



Virgin West Coast Trains Ltd.
North Wing Offices
Euston Station
London NW1 2DS

Paul Stone
Access Executive
c/o Office of Rail Regulator
1 Kemble Street
LONDON WC2B 4AN

8th March 2012

Dear Paul,

**Virgin West Coast Trains Ltd response to ORR's Consultation on
"The Structure and Specification of Access Rights"**

In consideration of the ORR's consultation received on 25th January 2012, but in this specific case with relevance to "*the Structure & Simplification of Access Rights*" only, West Coast Trains Ltd [WCTL] hereby responds with the following comments.

We must, at this juncture, make reference to the fact that WCTL is responding to this consultation exercise in its current capacity, as the incumbent West Coast Main Line Franchised Passenger Train Operator, but equally mindful that it is also one of the short-listed bidders for the ongoing ICWC franchise competition.

We have therefore approached this consultation taking cognisance of our current position, which means we are responding in general terms only, to those specific questions contained within the consultation paper, (namely 2 to 5 inclusive); those remaining questions being responded to later in April.

Introduction

1. WCTL welcomes this opportunity to further outline its comments and concerns relative to this review of the '*Structure & Specification of Access Rights*', resultant from the 2010 Access Planning Review, and latterly those outputs being driven through the McNulty report (RVfM); as outlined before, we consider that if approached correctly, this presents a real opportunity to affect positive change for the longer term benefit, of the Industry as a whole.
2. As highlighted in your frontispiece, the RVfM study highlights a far-reaching requirement to '*review those incentives and responsibilities for the efficient management of capacity*', but for which we consider, can only be driven forward by examining those processes that balance both Network Rail's approach to capacity management and the DfT's Franchise requirements.
3. Nevertheless, despite the hard lessons that WCTL, Network Rail and Industry partners have learnt in previous years, particularly during the upgrade of the West Coast Main Line (WCML), the eventual benefits now being witnessed both in terms of passenger growth, as a result of both robust timetable consultation and intensive development, (the net result being a completely new 7-Day Very High Frequency (VHF) timetable), clearly indicates that the Industry can work together to achieve those capacity & efficiency outputs, now being predicted through the RVfM.

4. In our response to the earlier Access Planning review, we tentatively agreed with the Industry Working Group's original outputs regarding its preference to simplify track access rights, but only as far as being considered against the imperative need to preserve both the commercial value and certainty of those rights in place for that Operator, a TOC's entitlement to run trains as specified, should not be compromised by any inappropriate simplification.
5. Whilst we acknowledged (at the time) the IWG's belief that the current description of Rights appeared to constrain any ability to facilitate an improvement in capacity, we also highlighted that those same Rights clearly mitigated a number of potential risks to TOC's, Funders and DfT alike. For example our current Franchise obligations centre primarily on journey times, calling pattern & frequency. It would therefore be unwise to import risk into such elements, and that they therefore remain protected.
6. We accept that the specification of rights in the majority of Train Operator's Schedule 5, protect those significant investments made in both infrastructure and rolling stock, particularly in WCTL case, the WCML upgrade. We are also mindful that the recent approach by the DfT in requiring the simplification and expression of Rights to be of a quantum format only, in order to introduce greater 'flexibility', will result in a direct dilution of WCTL protections, through the inability to be able to plan our business with any reasonable degree of certainty and assurance. This in turn, imports an unquantifiable level of risk into both our Revenue stream and responsiveness to Market change, both elements essential to a TOC's business model.
7. Such 'flexibility' is driven not through the presentation and rigidity of a TOC's Schedule 5, but through the Service Level Commitments (SLC) provided for by the DfT. In other words, whatever the SLC contains needs to be protected in the Schedule 5; as such it is the SLC that restricts any innovation and the advance of timetable capacity development. Taking cognisance of the DfT's move towards quantum, and thus the likelihood of simplifying Schedule 5, there still needs to be a balance against the uncertainty and risk imposed upon the Operator, Funder and Customer. TOCs are thereby exposed to greater uncertainty and risk through Network Rail having significantly greater flexibility alongside a lesser need to comply with contractual obligation, including the lack of an incentive to negotiate.
8. Based also on previous experience, we consider that the responsibility does indeed rest with Network Rail in terms of managing the timetable, its capability and production, but that under devolution and perhaps the positive aligning of Routes with TOC's under Alliances, there should be a more collaborative approach to timetable construction and capacity development than there is currently; however this will only work if the Schedule 5 allows for such negotiation and innovation.
9. For instance, we consider that any dilution (simplification) of specific Calling Patterns would effectively mean that firm rights would become contingent by default, and thus open to risk. It would also have an effect on other parts of Schedule 5, primarily Journey Times & Clockface.
10. Clockface departures are intrinsically linked to Calling Patterns and therefore any dilution or standardisation would have an adverse affect on the provision of regular clockface departures; which, over time, would gradually destabilise a timetable, such that any performance and capacity efficiencies would be negated. Similarly Journey Times (inc. 'Fastest Key') are essential to establishing and protecting a TOC's revenue potential and, as in our case, not undermining the taxpayer's longer term investment in the WCML Upgrade.

11. Journey times, are essential for any Long Distance TOC, where as one could argue that it is less so for a Commuter type TOC or Service Group. It is the amount of flex applied to any service that drives the ability to deliver a robust service to the passenger and provide value for money. Therefore, with premiums set towards weekday passenger markets we would consider it prudent to retain Maximum Key JT's for SX, whereas at weekends there might be more flexibility. Such flexibility limited however to Maximum JT, which, while un-constraining Network Rail in terms of undertaking engineering works, will still give us those protections necessary to grow the weekend travel markets.
12. Quantum is obviously also essential in establishing those core numbers of services (and where applicable station quantum) that are required to operate between and / or through selected nodes / stations; they again integrally link into those elements previously highlighted above under Para 9.
13. Furthermore, any deletion or reduction in the earliest / latest train protections would give Network Rail no distinct parameters with which to block the Network for engineering requirements, leading to gradual erosion in Network Availability. As an Operator who has worked tirelessly to ensure that Network Rail treats Route Categorisation, JNAP's and Network Availability with some degree of importance we would not wish for such positive progress to be put in jeopardy in the future. Indeed, we consider that JNAPs should be contractualised and sit alongside any Schedule of Rights established.
14. The above elements contained within Schedule 5 are paramount to providing the end customer with a timetable that offers both regularity and certainty. Furthermore, any such risk that impacts on revenue, would, in terms of having to balance timetable stability and flexibility, create the likelihood of a material increase in the use of traincrew and rolling stock, which would negate those efficiencies being sought, especially as part of the RVfM.
15. Nonetheless other aspects of Schedule 5, namely Turnaround times, Platform rights Interval Rights, Additional Slots and other parts rarely used in Section 8 could be withdrawn, as long as the ability to retain where necessary, bespoke arrangements is allowed. Likewise the mergence of Schedule 2 into Schedule 5 is a logical and sensible solution, alongside any reduction (through consolidation?) of the amount of specificity of Specified Equipment.
16. Taking the simplification of Rights forward in terms of how they are expressed (and to encompass those critical aspects to be retained as outlined above) , we have examined, as a consequence of previous disputes with Network Rail over Schedule 5 non-compliances, whether we could devise some internal expression of our rights for our own train planning and commercial teams, in order to ensure that in the future, we align our TAC with the SLC (TSR), for use during both 'Bid & Offer' processes, alongside assessing commercial or engineering driven train service changes; we have formally shared this with you.
17. We are also of the opinion that a tabular expression of rights (in the example previously presented, based on service group train listings), gives more clarity and consistency than the current combination of detailed text and accompanying tables, as contained in Schedule 5. Encapsulating all those key Schedule 5 facets in one overarching tabular format, whilst difficult, would provide an all encompassing and fully transparent source from which to work and measure conformance and commerciality.

18. We have had specific experience of a Commercial Purpose provision as this was contained within the PUG2 agreement. We found it very useful in providing an overarching contractual framework and we would support its inclusion in the access agreement structure.
19. In summary we consider that the ORR should:
- Retain as a minimum, those key Schedule 5 elements outlined above. Without them any contractual assurance would be dissipated to such a level that the commercial viability and responsiveness to market forces of any TOC would be significantly disadvantaged, as Network Rail would not be obligated to produce an efficient timetable. We do not consider the Rolled Over Access Rights provisions in the Network Code are an effective means to protect the delivery of this obligation. This would put at risk the ability of WCTL to compete against other modes of transport, and potentially undermine our ability, as for all franchisees, to provide value for money to both our funder and passenger;
 - As ATOC and other Industry partners highlight, any dilution of rights would require TOC's to depend on a far greater use of the Network Code and appeals to the ORR, which itself brings greater uncertainty;
 - Take cognisance that the detail contained within Schedule 5 has, to date, not necessarily denigrated the efficiency of the timetable, indeed in some areas it has brought about improvements in capacity. The recent introduction of the Calendar of Events and Event Steering Groups process (themselves outputs from the Access Planning Review) alongside other associated Network Code improvements, offers the future ability for all Industry parties to identify, develop and nurture access right requirements into robust and efficient timetables; to undertake this any specification of rights need to be sufficiently detailed and transparent.

Yours sincerely

Robert Hodgkinson
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West Coast Trains Ltd.