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8<sup>th</sup> June 2011

Dear Gerry,

**Proposed Changes to the Station Access Conditions and Independent Station Access Conditions – Network Rail’s response to ORR’s consultation**

Network Rail welcomes the consultation on a revised contractual regime at stations. As you note in your consultation document, Network Rail worked through 2010 to develop and propose a new streamlined and simplified process for Station Change, and one which will provide appropriate rights and responsibilities to those third parties wishing to invest at stations. We also welcome the opportunity for the station contractual framework to be updated for the changes in terminology and the new ADRR.

We can confirm that no part of our response is confidential and we are content for it to be published in full.

We believe that it is important that station change is dealt with in a structured and efficient manner to facilitate and communicate change effectively. All parties involved in station management need to be able to progress changes with reasonable speed and efficiency and have assurance that the resulting change is properly recorded and accepted. Beneficiaries and interested parties to a station and its services need to be reasonably consulted and informed on proposed changes.

Network Rail strongly believes that this proposal will help implement one of the Sir Roy McNulty’s Value for Money Report recommendations to “improve the legal and contractual frameworks so that decisions are faster and change is easier” in relation to stations.

In our response we have set out our comments to the questions using the title heading and paragraph numbers used within the consultation document.

**1.1 Differentiating between proposed changes to the national template SACs and specific Station Change proposals**

**6.5 Respondents are requested to submit their comments on this proposed differentiation between Part B and Part C changes (Part 2 and 3 of the ISACs). In particular, we would welcome comments on the following points:**



- **The retention of a voting process for changes to the national template SACs, and whether the 80% threshold for approving a change proposal is appropriate:**

Network Rail supports the proposed differentiation between Part B and C changes, and are happy with the proposed threshold.

- **The deletion of the need to hold Station Meetings (as currently defined)**

Network Rail agrees to the deletion of the need to hold Station Meetings, as these very rarely if ever happen in practice. If the proposer of a change felt a meeting was useful not having it in the contract does not preclude a meeting from being called. In practice the establishment of Integrated Station Plans and the growing collaboration on investment in stations as evidenced in the National Station Investment Programme has further mitigated the need for specific change oriented meetings.

## 1.2 **Categorisation of Station Change Proposals in Part C**

### 6.5.1 **Respondents are requested to submit their comments on this proposed categorization. In particular, we would welcome comments on the following points:**

- **Is the £5,000 threshold proposed in the definition of “Financial Impact Test” for assessing materiality the correct threshold?**

After much consideration Network Rail believes that an appropriate threshold would strike a fair balance between the need to reduce administration costs associated with small claims and also reflect the concerns of Station Operators that too high an amount would leave them with unforeseen additional costs. This is particularly the case where the changes result from requests or funding from third parties who may not be aware of the operating cost implications of the change proposed. Network Rail therefore believes that £5,000 is an acceptable figure, but would suggest that this should be kept under review as part of the periodic review process.

As an example of how this would work in practice, provision of a simple waiting shelter at a small station under the current regime would require a Station Change to be progressed. Under the proposed process, such work would be below the £5,000 threshold and could be immediately implemented providing benefits to the users of the station far sooner than might otherwise be possible.

- **Is there an alternative practical method of assessing materiality which respondents would favour?**

Network Rail believes that any other method of assessing materiality would be much harder to quantify and be at risk of being highly subjective. With an increase in the consultation parties it is important that materiality is as objective as possible. Subjective thresholds are likely to lead to more uncertainty, more disputes and considerably slow down the process in either reality or in planning assumptions all of which are likely to give rise to cost increases.

### 6.8.1 **We invite respondents to set out their comments on whether it would be appropriate to allow operators to make representations (or even objections) in relation to an Exempt Activity, and/or to receive compensation in relation to the same.**

Under the current regime many activities may be undertaken which do not need to be formally recorded or consulted and which are akin to “Exempt Activity”. They are generally routine and

predictable, and form part of normal activity at the station. In practice they will be part of a daily dialogue between the parties, and may also be subject to implicit approval routines, such as the signing off of method statements or access permits. Such routines are entirely appropriate for the type of activities which it is intended to classify as “Exempt”. It follows that they therefore should not require additional and formal consultation as part of the Station Access regime or be compensatable, unless they become “Material”. We believe that the current regime does not offer the clarity which is required as to what is and what is not “exempt”, but that the current freedom to undertake these actions should be continued. The new process would provide this clarity as to what activities require a more formal or compensatable approach via the Change process, especially if supported with guidance (as per response below).

- **Would respondents benefit from Network Rail producing guidance in relation to what is covered by its proposed definition of “Exempt Activity”**

Network Rail would be happy to produce guidance in relation to what is covered by the proposed definition of “Exempt Activity” if this proposal is implemented. An initial list of examples was set out in Network Rail’s proposal (included in ORR’s consultation documentation – Figure 2 of Appendices to Letter dated 8 October 2010). Network Rail further suggests that an industry agreed set of guidelines is produced for Station Change.

### 1.3 Direct involvement of third party developers

#### 6.12.1 Respondents are requested to submit their comments on the proposed direct involvement of third party developers. In particular, we would welcome comments on the following points:

- **Is the direct contracting with third party developers satisfactory?**

There were two clear problem areas which third parties identified during our discussions with them. Firstly, they felt that they remained outside of a process which had a major impact on their proposals both in relation to costing and timing but they had no direct influence on, or engagement in, it. Secondly (and this was particularly the case for Strategic Contributors), having invested considerable sums in station improvements they then had no further say in how the station was further developed or changed. For both reasons, they felt there was a disincentive to invest in stations. Network Rail came to the conclusion that this potential barrier to investment by third parties would only be overcome if third party funders could be involved directly in the Station Change process.

- **Is the distinction between the type of developer who can qualify as a Specific and Strategic Contributor appropriate?**

In developing its proposals Network Rail sought views on the issues and needs of different parties. We concluded that there was value in making a clear distinction between the types of parties interested in stations and their rationale for being so.

Network Rail believes that the two groups have different needs, and that the distinction between the two is correct. Strategic contributors will mainly be Governmental bodies with a longer term interest in a number of stations, whereas a specific contributor will have limited interest in a single station for a specific development or project, and these needs are appropriately reflected in the proposed drafting. Limiting the interest of specific contributors

also ensures that administrative costs to the industry of formal consultation are appropriate and affordable in relation to the potential industry benefits.

- **Are the proposed qualification thresholds appropriate?**

Network Rail believes the proposed qualifying thresholds seem appropriate, but would suggest that this is kept under review to ensure that the values do not lead to any perverse incentives or behaviours. Successful stations will come from stations that are supported and integrated into the communities they serve. The provision for third parties is to provide both a mechanism for understanding and a means to attract additional investment into the industry. Any such mechanism needs to be scoped so that participation is constructive and does not delay or hinder station improvements and their benefits to the industry and other stakeholders.

#### 1.4 **Grounds for objecting to a Material Change Proposal (C4.7 of the proposed SACs and 10.7 of the proposed ISACs)**

#### 6.15 **Respondents are requested to submit their comments on the proposed grounds of objection. In particular, we would welcome comments on the following points:**

- **Are the grounds of objection as drafted sufficient?**

Many recent studies of the industry, including the Better Stations Report, Nichols Report and McNulty review, have identified the change mechanism as a substantial barrier to station investment and improvement. We consider that this is in no small part due to the effective veto over change that can be effected by any respondent to a station change proposal. This results in enhancement schemes being either stopped, perpetually delayed or incurring unplanned costs. The latter is particularly the case in the absence of clear rules for financial settlement and dispute resolution, and where short term interests may conflict with longer term benefits.

It is therefore essential that there is a common process that all can adhere to, and which has a fundamental presumption that change is normally a positive and beneficial activity for end users of the railway that needs to be encouraged. One way of achieving this is to ensure that there are limited grounds for objection. What is proposed is that these grounds should be limited to insufficient information to properly consider the proposal, or that the change would result in a breach of either Statute, regulatory or contractual agreements. This will prevent vexatious challenges to legitimate change that delay benefits being realised and consequential improvements in value for money for the industry.

It should also be noted that where a third party developer is proposing a change, the rail industry parties have further rights to object to make sure the change is appropriate for the industry and its future strategy, and that the change follows ORR's guidelines. This recognizes that third party involvement with the rail industry may be required to achieve objectives which are unrelated to industry's obligations and imperatives, and can be imposed as a result of legal process (e.g. s106 town planning obligations). It is therefore important that the industry is not forced to implement proposals which may benefit the third party to the disbenefit of the industry itself. There needs to be a balance established between the industry and third party interest, which enables beneficial investment to occur without enabling inappropriate or unsustainable changes to take place.

In relation to asset protection, and following the work being undertaken for the Greater Anglia Franchise, Network Rail needs comfort that where there is commercial exploitation

by a third party developer which does not directly enhance the station, that their proposals fit with the existing asset protection requirements such that network operation is not prejudiced. Network Rail will develop drafting for this and submit to ORR shortly for their consideration. This additional requirement on third parties offers protection for both Network Rail as operator of the network, and to train operators as users of that network.

The drafting proposed moves towards the simplicity and certainty that Network Rail advocates to reduce the costs and time of industry station schemes.

- **Is this separation of financial compensation (and the provision of alternative accommodation) from the list of valid objections appropriate?**

Network Rail strongly believes that the separation of financial compensation from the list of objections is fundamental to transforming the current Station Change to an enabling one.

If the proposer is required to wait until any dispute over compensation is resolved, then projects could be seriously delayed, which in itself is a disincentive to development as costs of implementation and risks to the realization of the business case are likely to increase through construction inflation and other pressures. Proposals for change to a station are rarely for negative purposes – most provide additional benefit or value to the users of the railway network and/or the local community surrounding the station. Unproductive delay over the amount of compensation due merely denies end users of benefits and serves to ossify stations and potentially risk deteriorating their performance and contribution to passenger satisfaction.

Where consultees may suspect that a sponsor has to work to strict project timescales, they may be incentivised to delay the proposal as a means to seek to increase the compensation payable. This can in turn reduce the amount available to spend on enhancements, thereby creating value for money issues.

The proposed Co-Operation Agreement deals with both what is known at the time of the station change, and gives a framework to address the unknowns which will give the parties comfort. This avoids pro-longed discussions that consume industry energy and resource on hypothetical areas which may not be realized.

Having a Co-operation Agreement under which all the systems for arriving at a fair result are transparent must be beneficial to everyone.

## 1.5 Registration and implementation of a proposed Station Change

**6.15.1 The proposed modification provides that a Station Change proposal must be registered with ORR in order to be effective and before it can be implemented. There is a limit on how long a registered proposal can remain effective without being implemented, before it lapses.**

- **Respondents are requested to submit their comments on the proposal that Station Changes should be registered with ORR**

Network Rail believes that it is important that ALL Station Changes are registered with ORR, and that the public register should be seen as the definitive statement of the contractual position for each station. This will ensure that when franchise changes take place there is a full trail of all station changes which have happened at a station. It also ensures that parties intending to undertake change will be aware of changes already approved. There have been

many instances where a Station Change has taken place, and nothing was registered with ORR, leading to subsequent contractual disputes about equipment responsibility at the stations concerned. This kind of scenario would be avoided.

- **Respondents are requested to submit their comments on the proposal that registered Station Changes cease to be effective if not implemented within a set period after registration.**

Network Rail believes that giving a specific timescale will help minimise development blight, clarifies and provides greater certainty to the documentation for any station at any moment in time and ensures that the changes remain relevant over time.

## 1.6 **Costs Issues in the Co-Operation Agreement**

### 6.22.1 **Respondents are requested to submit their comments on the Co-operation Agreement. In particular, we would welcome comments on the following points:**

- **Are the alternative ways of compensating Material Change Consultees sufficient**

This proposal has been based on the experience of dealing with compensation arrangements in the wider property market, and in particular where compulsory purchase powers have been used. The options of either taking a fixed lump sum or compensation based on emerging costs is common practice and enables the promoter and the person receiving the compensation to take a considered view on cash-flow and risk issues that may arise on such schemes.

- **In instances where part of a fixed sum is to be returned by a consultee because a Material Change has not been completed, is the addition of interest appropriate?**

Network Rail believes it is appropriate to include interest on any amount not expended as this would also incentivise the parties to quickly clarify their intent with regard to a delay change and promptly pay back any sum and reduce net industry costs.

- **If a Material Change once-commenced is left incomplete (for any reason), should there be provisions for reinstating the original position (which might lead to consultees incurring further costs)?**

We believe that each case may have different requirements, and it may not be sensible to reinstate the original position. Such a change might lead to the loss of passenger facilities where the entire scope of the original Station Change has not been provided.

If the change has not been completed then the proposer is in breach of the Station Change, and therefore remedies can be sought against them if necessary. Resolution of the situation would itself require a further change proposal to be progressed. This would enable the parties to resolve the situation satisfactorily, and take the various financial and station operational factors into consideration.

## 1.7 **Provision of Alternative Accommodation in the Co-operation Agreement**

## **6.26 Respondents are requested to submit their comments on the appropriate terms for the provision of alternative accommodation.**

Network Rail notes that the requirement, contained in the existing SACs to provide an undertaking for alternative accommodation, is limited to making available alternative Station Facilities where Network Rail has first agreed, in the change proposal itself, to provide alternative facilities (see existing SAC C3.3.2), and is not a requirement to replace **all** affected Station Facilities. Therefore the proposed drafting and resulting obligation is more onerous than that provided by the present SACs.

Limiting the provision of alternative accommodation to replacement of Core Facilities that are required for the Station Change works, rather than Station Facilities as a whole, is considered appropriate by Network Rail given the overall mechanism of Station Change. Additionally the present SACs distinguish between a Railtrack Change Proposal, and a Material or Major Change Proposal. In the former case Network Rail must specify (assuming it is proposing to provide them) any alternative Station Facilities and undertake to make alternative accommodation available, whereas in the latter there is no obligation to provide alternative accommodation, even though a TOC is entitled to relocate any Core Facility as part of its proposal.

Network Rail considers a middle and clearer position to be appropriate for all proposers, with the result being that they must provide alternative accommodation in relation to Core Facilities (being accommodation to meet the TOCs fundamental business needs as a provider of train services, namely staff parking, TOC offices and storage, ticket sales and passenger information facilities, and messrooms, cloakrooms and staff rooms). To extend the application of this requirement to all Station Facilities (platforms, forecourts, ticket offices, toilets, waiting rooms and virtually all other parts of the Station) would effectively make it impossible to propose anything other than like for like works which may no longer be appropriate or necessary...

It is also to be noted that a consultee is entitled to object on the ground that the proposal would put it in breach of its Franchise Agreement, so to the extent it is under an obligation to provide a minimum level of facilities at the Station, it is protected anyway. In addition, the DfT controls the closure of station passenger facilities through the Railways Act 1993, and therefore the closure of facilities is impossible without due consideration of the need for their replacement. .

## **1.8 Additional modifications**

### **6.28 Respondents are invited to provide any comments or observations they may have on these proposed additional modifications.**

Network Rail welcomes the proposal to update the SACs for out of date terminology and the new ADRR.

I trust these comments are useful and Network Rail would be happy to discuss in more detail any of the issues raised in this response. I am copying this email to Paul Plummer and Gabrielle Ormandy at Network Rail as well as Alec McTavish at ATOC.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Mike Goggin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**Mike Goggin**  
Director Stations & Customer Service