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16 May 2019

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Route Contracts Manager
Network Rail
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Birmingham
B1 2ND

Chris Hassall
Head of Commercial Contracts
First TransPennine Express Limited
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Bridgewater House
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Manchester
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Dear Tamzin and Chris

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

1. We have today approved the above supplemental agreement submitted to us formally on 15 May 2019 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. This letter explains the reasons for our decision.
2. The purpose of the original agreement, informally submitted on 1 March 2019, was to add a number of services (between Liverpool and Glasgow, Manchester and Doncaster, and Newcastle and Edinburgh) to the parties' track access contract from the Subsidiary Change (SCD) 2019 to SCD 2020. The rights were a mix of firm and contingent.
3. Network Rail undertook the usual industry consultation from 23 December 2018 until 24 January 2019. Cross Country Trains had some queries regarding the application, which were answered by FTPE. London North Eastern Railway (LNER) objected to the services between Newcastle and Edinburgh only. There were no objections to any of the other services. LNER had concerns about performance, capacity and the lack of sufficient power supply on the route. It also said that the proposed services were abstractive and asked ORR to consider the Not Primarily Abstractive test for them. Network Rail, FTPE and LNER were still corresponding about these issues when the application was informally submitted to ORR on 1 March 2019.

4. Given that the disputed Newcastle - Edinburgh services were not intended to start until September 2019 and LNER's objections were still being considered, we asked the parties to separate those services from the other non-contentious ones which needed to be approved for SCD 2019. The parties subsequently submitted a 26th Supplemental Agreement for just the Newcastle - Edinburgh services (which we will consider later), while this 23rd Supplemental Agreement was amended so that it only included the remaining, non-contentious, services.

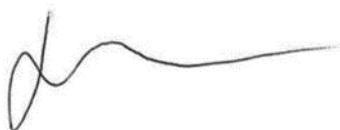
5. Our own review did not identify any concerns with the proposal, so we have approved the supplemental agreement.

6. 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)).

7. 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.

8. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport to Peter Craig at Network Rail. Copies of the approval notice and the agreement will be placed on ORR's public register (website) 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', written in a cursive style.

Jonathan Rodgers