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Dear Julia and Chris

Approval of the Fifteenth supplemental agreement to the track access contract between Network Rail Infrastructure Limited and First TransPennine Express Limited (FTPE)

1. We have today approved the above supplemental agreement submitted to us formally on 17 May 2018 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to set out the reasons for our decision.

Purpose of the agreement

2. The purpose of this agreement is to make some significant changes to the May 2018 timetable as follows:

North TransPennine Service Group

3. Service improvements and enhancements between York and Newcastle and Manchester/Manchester Airport and Liverpool. These are infills and extensions of existing Manchester Airport and Liverpool services, providing connectivity where FTPE do not currently operate.

4. Improvements to connections between Manchester Piccadilly and Scarborough/Middlesbrough in both directions. This will be achieved via a combination of amending some existing service rights and via the introduction of 14 new "infill" services across the week in hours currently without FTPE services.

5. Hull to Manchester service improvements in both directions. This will be achieved by a combination of extending Hull to Leeds rights through to Manchester Piccadilly and via the introduction of 14 new infill services across the week in hours currently without FTPE services.

6. Transfer of the Transpennine 6th Path. These are essentially Leeds to Manchester Piccadilly services (apart from 1 x SX and 1 x SO service that will start at Huddersfield instead of Leeds) and are created from the transfer of Arriva Rail North rights to FTPE.

7. The expiry date of the rights for all of the above North TransPennine Service group changes (apart from the transfer of the 6th path) is the Subsidiary Change Date (SCD) 2019. The expiry date of the rights for the 6th Path services is SCD 2024.

South TransPennine Service Group changes

8. These changes are intended to improve connectivity between Cleethorpes/Doncaster and Manchester Airport by combining and extending rights. The intention of the combined services proposed is to remove the need for passengers to change for connections at Sheffield and introduce a direct through service from Manchester Airport to Cleethorpes instead. 3 existing Manchester Airport to Sheffield services are to be extended to Doncaster and 1 existing Manchester Airport to Sheffield service is proposed to be extended to Manchester Piccadilly.

9. The expiry date of the rights for the Sheffield to Doncaster extensions is SCD 2019, all the other services will be SCD 2024.

Anglo-Scottish Service Group changes

10. Minor service changes are proposed in order to enhance weekend and early morning/evening connectivity between Scotland and Manchester Airport. This includes an additional Sunday service between Glasgow Central and Manchester Airport and 2 existing services into Manchester Airport to start at Lancaster rather than Preston. The expiry date of rights for these services will be SCD 2024.

Consultation responses

11. Network Rail undertook the usual industry consultation from 9 February to 9 March 2018. Supportive responses were received from Transport Focus, Nexus, South Yorkshire Passenger Executive and MerseyTravel. East Midlands Trains had some queries, which were resolved by correspondence.

12. On 9 March 2018, Virgin Trains East Coast (VTEC) commented on the North TransPennine Service Group changes only and said it did not support the application. It was concerned about the performance impact on VTEC's services and questioned the lack of performance modelling. It also said FTPE's proposals were not compatible with the access rights already approved between York and Newcastle after SCD 2019.

13. On 13 March 2018, FTPE wrote to VTEC in an attempt to address the concerns raised. It said, *“With regard to the VTEC performance concerns and the need for performance modelling, Network Rail, TPE and industry operators jointly reviewed the position at both the LNE TCRAG on 17 August 2017 where no particular issues were identified. Further, with the proposed services being a replication of an existing TPE service pattern that has been in place since December 2016, a full review of this existing train performance was undertaken. This has shown that the existing TPE services to Newcastle have not impaired performance on the ECML. It was considered that this review of services in place and therefore of current reality, superseded any need for performance modelling.”*

14. The letter also quoted the relevant Network Rail Sale of Access Rights paper, which said, *“It is not believed that there is a performance risk per se with these services, but it should be noted that these changes take place alongside a large number of service for ARN and taken together the performance impact might be significant, but it is unknown at this stage. Because of the complexity of the changes and wide geographic area over which they are spread it has not been possible to undertake any sort of comprehensive modelling.”*

15. The letter also went on to say that, with regard to capacity after May 2019, Network Rail was undertaking significant analysis to see if there was capacity for FTPE services to continue after this date.

16. VTEC replied again on 21 March, and continued to express concerns. It also suggested that if ORR did approve FTPE’s application it should make it clear that “the new services are temporary and only guaranteed for 12 months.”

17. FTPE met VTEC on 10 April to discuss these issues and followed this up with a letter on 16 April noting VTEC’s concerns. This letter stated that, with regard to capacity after SCD 2019, FTPE would discuss the industry position with Network Rail and VTEC in the near future. Regarding VTEC’s concerns about performance modelling, FTPE said that it believed Network Rail was best placed to address these concerns. VTEC subsequently confirmed to us that their concerns had not been resolved.

Our review and decision

18. On 19 April 2018, we sought comments from the Department for Transport (DfT) regarding capacity after SCD 2019 and, specifically, VTEC’s comments regarding the incompatibility of their current access rights and FTPE’s proposed services after that date.

19. DfT replied on 2 May 2018 and said that the issues referred to were “best managed through rail industry processes as usual”. It also said that it understood that any application for access beyond SCD 2019 will be subject to separate consideration. It also noted that there is an existing Industry Planning Group making recommendations for the future allocation of East Coast Main Line capacity.

20. We do not have any economic, operational or performance concerns about the Anglo-Scottish Service Group and South TransPennine Service Group changes and the transfer of the TransPennine 6th Path. We are content to approve these rights for the periods requested.

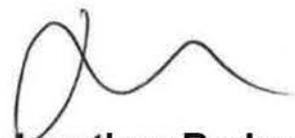
21. We have noted the concerns that VTEC has with regard to the North TransPennine Service Group changes. The situation regarding capacity on the East Coast Main Line after SCD 2019 is unclear. Taking this into account, we are content to approve these rights until SCD 2019 but there should be no presumption that any future application for these rights will be approved after this date.

22. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

23. Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and the Train Operator. Please send the conformed copy to me at ORR.

24. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at DfT and to Peter Craig at Network Rail. Copies of the approval notice and the agreement will be placed on ORR's public register and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Rodgers', with a stylized, flowing script.

Jonathan Rodgers