

Abigail Grenfell
Manager, Licensing and Network Regulation
One Kemble Street
London
WC2B 4AN

20 June 2011

Dear Ms Grenfell

Response by London Overground Rail Operations Limited to ORR consultation on proposed changes to Passenger Train Operators' Licences in relation to passenger information

Thank you for your letter dated 29 March 2011 in which you request comments from the industry and stakeholders on proposed changes to licences to include specific obligations in relation to passenger information.

Whilst we regard the provision of accurate and timely information to passengers as an important objective, I regret to inform you that we are unable to accept the current proposals as agreed changes to our licence for reasons set out below. We recognise that ORR may choose to pursue this matter by reference to the Competition Commission and if so we reserve our right to expand upon the arguments herein. We would, however, strongly recommend further cross-industry dialogue, as proposed in the joint response by ATOC to this consultation, is actually the preferred way forward.

We agree with the statement that the current position is complicated. Indeed in our view it is probably even more complicated than ORR's analysis suggests. In particular we believe insufficient attention has been placed on two crucial aspects of the problem:

1. That on many occasions during disruption it is not a lack of will or effective processes that prevents accurate information being disseminated, but a genuine lack of knowledge of what will happen next (for example just how long it will take to find and replace a stolen or vandalised signal cable).
2. That systems and responsibilities are split between industry players with different funding and incentive structures.

The licence route does not offer a solution to either of these problems. Indeed it could make the situation worse by incentivising risk-averse behaviour such as announcing and sticking to service shutdowns in order to make information accurate, rather than running what proves possible.

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The debate on industry structural issues and costs stimulated by the McNulty Report may offer an opportunity to clarify roles in the future and indicate migration routes to new and more effective systems. However, these will take time to identify and implement. Until these future arrangements are clear, we consider it premature to introduce new obligations, the fulfilment of which is problematic under current structures.

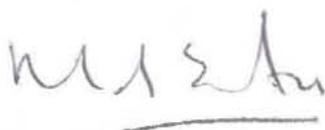
We note the consultation document identifies four options for improving information provision, one of which is to allow the industry to continue its current improvement process. We consider this process should be permitted to continue and do not see any evidence presented that this will not produce improvement. Indeed we note that the consultation document states "We think the current codes of practice and industry improvement plans are adequate but they should be made more visible to passengers and may need revision over time", a statement that does not suggest a strong case for additional regulation.

We do not accept the proposition contained in para. 35 that the proposals will not place a greater regulatory burden on licence holders. We consider the whole tone of the consultation document is clear that new obligations are exactly that which is intended, and we note that unhelpful statements have been made indicating the scale of potential future enforcement action. Our business is operated under a concession awarded competitively against the requirements of TfL and the licencing framework as it existed at that time. We consider these proposals introduce new and potentially costly obligations that were unknown and unforeseeable at the point our concession was tendered, for which there is minimal commercial benefit, but for which there is a risk of substantial enforcement costs.

Given that there is no mechanism to permit concession payments to be adjusted to take account of new licence obligations, we cannot accept these proposals as an agreed change and are of the opinion that any attempt to impose them will compromise our ability to plan activities in this important area and increase uncertainty in our business plan for the future of our business. Furthermore, we are disappointed to note that the proposed changes to Network Rail's licence are subject to the general disclaimer regarding the ability of the licence holder to finance its licensed activities, whereas no such protection is available to TOCs. Since, as indicated earlier, most improvements to information are likely to require joint action of TOCs and Network Rail, we consider this leaves us unacceptably at risk rather than better able to plan our business.

We would be pleased to continue with joint industry efforts to improve the quality of information provided to customers, providing there is either no material extra cost or such costs are met by additional funding, and welcome ORR's active involvement in finding best value solutions.

Yours sincerely



Mark Eaton
Concession Director