAARs on 10 December 2006, the eighth set of BAARs on 20 May 2007, the ninth set of BAARs on 09 December 2007 and the tenth set of BAARs on 18 May 2008.
- 7.5 ORR has assumed the WCTL December 2008 journey time outputs (which are proposed to be the realisation of the WCML Strategy) will be delivered for the purposes of the Periodic Review.

### **BAARs and timetable development**

- 7.6 All parties, including the DfT, consider it to be extremely desirable that WCTL should have Firm Rights of a nature which support the continued delivery of the WCML Strategy. The Firm Rights set out in the BAARs Document are designed to achieve this and reflect the WCTL train slots in the timetable developed for implementation in December 2008.
- 7.7 The WCML has undergone considerable change over the past few years in order to improve capacity and increase line speeds. To maximise the opportunities afforded by this new capability, a West Coast Timetabling Group was set up to develop the WCML timetable. In addition to Network Rail and WCTL, the West Coast Timetabling Group comprised the following key WCML stakeholders: CrossCountry, Silverlink, Central Trains, Northern Rail, TransPennine Express, Arriva Trains Wales, English Welsh & Scottish Railway, Freightliner and DfT, as well as occasional attendees First ScotRail, Centro and Transport for Scotland. The interests of other smaller freight operators were represented by English Welsh & Scottish Railway and Freightliner.
- 7.8 Network Rail has developed the December 2008 timetable in collaboration with relevant TOCs and FOCs operating on the WCML. This process has had regard to the rights currently held by affected operators, including their aspirations with regard to how they intend to exercise those rights in the future. The BAARs have been developed in tandem with this collaboration, and also reflect the requirements of WCTL's franchise agreement.

- 7.9 Further information about the timetabling process is set out in the WCML Strategy, in particular paragraph 2.17 (Timetabling process) of that strategy, and in Section 8 of that document.

### **Relationship between this submission and WCML Strategy**

- 7.10 This application for the approval of BAARs is compliant with the capacity utilisation anticipated by the WCML Strategy. As mentioned elsewhere in this submission the DfT supports this application. It is understood that the DfT will ensure that service level commitments for future franchisees using the WCML require them to contract with Network Rail for rights which are aligned with the WCML Strategy and the supporting timetable development and validation process.
- 7.11 It is felt that the previous extensive consultation carried out in developing the WCML Strategy supports this application and may prove to be helpful to ORR in its consideration of this application.

## **8. VERIFICATION ETC**

### **Timetable development and validation process**

- 8.1 Network Rail has completed preparation of a 24 hour weekday, Saturday and Sunday Working Timetable for passenger operators. For freight operators, standard paths were included in the timetable from the outset for weekdays between 0600 and 2200 hours south of Crewe and south of Trafford Park. North of Crewe, long distance paths in the December 2007 timetable have been rolled over into the December 2008 timetable. Network Rail has also completed allocation of standard daytime weekday freight train paths to each freight operator. It is this Working Timetable that has been used to create the proposed eleventh set of BAARs. As regards validation, the BAARs timetable is believed by Network Rail to be consistent with the Applicable Rules of the Route (for the engineering periods when the route is open throughout) and Applicable Rules of the Plan for the period in question.
- 8.2 Network Rail continues to seek to satisfy freight operators' outstanding compliant bids (including those for overnight and weekend services) and plans to conclude this by 30 May 2008 when Network Rail will share with freight train operators a full 24 hour, 7 days a week timetable. This should enable freight operators to complete their understanding of the effects of the BAARs timetable on their businesses and therefore conclude any response they may have to it. Network Rail will also then be seeking to agree any resulting amendments to the freight operators' contractual rights, but if such agreement cannot be reached speedily, Network Rail is prepared to issue modification notices to the affected operators in time for the ORR to consider and approve them before 11 July 2008.

### **Safety**

- 8.3 Network Rail confirms that it will act in accordance with its safety management system as regards its application to the maintenance, renewal and upgrading of the WCML undertaken by Network Rail.