Responses to July 2021 consultation on ORR's PR23 review of Network Rail's access charges

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PR23 – Review of Network Rail's access charges

Response from Aggregate Industries UK Ltd

September 2021

1. Aggregates Industries UK Ltd (AI) is pleased to respond to the consultation on the PR23 review of Network Rail's access charges. No part of this response is confidential.

2. AI is a leading provider of construction materials and long-term customer of rail freight services.

General Comments

3. We would endorse and support the comments of the Rail Freight Group in their response to this Consultation.

4. Access are a significant component of rail freight costs and are of particular sensitivity to the relatively low value products transported by AI.

5. Access charges provide a lever through which Government policy, for a lower carbon economy, safer journeys and reduced road congestion can be encouraged. Oversight of the relative competitiveness between the choices customers such as AI have to make, for their continued investment in rail in preference to road solutions needs to be maintained.

6. Understanding the cost structure for rail operations for the longer term is important. The identified outcome and substantial increase for heavy axle load traffic emerged late in PR18 and the continued cap unwinding is a circumstance AI are assessing. The continued increase in NR - railway land leases and inclusion of rail terminal plant diesel consumption within the changes to fuel duty are all unwelcome.

7. The simple, blunt charges methodology for track access does not take account of the poor quality of paths certain traffic are using and their impact on overall cost. AI freight traffic typically deliver construction materials into London and the South East. Our freight services are timetabled to be off the Network during the periods when capacity of the Network is being consumed by passenger demand, this leads to terminal loading / unloading activities being undertaken outside of 'normal working hours' incurring higher operational costs. The quality of paths

also feature low speed, regular diversionary running and routine regulation / stopping, which have additional inefficiency impacts.

8. The ORR statements made in various forums identified the unwinding of caps across CP7 in order to gain full cost recovery by the end of CP7 are incorrect. We understand full cost recovery will apply to the charges for the entire final year of CP7. We would urge that the rate at which charges unwind be recalculated to match with the statements made by ORR.

Specific Questions

9. *Question 1.* We agree with the general approach to establish stability during an uncertain period of reform.

10. *Question 2.* It is important that the granular detail which affect individual commodity groups is referenced throughout the review. In PR18 the full impact of on charges was only identified at a late stage (following the Network Rail application of their formulas)

11. *Question 3.* We would expect consistency of application in this area. Due to the change in use of the Network throughout the Pandemic and uncertainty regarding passenger numbers recovering, it is essential that freight is not allocated a greater share of fixed costs.

12. *Question 4.* No comment.

13. *Question 5.* We do not support the proposal to continue with the phasing in policy identified in PR18. As a minimum the phasing in should align with the ORR's statement for this to be completed by the end of CP7 not to apply to the final year of charges within CP7. The policy should be reconsidered given the significant impact (+58% charges) upon certain commodities and how this aligns with other government objectives.

14. *Question 6.* No comment

15. *Question 7.* NR paying VUC would expose NR's usage of the railway to 3rd party use and create alignment of understanding, challenges and efficiency. NR by paying VUC will provide recognition of the cost to their own Network use and

provide better comparison with options for maintaining the Network with less intensive use of the Network itself.

16. *Question 8.* The calculation of VUC is poorly understood. A full step by step guide with actual calculations and costs, including the source data and how it is derived would be helpful. The charges currently have a shroud of mystery which creates unhelpful distrust.

17. More generally, the discount for track friendly bogies should be reviewed to ensure that the incentive effects are sufficient to cover the cost differential, and that any changes also reflect previous investment choices made by operators.

18. 9 – 16 No comment

19. Question 17 We support this proposal

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

The programme of Rail Transformation Programme which has commenced to address the Williams-Shapps' Plan for Rail provides the opportunity to streamline and simplify the current charges structure. However, it is important that this simplification should not result in a loss of transparency as to the underlying costs or how costs are allocated between industry parties and services.

The Rail Transformation Plan also creates the opportunity to address inconsistent or non-transparent elements of the current charges structure such as the distortion evident in charges associated with fixed costs caused by the interaction with the fluctuating level of Network Grants.

As ORR highlight, the Rail Transformation Programme is still at an early stage so it will be necessary to retain flexibility in the PR23 approach to address a range of possible outcomes in the future access system and legislative requirements.

The approach proposed by ORR to build on the core principles underpinning Network Rail's current charging framework aligns with these objectives. However, it would appear that further simplification and increased transparency could be achieved, particularly in the area of fixed cost related charges.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

Arriva broadly supports the initial proposals made but would like to see further simplification and increased transparency in the area of charges associated with fixed costs.

In the light of the possibility that passenger operators who are directly contracted by Great British Railways may not be required to pay access charges, Arriva believes that further work is needed to determine how full transparency of cost allocation is maintained. Network Rail have produced a clear model for this for fixed costs, but similar arrangements may be needed for variable and station costs.

Arriva would also like to see further work along the lines of those proposed for station charges to be undertake with regard to rolling stock depot charges as the current arrangements are complex and do not provide transparency on cost allocation.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

Arriva strongly supports the proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to train services, operators and to funders (particularly non-DfT funders).

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

The current FTAC arrangement lacks full transparency due to its interaction with the network grant mechanism. This is unfortunate and unnecessary as there is full transparency on cost allocation from Network Rail's cost allocation methodology which is then lost due to the way that the FTAC is derived.

On this basis, Arriva suggests that FTAC should be removed all together and the Infrastructure Cost Charge (ICC) mechanism applied to all Operators. In this context, the ICC should be applied on a consistent basis using a common test of "ability to bear".

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

Arriva supports the retention of the PR18 phasing-in policy for changes in variable usage charges (VUC) for freight and charter operators but would also look to see the same approach applied to Open Access operators.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

Arriva has no additional evidence to provide.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

Arriva believes that applying VUC to all trains operating on the network, including Network Rail engineering trains, has the merit of increasing transparency on cost generation which would provide incentives to improve efficiency and cost effectiveness.

However, Arriva has concerns that this benefit may be out weighted by the additional administrative costs and complexity.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

Arriva would like to see additional granularity with regard to the train speed data that is used to calculate VUC for specific fleets. This position has been improved by allowing different speeds to be used for similar fleets for different Operators but could be extended to be more geographically sophisticated with different speeds being used for different parts of the network.

However, Arriva has concerns that this benefit may be out weighted by the additional administrative costs and complexity.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

There appear to be two issues to address here:

- Trains with meters fitted but not being used

- Trains not yet fitted.

Before implementing a funding or incentive regime, it feels sensible to undertake investigation of what factors are impeding the use or fitment of on-train meters and whether these issues have changed as a result of changes in the contracts operators have with funders and clients.

Any funding regime should include a focus on enabling compatibility between systems and simplifying the data flow infaces.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

Arriva would support the removal of the Partial Fleet Metering regime so long as this did not interfere with addressing the objective of securing more use of on-train metering in this area. Whether this might be an issue may become clearer once a better understanding of the issues standing in the way of securing more use of on-train metering.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

Arriva believes that there are useful transparency and incentive elements to the loss incentive mechanism. Indeed, Arriva has observed Network Rail implementing electricity feeding arrangements which incur greater losses as a result of deficiencies in the current infrastructure configuration. The loss incentive mechanism allowed the costs of transmission losses to be considered as part of the decision-making process in these cases.

However, Arriva has concerns that this benefit may be out weighted by the additional administrative costs and complexity.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

The EAUC mechanism has worked effectively, and Arriva would support ORR making no changes in PR23 other than necessary recalibration.

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

There is logic in the proposal. However, at present there is still little transparency for operators of the cost reflectivity of LTC in terms of MRR activity over a control period at individual

Managed Stations. This is partly due to the methodology of how LTCs are calculated, which are complex and historically done without operator engagement.

There would also be the need for effective definition and consultation with operators to determine which franchised stations might be categorised as ‘large’ or ‘complex’. As this may be considered subjective.

This proposal may also in itself not solve the issue of perceived imbalances across other franchised station LTCs within each category. Operators have informed Network Rail through NR’s own recent consultation, that the setting of LTC usually bears little relation to the outputs of Network Rail MRR workbank activity actually delivered to the franchised station estate. Increasingly, operators are in fact being advised that renewals budgets are being reduced and workbanks pushed back to future control periods, however LTC continues to be levied at the determined price.

SFOs have also expressed willingness to help shape Network Rail’s operational property and SISS expenditure planning for future control periods, to secure the right investment in stations for customers.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

It is not apparent that the current basis for apportionments of LTC between operators is unfair or particularly divisive. Alternative metrics, such as apportioning by passenger numbers, may in fact make it so and would undoubtedly create additional administration in allocating LTC.

One area where Arriva would seek improved engagement and transparency from Network Rail, is when any rebasing of LTC apportionment at Managed Stations is triggered (in accordance with Condition 41 of the ISACs). Though only an occasional event, LTC wash-ups can result in administrative/billing difficulties, where operators’ apportionments will go either up or down.

Question 15: Do you have any views on our proposal to class stations that open within a control period as ‘new’ for a fixed five-year period from the date of opening?

The proposal to class stations that open within a control period as ‘new’ for a fixed five-year period from the date of opening appears to address the objective better the current arrangements which are arbitrarily affected by the relative dates of when a new station opens and when a new Control Period starts.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

Creating a regulated element in the QX charge would have the benefit of streamlining the process of setting the QX charge and should cover the maximum range of costs practical. Therefore, the same arrangement should be extended to other large stations that are not “managed stations” as the same issues that drive this proposal are evident there too. It is inappropriate to determine a charging regime on the basis of which industry party is the station facility operator at a particular time – especially when this is likely to change as a consequence of the Rail Transformation Plan.

It may not be necessary to deploy full regulation in this area – a clearly mandated process for calculating QX charges including details of what costs should be included and how these should be attributed to each station user would improve transparency of the rational for GX charges, reduce transactional friction and allow a focus on issues of real difference between parties. A clear escalation process for disputes would assist in these remaining cases.

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)?

CPI remains an appropriate inflation index.

Are there any other comments you would like to make?

Arriva would also like to see further work along the lines of those proposed for station charges to be undertake with regard to rolling stock depot charges as the current arrangements are complex and do not provide transparency on cost allocation.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

The UK rail freight industry is a success story of the post-privatisation era, described by a former CEO of the Office of Rail & Road "*as the most transformed sector in the industry*". It has attracted major private sector investment which has in turn facilitated significant growth over the last 20 years. Such growth has also been achieved by a relentless pursuit of efficiency, striving towards customer satisfaction and strong control of costs.

Stability, certainty and confidence in the future is crucial for an industry that depends almost entirely on the private sector (whether in the form of shareholders, customers or debt providers) retaining confidence in the future. Consequently, the Periodic Review process, together with its proposals and outcomes, can have immediate and serious impacts on the attitudes and confidence of customers (and potential customers). This directly affects the financial position of the sector which is highly competitive, with all the major Freight Operators competing vigorously in all market segments. However, the rail freight industry's main competition is from road haulage (including road-based logistics services) which sets the price and service expectations in almost all market segments.

Key to maintaining growth and achieving further modal shift from road will be the ability to match the prices and the flexibility/simplicity of road haulage. Maintaining a simple structure with a competitive level of freight charges or other costs/incentives is fundamental in helping to achieve this. In almost all rail freight markets, and especially in the key growth markets for the future, customers have choices between rail and other modes, particularly road. Therefore, the entire regime, not solely the structure and level of access charges, has to allow, and incentivise, the use of rail to enable it to compete with road.

With the publication of the Williams-Schapps Plan for Rail ("WSPR") earlier this year, significant work will be undertaken by the rail industry over the coming years to develop and implement the Rail Transformation Programme which will change significantly the face of the rail industry in the UK. This in itself has the capacity to affect the future stability, certainty and confidence that Freight Operators and their customers rely upon, particularly as it is clear that in order to continue accessing the network, Freight Operators will subject to a new and as yet unknown, rules-based access system which may also involve a different approach to access charging.

Given the current uncertainty surrounding the outcomes of the Rail Transformation Programme, DB Cargo considers it would be unfortunate if there was to be yet more uncertainty introduced if radical changes to the charging structure were being considered by ORR as part of the PR23 process. DB Cargo is therefore pleased that ORR appears to have recognised this issue and is minded to leave the current charging mechanism largely unchanged and, instead, only seeks to consider incremental changes if they prove to be beneficial or consistent with the subsequent outcomes of the wider Rail Transformation Programme. DB Cargo strongly supports this approach.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

Subject to its comments made elsewhere in this response, DB Cargo agrees that the majority of the initial proposals and areas of further work identified by ORR are appropriate for further consideration in the context of PR23, particularly given the current uncertainty over the outcomes of the Rail Transformation Programme. Although of course DB Cargo acknowledges that ORR must remain within the bounds of current legislation, it is vitally important in DB Cargo's view that as far as is possible the outcomes of PR23 for freight align closely with the expected outcomes of the Rail Transformation Programme. DB Cargo is therefore encouraged that ORR has signified its intention to remain flexible in this respect and will respond to those outcomes as and when they become clear.

DB Cargo was very encouraged by ORR's statement in its PR23 launch letter that it expected to place increased focus on environmental outcomes in PR23 to reflect the growing importance of delivering a more environmentally sustainable rail network, to support governments' roadmaps to net zero carbon and other environmental objectives.

However, in the consultation document ORR recognises that it is somewhat constrained by legislation in being able to consider changes to charges to help achieve such outcomes. Whilst DB Cargo acknowledges that ORR must of course work within the existing legislation, it still considers that there may be opportunities to consider changes that can be made within current legislation that can also help to achieve such outcomes. For example, the current proposal to continue with the 'phasing in' of increases to the Variable Usage Charge ("VUC") across CP6 and CP7 could be reconsidered. Whilst the UK decided not to adopt the ability to modify charges to take account of the cost of environmental factors when transposing the First Railway Package Recast (EU Directive 2012/34) into UK law, the overall level of charges has a material impact on the competitiveness of rail freight and therefore its ability to grow. Consequently, if the ORR decided that the 'phasing-in' was instead to be paused and/or extended over a longer period of time, charges would remain lower for longer and more freight could be attracted to rail from less environmentally-friendly modes supporting both decarbonisation and modal shift objectives. DB Cargo considers that such action is within the powers available to ORR through the current legislation and if implemented would really help rail freight to grow and, in doing so, would be fully consistent with the stated aims of the Rail Transformation Programme in terms of decarbonisation and modal shift.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

On the basis of its support for ORR's approach of leaving the current charging mechanism largely unchanged for CP7, DB Cargo is content for ORR to continue to use Network Rail's CP6 cost allocation methodology as the basis for allocating fixed costs to operators in CP7. However, it is far from convinced that Network Rail's plans to review the traffic characteristics used in that methodology to determine whether or not they remain appropriate or should be changed is a priority for PR23 in advance of the Rail Transformation Programme.

DB Cargo acknowledges ORR's intention to carry out a 'market-can-bear' test study for freight to determine which commodities should contribute to fixed costs in CP7 by being made subject to a Freight Specific Charge ("FSC"). DB Cargo hopes that the study will take account of the stated aims of the WSPR to promote modal shift to rail freight. Such studies whilst being undertaken can introduce great uncertainty for Freight Operators and their customers as the outcomes can have a significant and profound impact on the level of charges for certain traffics, particularly if additional commodities are required to pay the FSC that have not been required to do so in the past. Consequently, to reduce the level of uncertainty, DB Cargo requests that ORR expedite its study as much as possible. Undertaking the study should not in DB Cargo's view be a particularly lengthy or complicated process if ORR restricts its focus to elements that have changed since the last study was undertaken to inform PR18 rather than starting all over again from a 'blank sheet'.

In this respect, DB Cargo is pleased that ORR intends to continue with the existing commodity-based approach. However, whilst DB Cargo understands why the study should look at whether there are any new commodities that have arisen since the last study was performed, it is concerned that ORR also intends to look at whether existing commodity groupings should be segmented further. DB Cargo submits that a review of current commodity groupings will extend the length of time taken for the study and therefore further increase the period of uncertainty in the rail freight market. DB Cargo therefore urges ORR to remain with the current commodity groupings supplemented only with new commodities (if any).

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

As it is not an operator in possession of a concession-style contract. DB Cargo has no representations to make on this matter.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

DB Cargo does not support the proposal to continue with the VUC phasing-in approach agreed in the PR18 process. Continuing with this approach will result in a material increase in track access charges for many traffics, particularly those in the bulk sectors such as aggregates. This will deter both new customers from using rail as well as existing customers moving more of their freight traffic by rail and in doing so work against the strategic aims set out in the WSPR (i.e. to promote modal shift from road to rail to support economic growth, reduce congestion on the road network and contribute to decarbonisation objectives).

As mentioned in its response to Question 2 above, DB Cargo acknowledges that ORR is constrained by legislation over what measures it can take to adjust charges particularly to take account of environmental considerations. However, DB Cargo considers that one course of action open to ORR would be to review its ‘phasing in’ approach with the aim of taking account of rail freight policy objectives set out in the WSPR.

Given that DB Cargo has sister companies in many European Countries, it is aware that following the implementation of EU Regulation 2015/909, many EU Member States have experienced a reduction in variable charges to support rail freight growth targets and therefore contribute towards a reduction in carbon emissions. DB Cargo considers that the UK should do the same within the PR23 process and wider Rail Transformation Programme. It therefore urges ORR to use a combination of a review of its ‘phasing-in’ policy and its review of the elements that make up “directly incurred costs” (see Question 6 below) to help PR23 to better align with the rail freight strategy objectives set out in the WSPR.

Although not specifically addressed in this consultation document, another factor that strongly influences the overall level of track access charges is the efficiency factor that Network Rail is charged to achieve across the Control Period. Recent industry data suggests that Network Rail has made substantial efficiency improvements so far in CP6 which indicates that it will more than likely outperform the efficiency target set by ORR in PR18. DB Cargo considers, therefore, that if Network Rail continues its efficiency improvements, as indications suggest, then it would expect to see Network Rail being set an appropriate challenging efficiency target to achieve in CP7.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail’s assessment of eligible costs to be recovered through the VUC?

DB Cargo supports ORR’s proposal to review the types of costs that should be recovered through the VUC, particularly as there was insufficient time in PR18 for the issue to be considered thoroughly. As mentioned in its answer to Question 5 above, given that DB Cargo has sister companies in many European Countries, it is aware that following the implementation of EU Regulation 2015/909, many EU Member States have reduced variable charges for freight. Consequently, a thorough review of this matter is therefore warranted in DB Cargo’s view and hopes ORR will also draw upon the representations that DB Cargo made during PR18 on this issue.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

DB Cargo has recently engaged with Network Rail on this issue and, in particular, how Network Rail currently takes account of the wear and tear on its network caused by its own engineering trains. Following that engagement, DB Cargo is now reassured that Network Rail does make allowance for such wear and tear to ensure that it is not instead being paid for by general freight traffic on its network. Whilst it could be argued that the methodology currently employed by Network Rail could always be reviewed and perhaps refined, DB Cargo does not believe this should be a priority for PR23 given that the time and effort taken to carry out any review would likely outweigh any potential benefits. DB Cargo therefore concurs with ORR's current view that the proposal should not be taken forward for PR23.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

Over the years, DB Cargo has become accustomed to using Network Rail's VUC calculator and generally finds it straightforward to use. The problem that DB Cargo encounters comes instead from sourcing the necessary input data required for the calculation (for example ascertaining the unsprung mass of vehicles not owned by DB Cargo). However, that said, DB Cargo would welcome an updated calculator that allows a user to model a number of scenarios using a range of inputs rather than starting afresh each time. This would certainly save considerable time and effort when looking at the likely VUC rate for a new wagon and how it changes as the input data is varied.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

DB Cargo does not currently have a large fleet on electric locomotives when compared to the size of its diesel fleet; In fact some of its electric locomotives do not even operate on Network Rail's network as they are currently confined solely to HS1 and the Channel Tunnel. Notwithstanding this, DB Cargo would certainly consider further the fitment of on-train metering equipment if there was a source of funding to help with the costs, not only of the fitment, but also the ongoing costs. DB Cargo understands that the charging process normally requires the services of a third party software provider to convert the metered data into a format acceptable to Network Rail's billing systems. DB Cargo would therefore certainly support ORR's proposal to consider setting up a ring-fenced fund to help incentivise on-train metering.

DB Cargo would not support ORR's other proposal that it is considering in making metering mandatory in CP7. Whilst this would be appropriate for any new electric vehicles operated on the network, it would not be welcomed for older vehicles particularly if those vehicles cannot be fitted with metering equipment for technical reasons.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

DB Cargo supports the proposal to remove the Partial Fleet Metering ("PFM") mechanism for EC4T. If PFM has not been used since its introduction at the beginning of CP5, then it would appear to DB Cargo that there is very little appetite in the industry for retaining this mechanism.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

If the loss incentive mechanism is working in a way that results in exactly the opposite outcomes to those envisaged when it was introduced, DB Cargo supports the ORR's proposal to remove it.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

For the reasons outlined in the consultation document, DB Cargo supports ORR's proposal to make no changes to the Electricity Asset Usage Charge.

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

Although neither Freight or Charter Passenger Operators are required to contribute to the Long Term Charge at the stations they use given their marginal usage, the proposal to calculate the Long Term Charge for large/complex franchised stations based on specific expenditure forecasts appears to DB Cargo to a worthwhile proposal to explore as it should improve cost reflectivity at the stations concerned.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

Although DB Cargo considers that the use of vehicle departures as a proxy for Passenger numbers is not ideal, it is certainly less cumbersome than measuring actual passenger numbers (i.e. by using passenger counts for example), which unlike vehicle departures cannot easily be calculated remotely. Consequently, unless there is an immediate identifiable benefit in using passenger numbers instead of vehicle departures that counteracts the additional work and effort required to collect the data, DB Cargo considers the current approach should be retained.

Question 15: Do you have any views on our proposal to class stations that open within a control period as 'new' for a fixed five-year period from the date of opening?

DB Cargo considers that the proposal to class stations that open within a Control Period as "new" for a fixed period (suggested as five years) appears to have merit as it would place all new stations on the same footing whenever they were opened during a Control Period. However, DB Cargo questions how and when the Long Term Charge would be calculated to cover the remainder of the following Control Period in cases where the five years straddles two Control Periods which it would in the vast majority of cases.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

DB Cargo has no views to offer on this proposal as Freight and Charter Passenger Operators make no direct contribution to QX costs although it understands that SFOs should deduct any income received from such Operators from the QX costs.

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)?

DB Cargo supports ORR's proposal to retain CPI as the general inflation index. The measure was only introduced at the beginning of CP6 as a replacement for the former index (RPI) and has so far not caused any adverse concerns. Consequently, DB Cargo believes that in the absence of any compelling evidence justifying the need for a further change at this time, this proposal should not be a priority for PR23.

Are there any other comments you would like to make?

Over recent months there has been much engagement between Network Rail and Freight Operators concerning the continued provision of capability to accommodate Heavy Axle Weight ("HAW") traffic over certain routes. This is because a number of Network Rail Regions/Routes have raised concerns over the extension of HAW operating dispensations due to the deterioration in the condition of certain bridges that Network Rail considers that it is not funded to repair to maintain HAW capability. DB Cargo considers it crucial that such capability is maintained for the long term to reduce uncertainty, maintain competitiveness and avoid the potential loss of the relevant HAW traffic flows to other transport modes as the economics of operating more lightly-loaded trains becomes unsustainable.

In this respect, DB Cargo noted from ORR's decision on Freightliner Heavy Haul's 10th Supplemental Agreement to its track access contract with Network Rail the statements that ORR (1) "*expects to have more detailed discussions with Network Rail* [about HAW traffic] *as part of PR23 and in particular what is needed to maintain the network at current capability*" and (2) "*expects HAW traffic to be part of the PR23 Network Rail Access Charges Review*".

Whilst DB Cargo together with other Freight Operators will continue to engage with Network Rail on this issue and impress the need for HAW capability to be a priority and therefore properly accounted for in the regional/route forward planning processes, it does consider that there is also a structure of charging review element to this issue that needs to be considered as part of the PR23 process.

The calculation of the VUC rates for wagons carrying HAW traffic will take into account that those wagons are loaded to HAW axle-loadings. Consequently, those VUC rates will be higher than they would otherwise have been if those wagons were loaded at below HAW capability. In other words, the costs directly incurred will assume HAW loadings. Therefore, if Network Rail removes HAW capability, and consequently the traffic flows concerned have to be downloaded to less than HAW axle loadings, those traffic flows would then be paying at a VUC rate that is higher than it should otherwise be (i.e. if the VUC rate was calculated on the basis on less than HAW axle loadings).

DB Cargo is concerned that if such cases arise where Network Rail has removed HAW capability that those flows would continue to be charged at a VUC rate based on HAW axle loadings and therefore be paying in excess of directly incurred costs.

By way of example (using equivalent prices):

- The VUC rate for a HRAI vehicle conveying aggregates is calculated on the basis that it would operate at HAW axle-loadings (99.83 tonnes) is £4.1050 per kgtm.
- VUC rate for the same vehicle calculated on the basis that it would operate at non-HAW axle-loadings (90.00 tonnes) is £3.5891 per kgtm.

Using the above VUC rates a 2,000 tonne HAW train conveying aggregates in HRAI wagons would pay **£8.21** per mile [i.e. 2000/1000 x £4.1050]. Under the current system if that train is then required by Network Rail to operate at less than HAW (say to 1500 tonnes) it would instead pay **£6.16** per mile [i.e. 1500/1000 x £4.1050]. However, DB Cargo submits that in the situation of that train being required by Network Rail to operate at a downloaded weight of 1500 tonnes, it should in fact be paying at a lower VUC rate (in the case of this example: £3.5891 per kgtm) which would result in it paying only **£5.38** per mile.

This situation would occur under the current system because there is no ability to recalculate the VUC rate on a particular wagon/commodity combination during a Control Period. DB Cargo argues that in the situation described above (i.e. when Network Rail has removed HAW capability on a permanent or semi-permanent basis) that the relevant VUC rates should be reviewed. DB Cargo therefore requests ORR to add this issue onto its list of priorities for PR23.

DB Cargo hopes that the comments made in this response to ORR's consultation document are helpful and it looks forward to working with ORR and the rest of the industry to take forward any changes ORR wishes to adopt.

Thank you for taking the time to respond.

Department
for Transport

From: Dan Moore
Director, Rail Strategy and Analysis

[redacted]

Tel: [redacted]
E-Mail: [redacted]

Dear Daniel,

Response to the ORR's consultation on Network Rail access charges

I am writing in response to the ORR's consultation on Network Rail access charges as part of the Periodic Review 2023 process (PR23). We are grateful for the opportunity to provide input and to set out our views.

Overall points

The review of access charges comes, as the ORR acknowledges, at a significant time of change in the industry. The commercial dynamics for most train operating companies (TOCs) have changed dramatically as the franchise system has ended and new contractual arrangements have been put in place for those TOCs contracted directly to the Department for Transport (DfT). The Williams-Shapps Plan for Rail (the Plan for Rail) makes it clear that new commercial agreements be part of much broader reform to ensure that the railway better delivers for its customers and for taxpayers. The approach to access contracts will be reformed to support the Plan for Rail. As this reform process is underway with new arrangements being developed, we consider it is particularly important that the ORR's approach remains adaptable to change and development. However, we entirely recognise the importance of certainty around access charges for freight, open access and charter operators, as well as passenger operators contracted by devolved rail authorities.

We therefore support the ORR's base position that it will not make fundamental changes to the charging framework as part of the PR23 process. We acknowledge that the ORR, at this stage, must conduct the review on the basis of the current legislative position, but it will be particularly important to continue to work closely with the Rail Transformation team and Great British Railways Transition Team to ensure a co-ordinated and aligned approach into the future.

We also note the ORR's comment that the current framework may have relevance to the access system adopted by Great British Railways (GBR). While the DfT continues to develop the approach to access, we consider that there may be certain elements of the current regime, as it applies to GBR, could serve a role into the future and would like to keep that option open. The incremental approach set out by the ORR to make improvements is therefore a helpful one. However, to do so the key issue for DfT is that the charging regime continues to reveal information which supports better decision making by Network Rail and the wider industry, by ensuring effective cost attribution (including to the regions and network activities) and cost reflectiveness, thereby supporting a more efficient railway. We support the ORR's focus on these issues in the consultation.

Moreover, as a general matter, we support simplifying the charging regime where possible, removing elements which have limited practical impact. This is in line with our position in the previous Periodic Review, PR18. Where administrative burdens can be reduced or not added in the first place, and there is no impact on incentive effects, we are supportive of simplification.

Finally, we note the ORR's conclusions with respect to environmental outcomes. Achieving our ambitious environmental commitments is a key government priority as we move towards Net Zero by 2050. We do acknowledge the constraints that the legal framework provides, but would encourage the ORR to take all available steps to reflect environmental considerations in its thinking, such as in relation to traction electricity (EC4T); we look forward to working with ORR on this issue as PR23 develops.

We welcome the ORR's very clear focus in the letter that this is a time of challenge and change for the railway, alongside the clear recognition of the changes proposed through the Plan for Rail to enable the railway to deliver more effectively into the future. As set out in the Plan for Rail, the conclusions of PR23 will be an important opportunity to support and enable reform.

Specific points

As we note above, the policy development process for the implementation of the Plan for Rail is in progress. We have therefore not sought to set out a detailed position on each of the issues which the ORR includes in its consultation. However, there are a number of areas where we have particular views which we would be grateful if the ORR could consider:

- **Support for freight and charter**: The Government continues to strongly support both the freight industry – reflecting its significant economic and environmental benefits, made even clearer through its excellent contribution to keeping goods moving during Covid-19 – and charter services, which provide distinctive and valuable journey opportunities. We are particularly conscious of the need for stability for these operators and support the continuation of the phasing approach set out in PR18.

- **Cost reflectiveness with respect to the variable usage charge**. As we discuss above, we consider it vital that the charging regime supports effective decision making. We are supportive of the VTISM approach. However, we do recognise that changes arising from changes to VTISM can be time consuming and reflect considerable efforts. We consider that only if it can be demonstrated that any potential changes are likely to have a significant beneficial impact, that new evidence should be adopted for charging purposes in CP7. We look forward to the preferred options consultation in early 2022 and would ask that the ORR clearly set out the costs and benefits of any potential changes at that time.

- **Impact of charges:** We note the ORR's comments in the consultation with respect to the meaning of non-discrimination within the context of the Access and Management Regulations 2016. At this stage as the policy process develops we are expressing no concluded view on this issue. However, we would be interested in further exploring the ORR's view on this issue, particularly as propositions are developed to ensure that appropriate options are not being precluded, so that we ensure that the charging approach is as practicable and as effective in relation to GBR-contracted TOCs .

- **EC4T and EAUC:** We support incremental improvements to EC4T, particularly to encourage greater on train metering, given the environmental and efficiency benefits. We were unclear, however, about the ring-fenced fund and would welcome further engagement with ORR on why this would be the most effective mechanism. We strongly support simplification of the charging framework where it is serving limited purpose, as we did in PR18 – we therefore support the removal of Partial Fleet Metering and the removal of the Loss Incentive Mechanism; in relation to the latter we do not consider that redesign would be an appropriate priority. With respect to EAUC, we agree with the ORR's approach, and do not consider that combining EAUC and VUC be a proportionate use of time during PR23.

- **Fixed Track Access Charges**: We consider it important at this stage to keep open the question of whether DfT-contracted operators are subject to FTAC until further reform work has been completed. This is to reflect that there may be opportunities for alternative arrangements to be implemented, which ensure that the fixed costs of the railway are met while ensuring a practicable and effective process, which is not discriminatory in effect. For operators outside of the GBR financial framework, we consider it necessary for them to continue to pay FTAC so that they make a fair contribution to the funding of the railway.

- **Infrastructure Cost Charges**. We continue to support ICCs for some open access operators and for freight. It is critical that a robust market-can-bear test reflecting current conditions is conducted.

- **Indexation for inflation:** We agree with the retention of CPI as the appropriate measure of inflation for CP7.

Concluding remarks

We very much look forward to continuing working closely with the ORR throughout the PR23 process. It is particularly important, as we develop the implementation of the Plan for Rail at pace, that we work very closely together. This is particularly important for access and charging issues, to ensure coherence in approach and ensure the most effective basis for a railway that better deliver for its customers and taxpayers.

Yours sincerely,

[redacted]

Dan Moore

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

Full name	Richard Gow
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Email*	[redacted]
Telephone number*	[redacted]

*This information will not be published on our website.

Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

The Williams-Shapps Plan for Rail outlines the importance of rail freight to the UK economy and has a stated ambition of encouraging freight to move off the roads and onto the railways. To encourage this, the PR23 charges review should ensure that charges levied on freight suppliers are fair and encourage the switch to rail freight, but also ensure that those who already utilise rail freight are not hit with unduly high charges.

There have been a number of changes to the costs incurred by users of the rail freight network since the last charging review. It will be important to ensure that charges for rail freight are reflective of these changing circumstances and that the ORR are as transparent as possible in their implementation.

The UK energy market has seen a tumultuous few months with a significant increase in the costs of wholesale gas and electricity prices. Any review to the cost of charges should be mindful of this issue and recognise that any increase to the costs of utilising rail freight for power generation (for example biomass) would ultimately be passed through to electricity consumers in the form of higher prices.

Drax is planning to install carbon capture and storage technology on at least two of the four biomass units operated at the power station in North Yorkshire. This technology (known as BECCS) will play a crucial role in ensuring that the UK can meet its interim carbon budgets but also its 2050 net zero target according to the UK’s Climate Change Committee. Rail freight will therefore continue to supply Drax Power Station beyond the end of the current subsidy regime in 2027. It is important that the charging regime provides certainty to ensure that it does not negatively impact this, and similar, critical decarbonisation projects. For this reason, we particularly welcome the intent to increase the focus on environmental outcomes within PR23.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

The initial proposals set out in the consultation seem sensible.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail’s cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

Drax does not have any specific views on the cost allocation methodology as it has been outlined. We would however welcome clear transparency around how these costs are allocated to operators and encourage Network Rail to ensure that the PR23’s intent to increase the focus on environmental outcomes within the review is given due consideration.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

We have no specific comments on the concession-style agreements but would note the following comments on Infrastructure Cost Charges.

- The Freight Specific Charge (FSC) is applied to just ESI coal, ESI biomass, Iron Ore and Nuclear raising £500k or just 0.02% of total track income.
- Volumes of ESI coal will reduce to zero by 2024 as coal power is phased out by the government. In addition, current subsidies for ESI biomass are due to expire in 2027. While it is likely that biomass will continue to be utilised beyond this date, for example due to its role in BECCS, volumes of biomass transported may reduce from this date.
- The market-can-bear tests provide considerable uncertainty to end users of FSC products, as these can feed through to increased costs. In the power sector these increased costs are ultimately borne by electricity consumers. There has been considerable difficulty in the energy sector recently with the rising wholesale price of electricity causing some retail suppliers to fail and creating worry about consumer bills. The FSC charges should remain mindful of this difficulty ensuring that they do not create a further burden to electricity consumers.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

No Views

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

No Views

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

No Views

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

No Views

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

No Views

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

No Views

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

No Views

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

No Views

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

No Views

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

No Views

Question 15: Do you have any views on our proposal to class stations that open within a control period as 'new' for a fixed five-year period from the date of opening?

No Views

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

No Views

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)?

No Views

Are there any other comments you would like to make?

Drax has invested considerable sums of money in rail and port infrastructure to develop the most sophisticated biomass logistics supply chain in the world. This has led to at least an 85% reduction in Drax's CO_2 emissions from 2012 levels. The rail network remains a vital part of this supply chain ensuring that Drax can continue to use sustainable biomass to provide renewable power to millions of homes across the UK. To ensure that Drax can continue to provide this, it is important to ensure that rail access charges are fair and proportionate and do not unduly increase the costs of biomass power generation.

Any rise in rail access charges would result in an increase to the costs of biomass power generation which would ultimately be borne by electricity consumers. As outlined earlier, electricity consumers are facing higher prices and greater uncertainty of supply as a result in a rise in wholesale electricity costs, primarily driven by a rise in gas prices. It is important that a review of rail access charges remain mindful of this issue.

Lastly, Drax has ambitious plans to introduce carbon capture and storage to the Drax power station's biomass units. The resulting process (BECCS) will enable Drax power station to become the world's first carbon-negative power station, providing highly valuable 'negative emissions' which, according to the UK's Climate Change Committee, will be a critical part of reaching net zero in the UK by offsetting residual emissions from difficult-to-decarbonise sectors such as aviation and agriculture. Rail access charges should ensure that undue burden for rail costs are not placed on ESI biomass, to ensure that projects like Drax BECCS can deploy at the scale required to meet net zero in the UK.

Thank you for taking the time to respond.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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Organisation	Direct Rail Services Limited
Email*	[redacted]
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*This information will not be published on our website.

Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

DRS believes the current transition may result in missed opportunities to adjust the charging elements for rail freight. Opportunities to advance decarbonisation incentives on rail and modal shift to rail to the greatest degree possible may still be possible, after taking into account the legislative restraints. DRS fully support any opportunities for changes to EC4T with simplification and transparent charges providing incentives for transfer from diesel to electric traction and providing greater certainty of the commercial implications. DRS suggests a review of VUC and ICC to place rail freight on a level playing field with road transportation, removing, phasing out or limiting VUC and ICC to further incentivise modal switch or via generating some form of grant provision when such transfers are identified.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

DRS agree in general terms with the initial proposals and understand the influence of the emerging Rail Transformation Programme outputs generate an added complexity to PR23 in some areas.

DRS would encourage the continued dialogue with GBRTT to ensure full consideration of all emerging issues generated from the PR23 consultation processes. Ensuring issues shared are understood and no opportunities for improvement missed.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

DRS has no comment on this proposal at the current time.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

DRS has no comment on this proposal at the current time.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

DRS supports the proposal to retain the PR18 phasing-in policy for freight and charter operators into CP7 and beyond.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

DRS would have concerns if alterations to VTISM were progressed at this stage of the PR23 process, as there may be insufficient time to consult and verify changes prior to CP7 commencing.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

DRS would welcome greater visibility and understanding of the drawbacks and merits of this approach from more independent sources. At this time DRS has no clear views on application of VUC to Network Rail engineering freight trains.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

DRS has no further suggestions on VUC improvements at the current time

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

DRS would welcome consideration of any ring-fenced fund to support incentives encouraging movement to electric traction ahead of a fund to increase greater take-up of metering. DRS' experience of operating with a fleet already providing 100% on-train metering indicates there remain challenges to simplify and improve transparency potentially beneficial to all operators.

DRS suggest consideration of EC4T charging methodologies with the possible introduction of a charging reduction to provide a return in on-train metering investment.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

DRS supports the proposal to remove PFM. Our belief is this approach is not currently used and is unlikely to be in the future.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

DRS supports the proposal to remove the loss incentive mechanism.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

DRS has no comment on this proposal at the current time.
Chapter 5: Station charges
Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts? DRS has no comment on this proposal at the current time. **Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?** DRS has no comment on this proposal at the current time. **Question 15: Do you have any views on our proposal to class stations that open within a control period as 'new' for a fixed five-year period from the date of opening?** DRS has no comment on this proposal at the current time. **Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?** DRS has no comment on this proposal at the current time.

Chapter 6: Inflation Indexation
Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)? DRS has no comment on this proposal at the current time.

Are there any other comments you would like to make?
No further comments from Direct Rail Services Ltd.

Thank you for taking the time to respond.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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*This information will not be published on our website.

Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

FirstGroup agrees with the overall approach the ORR proposes to adopt for PR23.The Rail Transformation Programme is likely to require the time of the same operator resources as those employed on PR23 to ensure it is successful. Therefore, any PR23 debates outside of the Rail Transformation Programme should be kept to an absolute minimum.

Although "franchised" operators are protected from any PR changes, Open Access operators are not and in a period of industry change, providing a degree of certainty to those businesses is paramount.

Therefore, any proposals for change should be based on necessity rather than "nice to have" while at the same time seeking to eradicate any emerging errors or perversities in the charging regime.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

We agree with the initial proposals and areas for further work. If issues emerge during the process, we request that sufficient resources will be available to investigate them.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

FirstGroup believes that the fixed cost allocation methodology needs to remain transparent and that the model for allocating traffic avoidable costs does not become over-complicated.

Any complexity could swing costs between operators or services and give the wrong signals for funders as well as adding uncertainty and risk for Open Access operators paying an ICC.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

FTAC is generally regarded by the industry as a "pass through" charge which has little effect on making efficient use of capacity. Once GBR is established, it is questionable as to whether it should be retained at all.

The accommodation of DfT (and others) public services is currently incentivised by non-financial means and is likely to remain as such.

We agree that the FTAC wash up should not be re-introduced.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

n/a

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

In view of our wish for PR23 to be "light touch", we would prefer that this issue is not revisited in detail in PR23, except to eliminate obvious errors.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

This would seem to be of limited value.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

The VUC calculator is generally regarded as being cumbersome in respect of viewing individual changes. The modelling suite badly needs updating so that it takes less time to examine parameter sub-sets and to run individual scenarios**.**

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

FirstGroup is an enthusiastic user of on-train metering and recognises the issue of fitment to older stock. However, we believe that creating a ring-fenced fund is unnecessary and for concessions that include such older stock, fitment should become part of the contract requirement.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

We agree that the PFM charging approach should be removed. It would now seem to serve no useful purpose.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

We agree with NR that current transmission losses cannot be reduced in the short term and that the loss incentive mechanism should be removed. There should be other incentives on NR to ensure an efficient and reliable EC4T supply to operators, perhaps outside of the access charging regime.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

The proposal to leave this charge unchanged (beyond recalibration) for CP7 is most welcome and removes another potential business uncertainty.

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

We agree with station-specific expenditure forecasts and this approach needs to reflect all obligations NR have and not just be a priority work bank for the control period.

Currently, there is no link between what operators are paying and the outputs at any given station and this review should seek to rectify this. It would bring the transparency operators are seeking on LTC spend as operators are continually being told there is no funding available for NR to undertake the obligations LTC is designed to fund. Transparency on spend would allow NR and TOCs to work together on priorities.

The question of “what is included” in LTC is common across SFO’s. Each route currently appears to take its own view, and the Station Specific Annexes rarely offer an answer.

We feel further clarity should be added within the Station Specific Annexes under both NSACs and ISACs to determine what is covered by LTC and, therefore, included in the calculation.

The transparency of understanding what has been included in LTC calculations, by station, is critical for SFOs.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

We do not believe there is no other robust and auditable way of calculating proportions other than by vehicle count.

Passenger counts are too variable and are affected by one-off events, whereas the LTP timetable and the diagramming of rolling stock is an extremely stable and auditable way of calculating the proportions between operators.

The other point we would like raise, is that QX and LTC must share a common method of calculation and we believe retaining vehicle counts is the only fair way for both charges.

Question 15: Do you have any views on our proposal to class stations that open within a control period as 'new' for a fixed five-year period from the date of opening?

A reduced LTC for new stations for the five-year period from opening is desirable, as assets would still be within their defect liability period.

The document refers to a reduction within a Control Period only (i.e., a new station opening in the final week of a CP would see a reduction for one-week only). Our position is that a five-year approach should apply regardless of Control Period dates.

We would like to understand how the blanket 10% reduction has been derived, and whether 10% is appropriate for every new station – as this approach may not take account the level of complexity of a station and the assets installed on it.

We would also like to explore including stations that have been heavily redeveloped into the LTC reduction category, as often a redeveloped station is similar in nature to a brand-new facility with the same level defects liability period for contemporary assets.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

This approach is supported in principle, in the interests of transparency.

We believe there are several areas of Managed Stations QX that would benefit from Regulation. These include:

- Route Charges – Operators TOCs believe there may be an element of "double counting" within this charge
- Utility Calculation – this needs to be based on what is paid to suppliers and not the enhanced calculation applied by NR in CP6
- Retail Split – experience shows that additional retail units can result in a reduced retail reduction applied through QX. We believe NR may be unfairly benefitting from charging both retailers and operators for the same activity
- Cleaning – there is currently no obligation on NR to ensure the costs at Managed Stations are efficient as possible, and station cleaning is one area where costs increase with often no tangible benefit. The split between Retail and operators also needs to be safeguarded to ensure payment is not being made twice by both elements at a station.
- Management Fee – this is already Regulated, but operators need a better understanding of the calculation of this fee, and how it relates to Route Charges.

In PR23, we need to understand the way such charges will be compiled in the future, the level of operator involvement in that compilation and the subsequent level of scrutiny of the proposed charges, including any appeals process before the final sign off by the ORR.

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)?

We agree with maintaining CPI as the general inflation index for NR's access charges. We do not see any reason for moving from CPI.

Are there any other comments you would like to make?

The updating of the Open Access market can bear test is welcomed but clear signals on segmentation and likely outcomes (including likely rates) need to be given to the Open Access sector well before Final Determination.

The increased focus in PR23 on the role of charges in supporting environmental outcomes is welcomed and FirstGroup endorses this approach.

Thank you for taking the time to respond.

OFFICE OF RAIL AND ROAD

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

The proposed reform of the railways as outlined in the Williams-Shapps Plan for Rail represents the largest restructuring of the rail industry since privatisation. The reform agenda will consume significant amounts of industry's time and resources over the months and years ahead. Freightliner therefore welcomes the ORR's proposed approach to PR23 that recognises the limited bandwidth of the industry to engage across multiple issues, and will therefore limit wholesale changes to the charging and incentives regimes. Freightliner agrees that any changes should be proportionate and targeted, and limited to where there is a demonstrable value in doing so.

While we agree with the ORR proposal to retain the existing charging framework and avoid significant structural changes, Freightliner considers that further consideration could be given to align the aspirations set out in the White Paper with the outputs of the periodic review. The White Paper makes clear the aspirations to grow rail freight volumes, deliver modal shift from road to rail and for rail to support the journey to net zero greenhouse gas emissions by 2050. While we understand that the current legislation may preclude TAC discounts to incentivise non-diesel rolling stock, the clear carbon saving of rail freight in comparison to the road alternative should be considered in the PR23 process. That could influence decisions around the phasing-in arrangements of the variable charges across CP7. The level of charges directly impacts on the relative competitiveness of rail freight against other modes and are a key driver of realising aspirations for modal shift to rail to support the wider decarbonisation of the UK economy.

While the proposed phasing-in arrangements for the VUC are discussed later in the consultation, Freightliner suggests that the broad direction of PR23 should align with the objectives of reform. While Freightliner understands that new legislation will be required to implement reform, we urge ORR to consider what scope may be available in the current legislation to support the direction of travel in the White Paper.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

Freightliner largely agrees with the initial proposals from the ORR. It is, however, important to be cognisant that even a conventional periodic review process creates significant uncertainty for the industry, but this periodic review is happening in parallel with the structural reform of the rail sector, which only exacerbates the overall uncertainty.

To minimise this and to de-risk this process, we ask ORR to consider what elements of the review could be closed-out quickly. For example, while we know that the ORR must conduct a 'market-can-bear' test to determine what commodities can make a contribution to fixed costs through the ICCs, given how recently this was last done, we would ask ORR to focus on what areas may have changed from the last review, in order to minimise uncertainty in this area.

Freightliner suggests that further consideration should be given to aligning the objectives of the Williams-Shapps Plan for Rail with options for the PR23 process to ensure a degree of compatibility between the outputs of PR23 and the implementation of reform. We know that the requirement for legislative changes may preclude total alignment, but we ask for consideration of where broad outputs can support the overall direction of travel. An example would be how decisions taken around the phasing-in of the VUC align to the decarbonisation and modal shift aspirations outlined in the White Paper. While it is suggested that the current legislation prevents environmental considerations factoring into the level of the VUC, the total VUC paid directly affects the competitiveness of rail freight and therefore the ability to attract more volume onto rail, and consequently support the decarbonisation of the UK economy. Therefore, the phasing-in of variable charges should be considered to be an available lever, permissible within the current legislative framework, that can directly support the decarbonisation agenda.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

Freightliner is aware that the ORR must conduct a 'market-can-bear' (MCB) test to determine what commodities can make a contribution to fixed costs through the ICCs. However, we would ask that such a process is expedited and focuses on what elements may have changed since the last MCB test was undertaken in PR18, to avoid a complete re-opening. We do not consider that any factors will have materially changed since the review was last conducted, but note the legislative requirement to review.

Freightliner supports the same approach to market segmentation that has been used in previous reviews, i.e. based on commodities carried. However, we are concerned that the ORR is proposing reviewing whether the existing commodities should be segmented further. To do so could result in structural changes and appears at odds with the ORR proportionate and targeted approach to the periodic review. This would also create additional uncertainty for the sector, at a time when the industry is trying to manage significant upheaval introduced by the reform agenda. Freightliner asks ORR to reconsider this approach in light of the uncertainty that it will create. While the MCB test should consider any new commodities to rail to include in the analysis, we do not consider there to be a need to segment further existing commodities for the analysis.

Freightliner asks that the strategic objectives outlined in the White Paper are considered as part of the MCB test, particularly in the setting of the level of any mark-ups. The White Paper is clear on its desire to see modal shift from road to rail and the level of the ICCs (through the Freight Specific Charge) paid influences the volumes moved, even where a mark-up is applied.

We note the consultation states that Network Rail is "*separately planning to review the traffic characteristics that are currently used to allocate traffic-avoidable costs, to determine whether these remain appropriate or whether there is a case for adding or removing some characteristics*". While we understand why Network Rail may wish to undertake such a review to better understand cost drivers, Freightliner does not consider such an exercise to be a priority to inform the periodic review. The existing methodology was only introduced in the current control period following engagement and we do not consider there to be a need to re-open this in PR23.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

Freightliner has no comment on this proposal.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

Freightliner does not support the proposal to retain the PR18 approach to phasing-in the VUC. Retention of this phasing-in will see a very significant increase in VUC, particularly for the bulk sector, reducing the viability of using rail for certain flows. Given the link between charges and modal shift to rail, Freightliner urges ORR to reconsider the proposed phasing-in, to ensure alignment with the strategic objectives outlined in the Williams-Shapps Plan for Rail. The White Paper makes clear the desire to see modal shift from road to rail to support economic growth and the decarbonisation of the UK economy. The level of charges is a key driver for the competitiveness of rail freight compared to other modes and therefore growth, and the accompanying decarbonisation benefits, requires a level of charges that supports modal shift.

Reducing the level of track access charges is a key lever that other European countries are using to support modal shift and their journeys to net zero carbon emissions by 2050. France was the most recent country to announce a halving of track access charges to support rail freight growth and decarbonisation (see: https://www.railtech.com/infrastructure/2021/09/17/france-halves-track-access-charges-until-2024/).

In that context we urge the ORR to reconsider the glide path for phasing-in and consider pausing the proposed phasing-in, to ensure consistency with the signalled objectives of the White Paper. Pausing the phasing-in will have the additional benefit of allowing consideration for any new methodology and accompanying legislation for the setting of charges that may be introduced following reform, minimising change and uncertainty.

Notwithstanding the above, any decisions on phasing-in need to consider the efficiency assumptions for Network Rail/Great British Railways. As charges are set on the basis of the efficient level of costs, the assumed efficiency of the infrastructure manager has a very material impact on the level of charges paid. In previous control periods Network Rail's level of efficiency has worsened leading to an increase in variable charges paid by freight operators. We note that Control Period 6 has seen Network Rail make some substantial strides to improve efficiency. The ORR's recent annual efficiency assessment notes that "*Network Rail has reported £710 million of efficiency improvements in 2020-21, against a target of £570 million. All five of its regions have met or exceeded their individual efficiency targets*" and this followed further gains made in 2019-20. In CP6 Network Rail is now expecting to deliver £4 billion of efficiency gains, having been set a target of £3.5 billion efficiency gains in PR18.

The continuing reorganisation of Network Rail into Regions, the establishment of Route Efficiency Boards and the impetus to deliver cost-savings with the formation of Great British Railways, suggests that this improving efficiency picture should continue in CP7. Consequently, we would expect a strong efficiency target to be applied to Network Rail/Great British Railways as part of PR23, reflected in the level of the VUC.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

Freightliner supports the proposed ORR review of what costs are recovered through the VUC to ensure adherence to the new legislation. We note that there was not sufficient time in PR18 to undertake the exercise, so we support this as a PR23 priority. Experience from other European countries have seen a reduction in variable charges having implemented Regulation EU 2015/909.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

Although Network Rail's engineering trains are not directly subjected to charges related to the wear and tear that they cause on the network, we do understand that the costs directly incurred are accounted for and recovered elsewhere. While Freightliner recognises that applying VUC to Network Rail engineering trains could increase transparency and ensure consistency of incentives with commercial freight services, we do not consider this to be a priority for CP7.

Consistent with the principle of avoiding wholesale changes to the charging and incentives regimes and limiting any changes to only those that are proportionate and targeted, we suggest that this could be an area that would be more appropriately be considered post-Reform, when the methodology and principles of any new track access charging regime are known.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

There would be significant value in the development of a user-friendly online calculator that enables freight operators to quickly calculate the expected VUC charge for vehicles in the R&D stage. Understanding the cost implications for a new vehicle/bogie type is useful for operators/owners to understand the potential benefits, which would support innovation.

Currently from the submission of a new vehicle's characteristics to the calculation of a charge by Network Rail is a protracted and lengthy exercise. While the high-level characteristics of what influences the level of charges is known, the precise impact that they have on the calculated charges is not altogether clear. This weakens the ability to incentivise the development of new track-friendly rolling stock and hampers innovation. This issue could in part explain suggestions from across the industry that the price signals incentivising track-friendly equipment are somewhat limited.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

Freightliner is the largest UK freight operator of electric traction. Some of our fleet is fitted with meters to calculate the consumption of EC4T, while the remainder of our fleet (the newly acquired Class 90 locomotives) are unfitted, and therefore EC4T for these locomotives is calculated on a modelled basis. Prior to this consultation we were close to finalising an investment to fit meters to the remaining fleet, however the potential of a ring-fenced fund in CP7 to incentivise the fitment now means that we have paused this programme.

Freightliner would in principle support such a fund to incentivise and expedite fitment, but we ask that any costs incurred to fit meters for the remainder of this control period can be subsequently recovered if such a fund is established in CP7. Without such an agreement in place, the establishment of a fund in the next control period will likely delay fitment of EC4T meters for the remainder of this control period, which would be counter-productive to expediting the greater take-up of meters. We would ask the ORR for clarification on the ability to recover any CP6 fitment costs, to avoid postponing investment decisions until the next control period.

Whilst not directly linked to the fitment of meters, the complexity in the calculation of EC4T and the associated costs impact on the case of using electric traction. EC4T varies by geography and time of day – for instance it is usually more expensive the closer to London the train is drawing power. We also understand that 40% of the EC4T amount is comprised of a 'green levy'. The imposition of such a high green levy on traffic that is even more carbon friendly seems counter-intuitive. We note that this levy is likely mandated by HM Treasury, DEFRA and DfT and therefore not within the jurisdiction of the periodic review to adjust. However, we do think that there would be value in beginning discussions with relevant Government departments to consider the case for removing this levy to support the use of electric freight traction.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

Freightliner has never used partial fleet metering and has no comments on this proposal.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

Freightliner supports the ORR proposal to remove the loss incentive mechanism. As stated in the consultation, because modelled consumption rates are generally higher than actual consumption rates, Network Rail keeps some of the difference between actual and modelled consumption providing the opposite incentive from what had been intended. As loss factors are fixed they can lead to an over-recovery. Consequently, the loss incentive mechanism is in clear need of reform and as such, we support the ORR proposal to remove it.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

Freightliner can see the merit of combining EAUC and VUC to simplify the track access charges. However, in light of the burden that ORR describes in recalculating the charges, we would not consider such a proposal to be a PR23 priority. Given the potential for a new track access charging structure following the reform of the railways, it would seem prudent to avoid changes at this time, despite any simplification benefits.

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

Freightliner has no comment on this proposal.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

Freightliner has no comment on this proposal.

Question 15: Do you have any views on our proposal to class stations that open within a control period as 'new' for a fixed five-year period from the date of opening?

Freightliner has no comment on this proposal.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

Freightliner has no comment on this proposal.

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)?

Freightliner supports the continued use of CPI as the inflationary measure. Given that CPI was only introduced in the current control period, replacing the previous inflationary metric of RPI, we do not consider further changes in this periodic review to be necessarily and certainly not a priority.

Freightliner cannot see the value in changing to CPIH. The consultation notes that CPIH track at a very similar value to CPI and therefore we would urge the ORR to avoid a further change to the inflationary measure that would create burden for no discernible benefit. As such, Freightliner supports the ORR proposal to maintain CPI as the general inflation index for CP7.

Are there any other comments you would like to make?

In making the Decision in respect of Freightliner Heavy Haul's 10th Supplemental, which was processed as a Section 22a application, ORR stated that they "*expect HAW [Heavy Axle Weight] traffic to be part of the PR23 Network Rail Access Charges Review*". Freightliner continues to highlight the need for the Network Rail Route and Regional Business Plans to prioritise maintaining HAW capability as a key element of their plans. We understand that this is the preferred route to make such representations, rather than through this charging review. Freightliner would like to restate though the importance of HAW capability as key to the competitiveness of using rail for certain bulk flows. Withdrawal of HAW capability will detrimentally impact on competitiveness, making rail freight less attractive in comparison with other modes. This risks modal shift back to road for certain flows of traffic.

While we will continue to emphasise the need to maintain HAW capability is a key priority in the Route and Regional Business Plans, there is an interface with track access charges to consider. The modelling to calculate the variable charges will be on the assumption of HAW traffic operating across routes for many commodity-types and those HAW characteristics will be reflected in the unit rates that are calculated for the charges. As such, the calculated unit rates for those wagon and commodity combinations will be on the assumption that the traffic is operating at HAW. In instances where Network Rail Routes and Regions begin to restrict HAW traffic and direct that wagons are down-loaded to run at RA8 or below, then the basis of the charges will still be based on the same unit rate (assuming HAW loaded traffic), with the associated wear-and-tear on the network. While the weight of the train will reduce and will result in a lower charge, the unit rate remains the same. Freightliner asks ORR to consider the implications of any downgrades of HAW capability on the VUC charges that are calculated in the PR23 process to prevent a scenario where unit rates are set on a different basis than the dispensations for traffic that are issued by Network Rail.

Thank you for taking the time to respond.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

Access charging, across the board, has a big role to play in encouraging the modal shift of freight from road to rail. That modal shift is one of the biggest contributors to the Government reaching its legal carbon net-zero targets in time. These targets are not a "nice-to-have" but hard legal requirements.

With any proposed changes, ORR needs to ensure there is a fair, non-discriminatory system of charging across all TOCs and FOCs, especially within the new Rail Transformation Programme. If ORR cannot currently reasonably anticipate the future access system, as stated, then it is not now the right time to change the access charging regime.

Given that existing legislation is still likely to be in place during the currency of this review, GB Railfreight does not expect there to be any fundamental changes to the current access charging regime, just some very minor changes where needed.

GB Railfreight is also concerned that it is very late in the day for looking at fundamental changes to the VTISM model, not least because that particular item will need a lot of discussion, between all parties, before any agreement on changes of principles is made. My concern is a lack of time.

With regard to the how franchised TOCs/concessions treat these access charges as “pass-through costs”, but with freight operators actively exposed to these direct costs and any sensitivities to them, GB Railfreight is concerned how these are to be reconciled in a fair way and one that encourages modal shift of freight from road to rail.

GBRf believes that the Rail Transformation Programme may well bring some fundamental change to how and/or if access charges are raised against passenger and freight operators and that the key to a healthy railfreight sector is stability of charges over period of time, ideally longer than five years. This helps both the freight operating companies and freight end-customers invest in this market with confidence that each can have a return on their investments over a reasonable time.

GBRf notes that ORR will have regard to environmental outcomes when developing its initial proposals however GBRf believes that, especially at this time, environmental incentives and outsides must be at the very heart of any charging regime. For example, GB Railfreight believes that distinctly lower variable usage charges should be applicable for new hybrid locomotives to incentivise freight operating companies to invest in such equipment, with much older diesel locomotives (e.g. 40-50 year old diesels) having a higher charge attached. The same is true for newer wagons where real financial incentives are needed to incentivise all parties to invest still further.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

GB Railfreight is broadly content with the restricted proposals for further work as wholescale change at this moment in time would likely cut across changes proposed by the Rail Transformation Programme. Any perceived large changes to the access charging regime would also likely discourage new customers to rail freight as it would be seen as too risky and unstable. This is exactly the time when we need to be attracting more customers to rail and achieve modal shift.

Overall, GBRf is keen that, throughout any holistic review of the access charging regime, there are no market shocks created in the railfreight market. Just as importantly, GBRf is looking for simplification of process for EC4T charging and also VUC charges for using the many freight wagons for various commodities, some of which will not have thought of at the time of setting the VUC charges.

GB Railfreight is concerned that, in carrying out work to update “what the market can bear” test, that commodities such as aggregates and building materials, for example, are not incorrectly assigned new fixed costs charges. It is clear that there are some large national projects and campaigns taking place over the next 5-6 years which have the ability to distort the base figures for growth in this sector.

Again, merely as one particular example, our aggregates customers have already invested in their road fleet, technologically, making them more environmentally friendly. They have also invested in some track-friendly rail wagons. Neither GBRf nor its freight customers want to see that investment in rail vehicles “punished” with additional charges. With the above investments in road vehicles, in this particular sector, GBRf could foresee a pronounced movement from rail back to road transport exactly at the time when Government is heavily promoting modal shift of freight from road to rail.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail’s cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

GBRf notes from the consultation document that the level of infrastructure cost charges (ICCs) for freight is primarily informed by FOCs’ ability to bear mark-ups, rather than deriving directly from cost allocations.

We are very concerned that making the methodology more cost-reflective in CP7, by increasing the number of traffic characteristics that are used to allocate traffic-avoidable costs, flies in the face of the Government’s clear message to achieve its legal requirement for its carbon net zero target. Modal shift, from road to rail, is what now has to take place, in increasing quantum, to reach these legal targets.

GBRf is clear that its current and future freight business cannot bear any more mark-ups (for fixed costs or otherwise) if we and our customers are to meet the Government’s carbon net-zero targets, which are legal targets.

Freight operators have previously seen increases in track access charges without any corresponding improvements in the quality of the infrastructure (e.g. robustly supporting higher Route Availability bulk traffics) or quality of train paths, meaning that FOCs cannot offer their customers any improved quality or added benefits for these higher costs. That is not a commercially acceptable way forward.

Elsewhere in Europe, EU legislation had allowed for Member States to put in place compensation schemes for railway undertakings for unpaid environmental, accident and infrastructure costs. Germany, for example, has recently made use of this provision to almost halve track access charges for rail freight companies. Austria, Luxembourg France & The Netherlands have also reduced freight track access charges.

The EU found that the scheme, as modified, is beneficial for the environment as it supports rail transport, which is less polluting than road transport, while also decreasing road congestion.

The Commission also found that the amended measure continues to be proportionate and necessary to achieve the objective pursued, namely to support the modal shift from road to rail.

On this basis, the EU Commission concluded that the amended measure will facilitate the shift of freight transport from road to rail in line with the EU policy objectives, including those set out in the European Green Deal, without unduly distorting competition in the Single Market. On this basis, the Commission approved the modified scheme under EU State aid rules.

For environmental reasons alone, a similar process needs to be taken forward in the UK and CP7 would appear to be a good time to do this.

In some points of detail, given that Network Rail is currently in the process of streamlining its overall workforce to the tune of ~20%, GBRf needs to be assured that this element of fixed cost is accurately incorporated in the figures along with any other fundamental cost centre changes within the company.

Operators, also, cannot be penalised for Network Rail not having met its CP6 efficiency plans when looking at the methodology and starting points for CP7 charges. It is clear that Network Rail still has some way to go to meet its CP6 targets and there is concern that freight operators will be penalised for Network Rail not achieved them, in the start of CP7 baselining.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

GB Railfreight believes the FTAC should not be retained as it has not been shown to be an effective mechanism.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

The phasing-in and scale of the PR18 charges are now understood by freight operators' customers. Having said that, increased charging towards the end of CP6 are likely to dampen growth in some rail freight traffic given the change in costs. This goes against the Government's green agenda for modal shift from road to rail, which our freight end-customers just do not understand.

GB Railfreight and its customers cannot accept the continual phasing-in and the reaching of full cost reflectivity at the end of CP7. As mentioned elsewhere in this response, this proposal undermines the Government's legal requirements to achieve its carbon net-zero target and our freight end-customers cannot understand the logic of increasing the fixed costs element of rail access charges going forward.

That is particularly the case, between 2024 and 2029, when there are some major UK PLC projects that will, ideally, be served by rail, e.g. large sections of HS2 building, Trans-Pennine Route Upgrade, materials in and out for the building of Sizewell Power Station, increase in Intermodal flows across the country.

Our customers, already nervous of what might come, are already weighing up their options on these projects with a view to using road as an alternative which would be an environmental disaster.

With regard to charter operations, these operations can be price-sensitive not least at a time when many rolling stock owners are expecting to invest more in their Mk.I fleet of coaches in order to continue running them.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

GB Railfreight is concerned that, with the Rail Transformation Programme now starting to rapidly move forward, time may well be wasted on detailed change that could be abortive given the suspected wide-scale changes likely to occur with GBR. Quite how a process might work under GBR, with potentially franchised/concessionary TOCs not paying any access charges but open access passenger and freight paying access charges is also a real concern.

GBRf does not wish to offer up any further evidence for review.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

Since GB Railfreight raised this subject in PR18, several conversations have now taken place on the real detail of the relationship between VUCs and Network Rail engineering services and also how that might change were these types of services to all attract similar VUCs to other commercial services.

This is the first time that this explanation has been given in any detail. It is true that more wear-and-tear transparency of engineering services would occur but, having now had some meetings on the subject, GBRf is also not convinced that potential benefits would outweigh the implementation costs and efforts.

What is clear, though, is that as a complete process, there must be clear financial incentives for all parts of the industry to remove wagons that cause more wear-and-tear on the network.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

Freight end-customers do not always have clarity of the variability of access charges that might be coming their way, especially beyond one Control Period. This is important to note given that their contracts with GBRf expand beyond 2024 and in some cases beyond 2029.

This uncertainty creates anxiety in our customers' minds when deciding whether or not to invest further in terminal facilities, expand current train operations or start brand new-to-rail freight services. It can stifle private investment. In the current climate of removing freight from the roads and pressing forward with modal shift, the increasing of any charges and, certainly, the lack of clarity is not what the industry needs.

In GBRf's view, any simplification in the current VUC methodology, and how that is presented, is welcome.

The VUC calculator could become a powerful tool for everyday use by freight operators comparing freight wagons to be used for carrying a variety of products. On many occasions over the last 10 years, there have occasions when certain wagon types have been chosen to be used to carry products for which there are no VUC charges in place as that combination was not thought of at the time of the periodic review.

FOCs need the calculator to be able to produce VUC figures for a far wider range of products on each wagon type in order to avoid delays in having the charges set up immediately before a new flow starts. Setting a VUC to an exceedingly expensive default rate is of no help to FOCs or their customers.

As the VUC is designed to recover operating, maintenance and renewal costs over and above a certain baseline level, GBRf needs to really understand the true, efficient costs of all three of these activities so it is transparent for all to see. A real level of rigour needs to be taken to ensure these costs are realistic and efficient over the course of the Control Period.

As this consultation states (at bottom of page 27), in practice rail infrastructure operating costs are widely understood not to vary materially with traffic commodities so there ought to be little or no variation in this respect across commodities carried.

Given there is deemed to be no material change in operating costs across the various freight commodities, GBRf would like to better understand what the differences might be across the commodities in either maintenance and renewals.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

What is clear is that, by the mid-2020s, electric and bi-mode traction is likely to feature far more on railfreight services than at present. Firstly, there ought to be additional financial incentives for operators to change over to use electric and bi-mode traction and, coupled with that, there has got to be a simple, effective and accurate way of recording the correct amounts of electricity used.

Although GB Railfreight does not currently have any metered electric locomotives, given the detail provided in this consultation it is supportive of establishing a ring-fenced fund to support the installation on meters more widely across fleets, not least for older classes of electric freight locomotives.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

GB Railfreight has no firm views on this proposal although given no operator has opted into this since PR13, it seems prudent to remove it.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

It is GBRf's understanding that modelled electricity consumption rates are generally higher than actual consumption as the modelling will always assume the worst-case scenario for loco power-draw, not taking into account driving techniques for coasting, where necessary, and the varying train weights.

In GBRf's view, as with much in access charging, it is vital that the right incentives are in place and made to consistently work. Therefore, this mechanism having the opposite of the intended incentive on Network Rail should not be continuing. GBRf believes the mechanism ought to be re-designed to ensure the right incentives are in place.

Were ORR to remove the loss incentive mechanism, it isn't clear what the mechanism would be to ensure that operators accurately make the correct payments.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

GB Railfreight has no issue with proposal.

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

GB Railfreight has no comment to make on this proposal.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

GB Railfreight has no comment to make on this proposal.

Question 15: Do you have any views on our proposal to class stations that open within a control period as 'new' for a fixed five-year period from the date of opening?

GB Railfreight has no comment to make on this proposal.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

GB Railfreight has no comment to make on this.

Chapter 6: Inflation Indexation
Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)? GB Railfreight is content that CPI remains as the general inflation index, having argued for it in PR18.

Are there any other comments you would like to make?
As can be seen from GB Railfreight's views throughout this consultation, the Government's legal carbon net-zero requirements, and the badly needed modal shift of freight from road to rail, are absolutely key to the industry right now. Future access charging plans, across the board, have a big role to play in encouraging the modal shift of freight from road to rail. That modal shift is one of the biggest contributors to the Government reaching its legal carbon net-zero targets in time. The real concern is that these proposals, as initially set out in this consultation, appear to be diametrically opposed to encouraging that modal shift of freight to rail.

Thank you for taking the time to respond.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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*This information will not be published on our website.

Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

ORR should recall that the FTAC is an 'artificial construct' which has no relevance to the ability to pay of franchised/concession operators, nor is it an important part of NR's revenue per se. It was introduced by the then Rail Regulator to give some 'customer' leverage to train operators over the dominant infrastructure manager (IM) by moving it from a direct grant mechanism.

As a result, the comment that "Removing ICCs for open access operators would imply recovering these fixed costs from other passenger operators through FTACs, thereby increasing the industry's overall reliance on public subsidy" is absolutely wrong. Ignoring for a moment that the ORR has so far failed to approve any new open access since the charge was introduced (supposedly alongside an argument that it would make access easier), ICC paid by open access is always over and above the FTAC levied on franchised operators. If that was not the case, then there would have been a variance mechanism to reduce franchised FTAC when a new open access operator entered the market. The issue was raised in PR18. The ICC paid by open access is an increase in FTAC revenue over and above the settlement figure.

It remains a significant concern to Grand Union that the ORR consistently 'identifies' issues with open access as if somehow it was a problem for it and the industry. Open

access has been a success story of the privatised railway but still finds great difficulty in getting approval from the industry's Competition Regulator.

As was also pointed out in PR18, the current ICC open access mechanism creates insurmountable barriers for new long distance cross country open access as the arbitrary £4 per mile charge makes it impossible to create a business plan that would address a number of poor direct flows. Instead, it naturally puts the focus on London flows.

The issue of 'ability to pay' is irrelevant while ever the ORR takes the position of the impact on the Secretary of State's (SoS) funds as the core criteria (despite there supposedly being a balance to be struck), as the DfT always objects to open access, wherever and whenever it is suggested, and always cites the impact on the SoS's funds as the reason.

The fact is that the cross country network has been reduced over time, and coupled with the arbitrary imposition of the ICC has meant that important markets that could, for example, link Wales and Scotland are not possible under the current and likely PR23 charging regime unless trains do not call at major stations en-route.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

The ICC for open access needs further detailed assessment.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

No comments

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

No comments

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

Yes

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

The VUC is one area that seems transparent and works well now.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

It would just become a money go-round exercise so not sure what value it would add.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

No

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

A discount for metered services would be an incentive.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

It's not used so removing it would not be a burden.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

Any moves to simplify the process are welcome.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

No

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

No

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

No

Question 15: Do you have any views on our proposal to class stations that open within a control period as ‘new’ for a fixed five-year period from the date of opening?

No

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

No

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail’s access charges (and payment rates in other mechanisms where we set the method of indexation)?

No

Are there any other comments you would like to make?

Thank you for taking the time to respond.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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*This information will not be published on our website.

Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

LSER appreciate the potential merits of the selected subjects of this charges review given the upcoming reform of the industry structure.

We fully understand the need to consider the administrative burden that is linked to some current processes for access charging.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

LSER agree with most of the areas for further work and look forward to assessing further detail as the periodic review progresses.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

LSER support Network Rail's proposed review of allocation of fixed costs although agree that transparency should be maintained and consultation should occur ahead of any recalibration exercise.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

LSER are supportive of retaining the FTAC as a fixed lump-sum, rather than reintroducing a FTAC wash up

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

LSER would support the retaining of this policy, though we would like to see further information, with quantifiable data if possible, on the impact of this policy later in the periodic review process.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

LSER do not have additional evidence that we would like to highlight, but we support the proposed review.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

LSER do not believe that it would be necessary because, as set out in the consultation paper, the costs of the wear-and-tear are already borne by Network Rail for their engineering trains.

We would like to see further information and assurances that Network Rail are accurately separating out these costs. Provided that this process is accurate, we would not think it necessary to apply the VUC to Network Rail vehicles, as the effect on operators would be cost-neutral.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

LSER support the proposed improvements to the VUC calculator as set out in the consultation paper. We would also like to see a 'blank' version of the calculations for the VUC, demonstrating how different factors are weighted.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

LSER would be supportive of additional funding being allocated to train metering projects, but we believe that the implementation of this should vary depending on whether it is intended to fund metering projects fully or partially. If fully funding metering is the intention, then we are wholly supportive. If the fund would only partially cover the costs of introducing metering, then we would encourage NR/ORR to ensure that the fund is also supported in principle by the DfT, from whom operators would probably need to also seek extra funding – otherwise operators may not be able to make use of the money available in the fund.

We have potential concerns over any proposal to make metering mandatory, if it were not introduced effectively and in co-operation with operators. We are supportive of introducing further on-train metering, but if metering were to become mandatory the industry would need sufficient notice to plan for and introduce metering across its fleets (the time needed for this would vary by operator) and we would expect funding to be available for this.

We think that receiving specific and concrete commitments from the DfT on future on-train metering would be the most effective way to incentivise operators to fully meter their fleets – though we recognise that this is beyond the scope of the current consultation.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

LSER do not have any comments on the proposal to remove the PFM charging approach for EC4T.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

We believe that the principle of the loss incentive mechanism is useful, and we would not like to see it removed entirely. We recognise that in practice the incentive mechanism may not work as intended, but we would like to see how the mechanism could be reworked, rather than it being removed in the first instance.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

We are broadly supportive of this approach, as we do not have any specific changes to propose on the EAUC. However, we would like to see further information and consideration on the EAUC later in the review process to highlight whether there are any areas for improvement.

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

LSER agree with the principle of what is proposed but do acknowledge the administrative burden that this would bring. To full assess this proposal we would need understand how a "large/complex franchised station" would be categorised, (e.g., will this be based on footfall, vehicle counts, square footage etc?). TOCs would need to play a part in the review of station categorisation criteria to ensure transparency.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

LSER consider that there may be some merit to exploring a different approach to allocate LTC related expenditure. Using vehicle counts does not consider the time of day (peak/off peak) and therefore does not consider footfall. Off peak services carry considerably fewer passengers and therefore would have lesser impact on the maintenance and upkeep of the station whereas an operator with services that travel from a longer distance may be transporting more passengers and so having a greater impact. There may be some benefit in analysing passenger loadings/footfall for 1 period in the summer and 1 period in the to determine if the vehicle counts are reflecting a fair split of the usage of the station and its facilities especially as passenger data is becoming clearer especially given the ability of new rolling stock to provide load weigh data. Whilst vehicle counts confirm the capacity of services, they do not necessarily show a fair reflection of use of the station itself.

Question 15: Do you have any views on our proposal to class stations that open within a control period as 'new' for a fixed five-year period from the date of opening?

LSER are supportive of the proposal to class stations as 'new' for a 5-year fixed period however would need to further understand the definition of 'new' to fully consider this. Where a station is not entirely built from scratch but undergoes an extreme overhaul (e.g. London Bridge), we would expect to see the same or similar reduction in maintenance and renewal costs given the large levels of investment. LSER do not agree that SISS charges should not be included in this principal as the assets will benefit from the same one-year warranty and extended asset life as a result of being new. It would be useful to understand why it is proposed that TOCs contribute in full for this element on a 'new station.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

LSER acknowledge that the current process for the fixed QX element can be an administrative burden on all parties however it affords TOCs a deep insight into how these budgets are compiled. This offers the opportunity to challenge unnecessary costs, drive efficiencies and hold NR to account. For LSER to consider the merits of making the QX fixed element a regulated charge we would need to understand the intended level of TOC involvement in advance of each control period. We do agree that clarifying the charge categories would allow a more transparent approach and make the process of reviewing and agreeing charges simpler.

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail’s access charges (and payment rates in other mechanisms where we set the method of indexation)?

LSER are content for CPI to remain.

Are there any other comments you would like to make?

Thank you for taking the time to respond.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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*This information will not be published on our website.

Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

The current access charge regime is set up to reflect the railway structure that existed following railway privatisation, with Railtrack operating the infrastructure as a private entity and a majority of TOCs operating under franchise agreements.

This no longer reflects the model in operation today, with a nationalised Network Rail operating the infrastructure and a majority of TOCs moving to National Rail Contracts or concessions. This process will continue to evolve between now and the start of Control Period 7.

The Periodic Review should aim to simplify charges and where possible design them so that they can be adapted to enable a smooth transition to the Great British Railways (GBR) model, whilst taking into account operators that will fall outside of the GBR framework, such as TfL Concessions (including MTR Elizabeth line), London Underground, Open Access operators and Freight operators.

If existing regimes continue, then the charges, and how they are calculated, need to be transparent, including where charges are capped (subsidised) so that costs and subsidies are clearly visible to funders, stakeholders and taxpayers. The regimes also

need to incentive both Network Rail, FOCs and TOCs to behave as intended by the rail review and the future GBR model.

There are opportunities to introduce early efficiencies and reduce the £2bn a year that flows between TOCs and Network Rail.

Given that by 2022 a majority of TOCs will have National Rail Contracts, with a number of other TOCs such as MTR Elizabeth line operating as concessions, it would seem appropriate to simplify the charges where possible and start to align incentives with the future GBR model.

However, we consider that the incremental approach proposed is appropriate as the precise future structure of the industry remains uncertain following publication of the Williams - Shapps Plan for Rail.

It is also important that there is clarity on the position of operators that use bespoke access arrangements on Network Rail infrastructure such as London Underground.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

The review of QX and LTC should be extended to the entire station portfolio, to enable stations that are not currently Network Rail Managed Stations to transition to the GBR model during the course of CP7.

Station charges should be benchmarked, to make sure that stations are run efficiently by Network Rail and TOCs. The charge should incentivise Network Rail and TOCs to staff stations to meet the needs of passengers and improve safety and train performance.

MTREL and London Overground (TfL Concessions) have seen an improvement in train performance, an increase in passenger safety and a reduction in incidents such as suicide since all stations became staffed from first to last train. Network Rail and other TOCs should be incentivised to do the same.

QX charges at stations not managed by Network Rail are not transparent and this regularly leads to disputes between TOCs over the cost of QX charges. A comprehensive and clearly structured approach to the assets at each station and their maintenance/renewal cost is needed to achieve better transparency in this area and should be applicable across the full stations estate.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

Whilst this would potentially simplify the transactions between TOCs and Network Rail, it does not appear to drive efficiency improvements or enable Network Rail to have sufficient control over their budget.

Network Rail costs should be transparent and decisions around asset management plans, renewals and enhancements should be made at a local level involving Network

Rail, TOCs, FOCs and other stakeholders. Some form of benchmarking should be undertaking to make sure that funding is allocated appropriately across the network whilst at the same time making sure that efficiencies are achieved.

We understand that Transport for London (TfL) has concerns over the continuation of the Fixed Track Access Charge (FTAC) that is paid by operators because of the financial risk this imposes on them as a funder which is hard to control. We would support any measures that minimised or removed such risks as this would improve the stability of our own position as an operator.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

The FTAC should reflect the funding needed to maintain asset condition at an acceptable level and funding to renew any assets that are life expired or are in need of replacement during the Control Period. Network Rail should develop their funding plans for CP7 in partnership with the TOCs , FOCs and other stakeholders where appropriate. This dialogue should continue throughout the Control Period to make sure that any emerging issues or changes to the plan are agreed locally. However, care needs to be taken regarding any more bespoke approaches related to renewals/enhancements as this could result in greater volatility of charges between Control Periods which is hard for funders such as TfL to manage within the constraints of their funding arrangements;

In the absence of an FTAC wash up mechanism consideration should be given as to how to incentivise the industry to reduce fixed costs, given the high proportion of total costs that they represent and the significant loss of revenue the industry has suffered as a result of the ongoing effects of the Pandemic.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

The Variable Usage Charge should fund Network Rail for maintenance costs arising from daily wear-and-tear caused by TOC and FOCs. The charge should be designed to charge operators for the actual cost of the wear-and-tear that they cause, and where appropriate encourage operators to minimise their impact on the infrastructure. The charge, if it is to continue in its' current form, should be transparent and charged equally and fairly across the network. Any subsidy to Open Access or freight operators should be managed separately and should be visible to stakeholders, funders and specifiers, although our view is that Freight and charter operators should pay the full variable costs their operations impose on the network.

Maintenance costs and train performance should be benchmarked, to make sure that VUC is being spent effectively and efficiently on each route section.

The VUC could also be used to incentivise operators to introduce rolling stock, and review train formations, to reduce the impact on the environment, including the introduction of hydrogen or battery powered trains and more electric or hybrid vehicles.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

No Comment.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

The principle makes sense and provides full transparency of the costs incurred by Network Rail in maintaining and renewing the infrastructure. Again, costs could be benchmarked across the network to make sure that Network Rail operates engineering trains efficiently, and that units have track friendly characteristics, and funding should be allocated accordingly. Under the current arrangements, TOCs and FOCs are subsidising the wear and tear caused by engineering trains, which Network Rail should be funded for.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

No Comment.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

We support any measures taken to move electric rolling stock to on-train metering at the earliest opportunity, including some funding where appropriate.

We suggest that this is combined with measures to incentive Network Rail to reduce the impact of transmission loss.

We also propose that funding is put in place to enable Network Rail and their partners to develop and implement infill electrification schemes and support initiatives such as battery train operation. Electrification of freight sidings and depots, and short freight branches on otherwise electrified routes, being one example.

We support this approach given the environmental imperative to ensure power is used as efficiently as possible. It should encourage closer attention to be paid to the energy consumption characteristics of trains.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

We support this, as the Partial Fleet Monitoring approach is clearly of little value to operators because none of them has made any use of it.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

We agree that the loss incentive mechanism should be removed, but it is important that Network Rail publishes data by route, and that benchmarking takes place and targets are set to inform future enhancements.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

We propose that the charge is removed. In the short term it could be incorporated in the VUC or the FTAC, but essentially the electrical equipment should be treated in the same way as other assets such as signalling equipment, which are not funded separately.

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

If the categorisation of assets is done in a sufficiently comprehensive manner it should be possible to apply this to all types of station to achieve a fully consistent approach. Further consideration should be given to this before adopting a bespoke approach for large and complex franchised stations, as this approach could result in volititily in charges (i.e. if a roof renewal was scheduled during a particular control period).

Question why LTC is to be retained at all. Volatility in charges if linked to renewals (i.e. roof repairs).

We question whether LTC should still be retained, but should it continue then the calculations should be transparent and reflect any efficiencies that will be achieved when the new GBR model is introduced and all station maintenance, repair and renewal activities will fall under GBR. The budgets should be developed in partnership with the TOCs and other stakeholders and provide opportunities for innovation and third party funding to be introduced during the course of the Control Period.

We suggest that this approach is applied at all stations, not just large/complex stations and that costs are benchmarked across the network for stations of a similar size, complexity, footfall and asset condition. This will also provide valuable data for GBR to inform future station maintenance, renewal and enhancement plans.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

Costs should be benchmarked across the network for stations of a similar size, complexity, footfall and asset condition. This will also provide valuable data for GBR to inform future station maintenance, renewal and enhancement plans and encourage TOCs to maintain stations to the required standard and seek appropriate funding to do so through their new contracts, until such time as the stations transfer to GBR.

Maybe stations could be categorised based on measures such as; station facilities (i.e. toilets, lifts), asset age and condition, footfall, number of platforms, with costs then benchmarked between stations of a similar size, with TOCs and Network Rail funded and incentivised to meet minimum standards, and deliver cost efficiencies where appropriate, until such time as the stations transfer to GBR. This may include identification of funding for enhancements that are required during the Control Period (i.e. new lifts).

Question 15: Do you have any views on our proposal to class stations that open within a control period as ‘new’ for a fixed five-year period from the date of opening?

We consider this approach to be appropriate.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

This approach has merit provided that the process for generating the regulated charge is transparent and that the categories it covers are comprehensive and reflective of potential operator requirements. Regulation would ensure the reasonableness of such charges. Whatever process is implemented for CP7 needs to be flexible and enable it to be extended to all GBR managed stations during the control period.

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)?

We support the retention of CPI as the general inflation index for Network Rail.

Are there any other comments you would like to make?

Thank you for taking the time to respond.

Peter Swattridge
Head of Regulatory Economics
Network Rail
[redacted]

Dan Brown
Director, Markets and Economics
Office of Rail and Road

24 September 2021

Dear Dan

Network Rail's response to ORR's technical consultation on the PR23 review of access charges

1. This letter sets out Network Rail's response to the Office of Rail and Road's (ORR's) 15 July consultation on access charges for Control Period 7 (CP7).
2. The main body of this letter summarises the key points which we consider that ORR should factor into its work programme for the 2023 Periodic Review (PR23). The annex to this letter responds to ORR's specific consultation questions.
3. We consider below:
   a) the overall approach to the PR23 review of charges, including the impact of the Williams Shapps plan for Rail;
   b) the Variable Usage Charge;
   c) traction electricity charges;
   d) fixed charges; and
   e) station charges.

Overall approach to PR23 review of charges

4. We acknowledge that the nature and timing of future legislation, and the details of new industry arrangements, are currently uncertain. Moreover, it is not clear whether these uncertainties will be resolved before ORR has to conclude on the charging framework for CP7. We therefore agree that at this stage of PR23, it is appropriate for ORR to maintain consistency with existing industry legislation in conducting its review of charges.
5. We support ORR's proposals to reduce the complexity and administrative burden of aspects of some charges, where this no longer appears proportionate, and existing legislation allows. However, we believe that ORR should be more forward-focused in this regard, with an eye to what can usefully be achieved to progress towards future industry arrangements while complying with existing legislation.

6. Firstly, as ORR acknowledges, it may be the case that passenger operators that are directly contracted by Great British Railways (GBR) will not be required to pay access charges to GBR.
   a) ORR appears to assume that the non-discriminatory charges requirement in the Access and Management Regulations (the Regulations)[1] means that Department for Transport (DfT) / Transport Scotland (TS) specified operators must pay any charge that is levied on non-DfT/TS operators, and that under current legislation there is no scope to exempt DfT/TS operators from some charges (e.g. fixed charges and station charges) that are not required by other elements of the Regulations.
   b) We encourage ORR to keep this assumption under review. Specifically, we believe that a charging framework which does not result in discriminatory effects cannot reasonably be considered discriminatory. If DfT/TS hold DfT/TS operators harmless against certain charges, then the payment or non-payment of those charges by those operators does not have any effect on their behaviour, and cannot result in any advantage to those operators. Moreover, as long as the framework for the <u>calculation</u> of charges to both DfT/TS operators and non-DfT/TS operators continues to be non-discriminatory and cost allocations are not affected by non-payment of calculated charges by DfT/TS operators, such non-payment will not cause any disadvantage to non-DfT/TS operators. In those circumstances, non-payment of charges by DfT/TS operators will not in practice result in any discriminatory effect.
   c) Therefore, we consider that where contractual arrangements hold DfT/TS operators harmless against a charge, it might be possible to exempt DfT/TS operators from paying that charge to Network Rail, while complying with existing legislation. We suggest that ORR keeps this option open pending developments between now and its final PR23 conclusions on charges.
   d) We note that the possibility of exempting DfT/TS operators from paying some charges need not delay the bulk of ORR's thinking and decisions on the charging framework, which are focused on the calculation of charges (including underlying cost allocations) on a non-discriminatory basis. As noted above this remains relevant, even if some operators do not end up paying those charges.
7. Secondly, we believe that one element of the charging framework – the charges levied for stations – is currently disproportionately complex:
   a) In the longer term, we have considerable doubts over the benefits of continuing to calculate and levy individual charges for each of our 2,500 stations, with the great complexity that this entails. In principle, the logic for calculating an individual charge for every station that a train calls at appears no stronger than the logic for calculating an individual charge for every bridge that a train runs over, or an individual charge for every tunnel that a train passes through.
   b) This complexity is not justified by the incentive effects of station charges. Most operators have no choice over the calling pattern of their services, since this is tightly specified in their funder contracts. And while incentive effects are relevant to Open Access operators, a far simpler charging regime would be more proportionate for that purpose, given the scale of revenues involved.

[1] Paragraph 1, Schedule 3, Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016

c) It may be possible to move away from individual charges for every station even under existing legislation and existing contractual arrangements, as part of PR23. At a minimum, we believe that potential charging reforms for PR23 should be considered with an eye to simplifying the station charging regime in the longer-term.

d) Therefore, we consider that while there is merit in pursuing simple opportunities to improve the cost reflectivity of individual station charges at PR23, until there is greater clarity about the detail of rail reform, any fundamental change to the calculation of individual station charges would be disproportionate.

Variable Usage Charge

8. ORR draws attention to the possibility that the industry wide working group responsible for the Vehicle Track Interaction Strategic Model (VTISM), which provides the underlying engineering evidence for the calculation of the Variable Usage Charge (VUC), may propose some revisions to VTISM. ORR suggests that any revisions that arise from this process should be taken into account in Network Rail's VUC recalibration process, which is expected to begin in autumn 2022.
9. We have significant concerns with the appropriateness, proportionality and practicality of reflecting such revisions in our recalibration process:

   a) Revisions of this nature would be the most significant amendment in a decade to the calculations underlying the VUC. The last amendment was at PR13, when the track damage formula was revised. The full consequences of that change have still not filtered through to VUC rates: ORR has allowed freight and charter operators a 15-year glide path spanning from the start of CP5 to the end of CP7 for VUC rates to catch up with the VUC costs implied by the revised track damage formula. We consider that this timescale clearly demonstrates that another revision at this stage would not be compatible with ORR's stated aim of avoiding fundamental changes to the charging framework at PR23, and focusing only on limited and incremental changes.

   b) Reflecting such revisions in VUCs is a time-consuming exercise which requires extensive and technically complex stakeholder consultation, particularly with operators who could face increased VUCs. The timescale for consequential changes to the VUC calculations following any revision to VTISM is not yet clear, and we have significant concerns that it will be too late for the launch of our recalibration process in autumn 2022, and too late to leave enough time for adequate stakeholder consultation.

   c) Therefore, we do not support the suggestion that CP7 VUCs should be recalibrated to reflect any forthcoming revisions to VTISM.

10. We are content with ORR's current intention to retain the existing path for phasing in VUCs for freight and charter services, so that they reach full cost reflectivity by the end of CP7.
11. We believe that creating internal VUC charges within Network Rail for the wear and tear caused by engineering trains would require disproportionate effort for the resulting benefits:

   a) These trains account for only 2.2% of total traffic. Establishing internal VUC charges would be a significant exercise, requiring the creation of VUC rates for around 450 vehicle types: a 20% increase in the total number of calculated VUC rates.

b) Network Rail already has a strong incentive to make efficient choices over the track-friendliness of engineering vehicles, since it bears the cost of the wear and tear that they cause. The incentive is effective: the Independent Reporter appointed by ORR and Network Rail at PR18 to review this and other issues relating to VUC, examined the track-friendliness of engineering trains and concluded that engineering trains are not excessively damaging to the track when compared to other freight traffic.

c) As confirmed by ORR, the wear and tear that these vehicles cause is not recovered from operator VUCs, but is borne by Network Rail and recovered from other funding sources. However, once the cost of engineering train wear and tear is transparently identified, there is a strong case for recovering a proportion of that cost from operator VUCs, since some of it is directly caused by activities necessary to repair operator wear and tear. Preliminary calculations conducted at PR18 to support Arup's review indicated that this would increase operator VUC rates by just under 1%.

Traction electricity charges (EC4T)

12. We support the greater use of on-train metering, primarily because billing on the basis of actual consumption, as opposed to estimated or 'modelled' consumption, incentivises the efficient use of traction electricity and makes a contribution to Great Britain's (GB's) decarbonisation agenda.

13. The majority of modelled consumption is on older rolling stock that did not have on-train meters fitted when new. ORR's suggestion of establishing a ring-fenced fund to support the retro-fitting of meters on such stock might have merit.

    a) However, we do not agree with ORR's suggestion that such a fund should be financed by diverting some of Network Rail's funding from other uses for this purpose, since current Network Rail business planning is not incorporating any provision for such expenditure.

    b) Any ring-fenced fund should recognise the need for incremental funding, either as a separately identified enhancement within Network Rail's funding, or as a direct arrangement between funders and train operators.

    c) Alternatively, ORR could also consider an adapted version of an approach it considered at PR13, that of uplifting modelled rates by, say, 10% in order to incentivise a move to on-train metering.

14. Although new rolling stock invariably comes with meters fitted as standard, there is a small amount of modelled consumption on such stock (mainly relating to teething problems with commissioning and setting up the metering interface). Some affected operators are charged at the default rate where neither metering nor a modelled rate is available. However, some operators in this position apply for a modelled consumption rate. We believe that operators with new metered rolling stock should be incentivised to move to on train metering as soon as possible. We propose that modelled consumption rates should no longer be made available for new rolling stock.

15. We agree that the Loss Incentive Mechanism (LIM), which gives Network Rail a share of the traction electricity wash-up, no longer acts as an effective incentive to reduce transmission losses, and are content with ORR's proposal to remove it.

16. We support ORR's proposal to remove the Partial Fleet Metering (PFM) option which allows operators to extrapolate from consumption on metered trains to estimate consumption on similar un-metered trains. We note that no train operator has ever taken up this option. Removal of PFM would, therefore, clarify and simplify EC4T charging arrangements.

Fixed charges

17. We do not propose any fundamental changes to our fixed cost allocation methodology. However, as noted by ORR, in advance of our recalibration exercise for CP7, we will review and consult on potential minor changes to the detail of the methodology, including:
    a) whether the set of traffic characteristics such as speed, axle load, etc currently used to allocate some avoidable costs remains appropriate; and
    b) whether some aspects of the cost allocation methodology can be simplified without undue loss of accuracy in cost reflectivity, in order to make it easier for stakeholders to understand and engage with the modelling calculations.
18. As noted by ORR, fixed cost allocations to train operators contracted by DfT/TS and non-DfT/TS funders are recovered through two sources: Fixed Track Access Charges (FTACs) paid by operators; and direct network grant.
    a) We support ORR's aim to make the split of recovery between these two funding sources transparent and better understood by stakeholders.
    b) We also support the retention of FTACs for passenger operators contracted by non-DfT/TS funders. These operators should make some contribution to the fixed costs that Network Rail incurs.
    c) We believe that ORR should keep open the option of exempting DfT/TS-contracted operators from paying FTACs. As noted above, we do not consider that this would result in a discriminatory effect under current legislation. Moreover, the split of fixed cost recovery between FTACs and network grant for these operators appears to have very limited if any economic or operational relevance.
19. We support the removal of the FTAC wash-up mechanism for CP7.
    a) As a result of COVID, it is likely that CP7 passenger numbers and subsequent timetabled traffic levels will remain highly uncertain for at least the next two years, making any forecast of timetabled traffic subject to a significant margin of error. A wash-up mechanism based on such a forecast could well result in significant payments to and from Network Rail as a result of forecasting errors, rather than the intended incentive effects of the mechanism.
    b) As noted by ORR, the move to concession-style contracts for many operators has removed the incentives on these operators to respond to the FTAC wash-up mechanism in the way previously envisaged. Under a reformed industry structure GBR will take decisions about optimal network use, further diminishing the need for a separate financial incentive to grow passenger volumes.
20. We support the retention of Infrastructure Cost Charges (ICCs) for some open access and freight operators for CP7. In principle, these operators should make some contribution to the fixed costs that GBR incurs, subject to 'market can bear' tests under current legislation – which we recognise will need to be updated to reflect expected market conditions in CP7.

Station charges

21. We continue to believe that ORR regulation of the entirety of the Qualifying Expenditure (QX) charge, including the fixed component, would be the most effective means of securing the funding necessary to serve the best interests of passengers and their safety at stations. This would avoid the unsatisfactory compromises and funding shortfalls that result from the current negotiated process. ORR has suggested that this might best be achieved through a Network Rail-initiated amendment to Independent Station Access Conditions (ISACs). However, our previous experience of even modest attempts to implement changes to ISACs indicates that we would be unlikely to gain the necessary 80% approval from users, under current contractual arrangements with operators. Therefore we do not consider that such an approach would deliver comparable benefits to an ORR-initiated amendment to enable regulation.
22. We acknowledge that some stakeholders have asked for additional explanatory guidance to help them improve their understanding of the current stations Long Term Charge (LTC) methodology and the underlying calculations.
    a) We believe the concerns which underlie these requests are largely a product of a disproportionately complex charging framework which requires the calculation of 2,500 individual station charges and creates the false impression that there is, or should be, a close link between the LTC for a specific station in a control period, and Network Rail expenditure at that station in that control period.
    b) However, we confirm that we will look to provide greater clarity on the current methodology, and to publish explanatory guidance in our charges consultation process, and alongside our CP7 station LTC price lists.
    c) In the longer term, we believe that improved understanding would also be helped by a significantly simpler charging methodology.
23. We agree that there is merit in revisiting the current approach of calculating LTCs for all managed stations on the basis of station-specific costs, and calculating LTCs for all franchised stations on the basis of average costs for stations of a similar category:
    a) It is based on an implicit assumption that our largest (i.e. most costly) stations are necessarily managed stations, and that all other stations are necessarily franchised stations. This is not always the case: for example, Cardiff Central Station (franchised) is much larger than Guildford Station (managed). Moreover, the Williams-Shapps Plan indicates that GBR will be more involved in the management of stations currently designated as Network Rail franchised stations. We interpret this greater involvement as potentially resulting in a change in the current distinction between ‘managed’ and ‘franchised’ status. In that eventuality, the current approximate link between ‘managed’ status and station size could be lost, and it may no longer make sense to decide whether an LTC should be determined on a station specific or category average approach on the basis of a station’s status as ‘managed’ or ‘franchised’.
    b) For PR23, we support a move to a modestly revised framework under which the LTCs for our very largest stations are calculated on the basis of station-specific costs, regardless of their managed or franchised status.
    c) In the longer term, we believe that the need for individual charges at every station should be reviewed. Therefore, we would not support a more fundamental revision of this aspect of the framework as part of PR23.

24. We accept that in principle, apportioning LTCs between train operators based on their share of the number of passengers at each station, rather than their share of the number of vehicle departures at each station, might improve the cost-reflectivity of the charges they face. However, on the basis of the information currently available to us, we share ORR's view that the administrative costs of such an alternative approach are likely to be very significant, and outweigh the benefits of improved cost-reflectivity, which may be relatively minor. Therefore, we consider that LTCs should continue to be apportioned based on vehicle departures in CP7.
25. We support ORR's proposal that the 90% discount to the operational property element of the LTC applied to new franchised stations opening during a control period should be applied for a fixed five-year term from the date of opening, regardless of what point in the control period that opening occurs.

If you would like to discuss the content of this letter in more detail, please contact myself or my colleague Adam Mantzos [redacted]

Yours sincerely

Peter Swattridge

Annex – Responses to ORR's specific consultation questions

Chapter 2: ORR's proposed approach and priorities

Q1: Our overall approach to the PR23 charges review, in light of the prevailing industry context

2.1 We acknowledge that the nature and timing of future legislation, and the details of new industry arrangements, are currently uncertain. Moreover, it is not clear whether these uncertainties will be resolved before ORR has to conclude on the charging framework for CP7. We therefore agree that at this stage of PR23, it is appropriate for ORR to maintain consistency with existing industry legislation in conducting its review of charges.

2.2 We support ORR's proposals to reduce the complexity and administrative burden of aspects of some charges, where this no longer appears proportionate, and existing legislation allows. However, we believe that ORR should be more forward-focused in this regard, with an eye to what can usefully be achieved to progress towards future industry arrangements while complying with existing legislation.

2.3 Firstly, as ORR acknowledges, under new industry arrangements, it may be the case that passenger operators that are directly contracted by GBR will not be required to pay access charges to GBR.

a) ORR appears to assume that the non-discriminatory charges requirement under current legislation (specifically, the Access and Management Regulations) means that DfT/TS-specified operators must pay any charge that is levied on non-DfT/TS operators, and that there is no scope to exempt DfT/TS operators from some charges (e.g. fixed charges and station charges) that are not required by other elements of the Regulations.

b) We encourage ORR to keep this assumption under review. Specifically, we believe that a charging framework which does not result in discriminatory effects cannot reasonably be considered discriminatory. If DfT/TS hold DfT/TS operators harmless against certain charges, then the payment or non-payment of those charges by those operators does not have any effect on their behaviour, and cannot result in any advantage to those operators. Moreover, as long as the framework for the calculation of charges to both DfT/TS operators and non-DfT/TS operators continues to be non-discriminatory and cost allocations are not affected by non-payment of calculated charges by DfT/TS operators, such non-payment will not cause any disadvantage to non-DfT/TS operators. In those circumstances, non-payment of charges by DfT/TS operators will not in practice result in any discriminatory effect.

c) Therefore, we consider that where contractual arrangements hold DfT/TS operators harmless against a charge, it might be possible to exempt DfT/TS operators from paying that charge to Network Rail, while complying with existing legislation. We suggest that ORR keeps this option open pending developments between now and its final PR23 conclusions on charges.

d) We note that the possibility of exempting DfT/TS operators from paying some charges need not delay the bulk of ORR's thinking and decisions on the charging framework, which are focused on the calculation of charges (including underlying cost allocations) on a non-discriminatory basis. As noted above this remains relevant, even if some operators do not end up paying those charges.

2.4 Secondly, we believe that one element of the charging framework – the charges levied for stations – is currently disproportionately complex:

a) In the longer term, we have considerable doubts over the benefits of continuing to calculate and levy individual charges for each of our 2,500 stations, with the great complexity that this entails. In principle, the logic for calculating an individual charge for every station that a train calls at appears no stronger than the logic for calculating an individual charge for every bridge that a train runs over, or an individual charge for every tunnel that a train passes through.

b) This complexity is not justified by the incentive effects of station charges. Most operators have no choice over the calling pattern of their services, since this is tightly specified in their funder contracts. And while incentive effects are relevant to Open Access operators, a far simpler charging regime would be more proportionate for that purpose, given the scale of revenues involved.

c) It may be possible to move away from individual charges for every station even under existing legislation and existing contractual arrangements, as part of PR23. At a minimum, we believe that potential charging reforms for PR23 should be considered with an eye to simplifying the station charging regime in the longer-term.

d) Therefore, we consider that while there is merit in pursuing simple opportunities to improve the cost reflectivity of individual station charges at PR23, until there is greater clarity about the detail of rail reform, any fundamental change to the calculation of individual station charges would be disproportionate.

Q2: Initial proposals and areas for further work that we have identified. Other priority areas that we should seek to address

2.5 We are keeping the detail of the charging framework under continuing review. However at this stage, we have not identified any major issues for ORR to consider beyond those outlined in this response.

Chapter 3: Infrastructure cost charges

Q3: Proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7. Elements of the methodology that should be improved as part of this review.

3.1 We agree with ORR that the fixed cost allocation methodology introduced for CP6 provides greater transparency over the geographical distribution of fixed costs, and results in a fairer allocation of costs between services, more closely related to the costs that funders' service specifications cause Network Rail to incur. The methodology is comprehensive and was subjected to extensive consultation at PR18. We share ORR's view that it should continue to be applied in CP7, without any fundamental changes to the methodology.

3.2 As noted by ORR, in advance of our recalibration exercise for CP7, we will review, and consult on potential minor changes to the detail of the methodology. At this stage, we anticipate two areas of focus for the consultation:

a) The methodology currently reflects the following traffic characteristics: speed, axle load, unsprung mass, Curving Class, electrification, and depot usage. At PR18, we considered a number of other traffic characteristics for avoidable cost analysis, including suspension factors, early/late service patterns, acceleration, and train length. However these were excluded on the basis that their impact appeared to be immaterial from the perspective of the allocation of total costs, and/or incapable of estimation without disproportionate effort.[2] We will review whether these assessments remain valid.

b) The current methodology is underpinned by a very complex cost allocation model. We consider that it may be possible to simplify some of this complexity without undue loss of accuracy. A simpler model would be easier for stakeholders to understand and engage with, enhancing the effectiveness of stakeholder engagement. For example, much of the current complexity is a result of disaggregating costs between nearly 2,000 geographically separate sections of the network. While this disaggregation is valuable, it could be achieved using a more straightforward approach, which would significantly reduce the size of complexity of the model's calculations. We will consider this and other opportunities to simplify the calculations without materially affecting cost allocations.

Q4: Initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)

3.3 As noted by ORR, fixed cost allocations to passenger services specified by DfT/TS and non-DfT/TS funders are recovered through two sources: FTACs paid by operators; and direct network grant. We support ORR's aim to make the split of recovery between these two funding sources transparent and better understood by stakeholders.

3.4 We support a framework for fixed charges based on fixed cost allocations. This recognises that in addition to the short run marginal costs (e.g. wear and tear) recovered from variable charges, services also cause long-term infrastructure costs. For example, most enhancement projects are aimed directly at expanding or upgrading service capacity. In principle, it is therefore appropriate that operators of all services, or the funders that specify those services, pay some contribution to the fixed costs that Network Rail incurs.

3.5 We therefore support the retention of FTACs for operators of passenger services specified by non-DfT/TS funders. We also support the continued calculation of FTACs for operators of passenger services specified by DfT/TS. However, we consider that ORR should keep open the option of exempting DfT/TS-contracted operators from paying those FTACs:

a) the split of fixed cost recovery between FTACs and network grant for these operators appears to have very limited if any economic relevance, since both components are in any event funded by DfT/TS;

b) the level of FTACs for these operators has no impact on operator incentives or behaviour;

[2] Paragraph 218, *A new method for allocating network fixed costs*, Brockley Consulting, September 2017

c) as a result, we do not consider that exempting such operators from payment of FTACs would result in any discriminatory effect, or other detriment; and

d) such exemption might be possible under current legislation.

3.6 We support the removal of the FTAC wash-up mechanism for CP7.

a) As a result of COVID, it is likely that CP7 passenger numbers and subsequent timetabled traffic levels will remain highly uncertain for at least the next two years, making any forecast of timetabled traffic subject to a significant margin of error. A wash-up mechanism based on such a forecast could well result in significant payments to and from Network Rail as a result of forecasting errors, rather than the intended incentive effects of the mechanism.

b) As noted by ORR, the move to concession-style contracts for many operators has removed the incentives on these operators to respond to the FTAC wash-up mechanism in the way previously envisaged.

c) Under a reformed industry structure, GBR will take decisions about optimal network use, further diminishing the need for a separate financial incentive to grow passenger volumes.

Infrastructure Cost Charges for open access and freight operators

3.7 As noted above, we consider it appropriate that operators of all services pay some contribution to the fixed costs that Network Rail incurs. We therefore support the retention of an ICC framework for open access and freight operators for CP7.

3.8 In practice, the level of ICCs charged is determined by 'market can bear' tests and not fixed cost allocations. We recognise that these tests will need to be updated to reflect expected market conditions in CP7, to determine both the services and commodities that are subject to ICCs, and the rates at which ICCs are charged.

Chapter 4: Variable charges

Potential revision to VTISM

4.1 The VUC relies heavily on engineering evidence from the Rail Safety and Standards Board's (RSSB's) VTISM model. VTISM is managed by an industry wide working group, the Vehicle/Track System Interface Committee (V/T SIC).

4.2 V/T SIC has recently launched a study to examine two potential revisions to VTISM, relating to the model's estimation of how wear and tear is impacted by:

a) high-speed traffic; and

b) track-friendly bogies on freight wagons.

4.3 ORR suggests that any revisions that arise from this process should be taken into account in Network Rail's VUC recalibration process, which is expected to begin in autumn 2022.

4.4 It is not yet clear whether the study will recommend revisions to VTISM. However, any such revisions may have a fundamental impact on the calculation of VUC. Moreover, if the study does recommend revisions to VTISM, it is not yet clear when the data necessary for consequential changes to the VUC calculations will be available (e.g. a revised track damage formula).

4.5 We have significant concerns with the appropriateness, proportionality and practicality of reflecting such revisions in our recalibration process.

4.6 First, revisions of this nature would be the most significant amendment in a decade to the calculations underlying the VUC. The last amendment was at PR13, when the track damage formula was revised. The full consequences of that change have still not filtered through to VUC rates: ORR has allowed freight and charter operators a 15-year glide path spanning from the start of CP5 to the end of CP7 for VUC rates to catch up with the VUC costs implied by the revised track damage formula. We consider that this timescale clearly demonstrates that another revision at this stage would not be compatible with ORR's stated aim of avoiding fundamental changes to the charging framework at PR23, and focusing only on limited and incremental changes.

4.7 Second, in our experience, reflecting such revisions in VUCs is a time-consuming exercise which requires extensive and technically complex stakeholder consultation, particularly with operators who could face increased VUCs. As noted above, the timescale for consequential changes to the VUC calculations following any revision to VTISM is not yet clear. We have significant concerns that it will be too late for the launch of our recalibration process in autumn 2022, and too late to leave enough time for adequate stakeholder consultation.

4.8 Therefore, we do not support the suggestion that CP7 VUCs should be recalibrated to reflect any forthcoming revisions to VTISM.

Q5: Proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process

4.9 We are content with ORR's current intention to retain the existing path for phasing in VUCs for freight and charter services, so that they reach full cost reflectivity by the end of CP7.

Q6: Additional evidence to consider in review of Network Rail's assessment of eligible costs to be recovered through the VUC

4.10 As ORR notes, at PR18 we undertook an assessment of whether the costs included with the VUC comply with the definitions in the 2016 Regulations and in the Commission Implementing Regulation EU 2015/909.[3] We have reviewed that assessment and consider it remains valid and can be incorporated in the PR23 recalibration process without being revisited.

4.11 As noted in the assessment, in a number of places where a category includes a mixture of direct and indirect costs (e.g. the treatment of Network Rail management, project management and other operating costs), the category has been excluded in its entirety in order to be conservative. Therefore, if we were required to revisit the assessment, a more detailed analysis might identify additional direct costs that should be brought back into the calculation of VUC.

[3] Appendix 2, *Network Rail's conclusions on variable charges and station charges in Control Period 6 (CP6)*, Network Rail, 14 May 2018

Q7: Relative merits of applying VUC to Network Rail's engineering trains

4.12 We consider that creating internal VUC charges within Network Rail for the wear and tear caused by engineering trains would require disproportionate effort for the likely benefits.

4.13 Engineering trains account for only 2.2% of total traffic.[4] We do not share ORR's expectation that calculating internal VUC charges for these vehicles would come at a relatively low administrative cost. We estimate that we would have to create VUC rates for around 450 vehicle types: a 20% increase in the total number of calculated VUC rates.

4.14 ORR notes that GB Railfreight suggested at PR18 that engineering trains are some of the least track-friendly on the network, and suggests that one potential benefit of creating internal VUC charges for engineering trains might be to increase transparency and create a reputational incentive in relation to our choice of engineering vehicles. We do not agree:

a) We already have a strong incentive to make efficient choices over the track-friendliness of engineering vehicles, since we bear the cost of the wear and tear that they cause. There is no externality to internalise through the creation of VUC charges for our own vehicles.

b) Arup, the Independent Reporter appointed by ORR and Network Rail at PR18 to review this and other issues relating to VUC, examined the track-friendliness of engineering trains and concluded that "*engineering trains are not excessively damaging to the track when compared to other freight traffic*".[5] Therefore, there is no evidence that our existing incentives are weaker than those faced by operators who pay VUC charges, and that there is a shortfall in the strength of incentives that needs addressing.

4.15 We share ORR's view that the effect on operators' VUC rates is likely to be negligible. Indeed, we consider that the net effect of calculating transparent VUC charges for engineering trains might be a small increase in operators' VUC rates:

a) As noted by ORR, under the current approach, the wear and tear caused by engineering trains is not recovered from operator VUCs, but is borne by Network Rail and recovered from other funding sources.

b) However, a proportion of that wear and tear is a cost 'directly incurred' as a result of operator traffic, since it is causally attributable to maintenance and renewals work that is a direct result of making good operator wear and tear.

c) Therefore, once the cost of engineering train wear and tear is transparently identified, there is a strong case for recovering a proportion of that wear and tear from operator VUCs.

d) Preliminary calculations conducted at PR18 to support Arup's review indicated that this would increase operator VUC rates by just under 1%.

4.16 Therefore, in the light of the likely minor potential benefits of creating internal VUC charges for the wear and tear caused by engineering trains, the effort required to establish and administer these charges would be disproportionate.

[4] Analysis based on 2020/21 traffic. This is somewhat lower than figure of under 3% estimated at PR18 (paragraph 3.4.3.1, *L4AR006: Review of Network Rail's CP6 Variable Usage Charge Assessment*, Arup, 22 June 2018).

[5] Page 23, *L4AR006: Review of Network Rail's CP6 Variable Usage Charge Assessment*, Arup, 22 June 2018

Q8: How the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC

4.17 We share ORR's wish to help stakeholders understand how VUC rates are calculated. We currently make available on our website:

a) a guidance document which sets out the process for the calculation and approval of new VUC rates;

b) a VUC calculator which can be used to calculate VUCs for prospective new vehicles; and

c) supporting documents and software which provide guidance on calculating certain vehicle characteristics (T-gamma and Ride Force Count).

4.18 In addition, our consultation documents and supporting materials at periodic reviews provide further detail on specific elements of the VUC calculation.

4.19 We note ORR's observations that alternative designs for the user interface and results layout in the VUC calculator might have some benefits, and will do what we can to accommodate ORR's suggestions.

4.20 We are, however, conscious that any design involves compromises, and that no single design is likely to please everybody. This is illustrated by the fact that the design in the current VUC calculator was itself developed in response to feedback from stakeholders on what they would find helpful, so the ORR's observations suggest the existence of a variety of views. We, therefore, consider that the most effective approach is for ORR to work with stakeholders to agree a precise specification (including draft templates) for the desired user interface and results layout. We will then endeavour to create a new version of the VUC calculator in line with that specification.

Q9: Relative merits of a ring-fenced fund to incentivise on-train metering. How else could greater take-up of metering be incentivised

4.21 We support the greater use of on-train metering. Billing on the basis of actual consumption, as opposed to estimated or 'modelled' consumption, incentivises the efficient use of traction electricity by providing operators with direct feedback on the impact of acceleration rates, operating speeds and deceleration styles on consumption. More efficient use of traction electricity would also make a contribution to GB's decarbonisation agenda.

4.22 Although on-train metering has increased in recent years, around one third of traction electricity consumption remains unmetered and on modelled rates. The majority of modelled consumption is on older rolling stock that did not have on-train meters fitted when new. In principle these trains can be retro-fitted with meters, but in practice this is not commonly pursued. We, therefore, consider that ORR's suggestion of establishing a ring-fenced fund to support the retro-fitting of meters on old rolling stock might have merit. However we do not agree with ORR's proposed approach to financing that fund.

4.23 ORR suggests that such a fund could be financed by diverting some of Network Rail's funding from other uses for this purpose. Current Network Rail business planning is not incorporating any provision for expenditure on retro-fitting or contingency for the use of funds on such non-core infrastructure purposes. Therefore, any diversion of funding identified in our business plan would unavoidably result in a shortfall in the funding required for the purposes explicitly articulated in the business plan. Any ring-fenced fund for the retro-fitting of meters should, instead, be financed through a business planning and regulatory oversight process which recognises the need for incremental funding for this purpose. For example:

a) A retro-fitting fund could be established as a separately identified enhancement within Network Rail's overall funding arrangements.

b) Modelled rates could be uplifted by, say, 10%. The uplift could be used to create a fund and at the same time incentivise a move from modelled rates to on-train metering. ORR considered an uplift to modelled rates at PR13, and at that time was concerned that simply re-paying the proceeds of the uplift to metered operators might not be consistent with the legislative framework for access charges. However, applying the proceeds to a ring-fenced fund that would be used to support retro-fitting might not suffer from this difficulty.

c) A fund could be created and administered as a direct arrangement between funders and train operators.

4.24 Although new rolling stock invariably comes with meters fitted as standard, there is a small amount of modelled consumption on such stock. Our understanding is that this relates mainly relating to teething problems with commissioning trains and setting up the metering interface.

a) Some affected operators are charged at the default rate where neither metering nor a modelled rate is available.

b) However, some operators in this position apply for a modelled consumption rate. We believe that operators with new metered rolling stock should be incentivised to move to on train metering as soon as possible and are concerned that the availability of modelled rates in these circumstances is unhelpful in this regard. We, therefore, propose that modelled consumption rates should no longer be made available for new rolling stock.

Q10: Proposal to remove the PFM charging approach for EC4T

4.25 We support ORR's proposal to remove the PFM option which allows operators to extrapolate from consumption on metered trains to estimate consumption on similar un-metered trains. We note that no train operator has ever taken up this option. Removal of PFM would, therefore, clarify and simplify EC4T charging arrangements.

Q11: Proposal to remove the loss incentive mechanism

4.26 We agree that the LIM, which gives Network Rail a share of the traction electricity wash-up, no longer acts as an effective incentive to reduce transmission losses, and are content with ORR's proposal to remove it.

Q12: Proposal to make no changes to the EAUC in PR23, beyond recalibration

4.27 We agree that no fundamental change should be made to the Electrification Asset Usage Charge (EAUC) for CP7. We will consult in due course on the recalibration of the charge.

Chapter 5: Station charges

Complexity and transparency of the Long Term Charge

5.1 We acknowledge that some stakeholders have asked for additional explanatory guidance to help them improve their understanding of the current stations LTC methodology and the underlying calculations.

5.2 We believe the concerns which underlie these requests are largely a product of a disproportionately complex charging framework which requires the calculation of 2,500 individual station charges and creates the false impression that there is, or should be, a close link between the LTC for a specific station in a control period, and Network Rail expenditure at that station in that control period.

a) This is in stark contrast to the approach adopted for all other assets. We do not, for example, calculate an individual charge for every bridge that a train runs over, or an individual charge for every tunnel that a train passes through.

b) We do not consider that the greater complexity adopted for stations is justified by the incentive effects of station charges. The majority of services that stop at stations have their stopping patterns specified for them by funders. While incentive effects are relevant for Open Access services, the complexity of the stations charging regime is disproportionate for the modest total charges associated with such services.

c) In the longer term, we have considerable doubts over the benefits of continuing to calculate and levy individual charges for each of our 2,500 stations, and would wish to explore a much simpler holistic framework for stations charging. However, we recognise that under existing legislation and existing contractual arrangements, individual charges for every station may be more difficult to avoid.

5.3 In that context, we confirm that we will look to provide greater clarity on the current methodology, and to publish explanatory guidance as part of our station charges consultation process, and alongside our CP7 station LTC price lists. This will for example make it clear which charges are calculated on the basis of station specific forecasts and which charges are calculated for groups of stations and then allocated to individual stations (as discussed further below).

5.4 In the longer term, we believe that the focus should be on addressing the underlying complexity at source, through a significantly simpler charging methodology.

Q13: Proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts

5.5 The current approach to calculating LTCs distinguishes between managed stations and franchised stations:

a) Managed stations: The LTC for each of our 20 managed stations is based on an estimate of the long-term Maintenance, Repair and Renewals (MRR) costs for that specific station, converted into an annualised average.[6]

[6] These estimates are based on long-term forecasts for renewals costs (which can vary significantly from one control period to another) and control period forecasts for maintenance and repair costs (which tend to be relatively similar over the long-term).

b) Franchised stations: Within each route, every station is assigned to one of six categories, based on the level of passenger usage (with category A being the highest usage and category F being the lowest). The total forecast MRR costs for that route and that control period are allocated to each station category in line with each category's share of long-term average renewal expenditure. The resulting cost for each station category is then allocated equally to every station within that category.[7]

5.6 This approach aims to achieve cost reflectivity for individual stations with the very highest MRR costs (assumed to be managed stations), and deliver a proportionate solution based on average MRR costs by category for lower cost stations (assumed to be franchised stations), recognising the impracticality of trying to generate 2,500 station-specific forecasts. However, the implicit assumption is that our most costly stations are necessarily managed stations, and that all other stations are necessarily franchised stations. This is not always the case: for example, Cardiff Central Station (franchised) is much larger than Guildford Station (managed).

5.7 Moreover, the Williams-Shapps Plan indicates that GBR will be more involved in the management of stations currently designated as Network Rail franchised stations: [8]

"*Today, almost all stations on the network are owned by Network Rail, but all bar 20 of the biggest are managed by the train operators. This has created a fragmented system in which many stations are not managed effectively for the long term. Their potential as assets to the community are not fully realised, and commercial opportunities are missed.*

Dedicated station management teams will be created locally within regional divisions of Great British Railways to manage stations, land and assets. These teams will improve accountability and long-term decision-making over how stations and the estate are maintained and improved for passengers and local communities."

5.8 We interpret this greater involvement as potentially resulting in a change in the current distinction between 'managed' and 'franchised' status. In that eventuality, the current approximate link between 'managed' status and station size could be lost, and it may no longer make sense to decide whether an LTC should be determined on a station specific or category average approach on the basis of a station's status as 'managed' or 'franchised'.

5.9 For PR23, we support a move to a modestly revised framework under which the current twin solution 'station-specific' and 'category average' approach is retained, but the allocation of stations to each solution is based on station size as opposed to managed or franchised status. A relatively simple and practical approach to achieving this would be to use existing data on passenger usage as a proxy for size.

5.10 For example, one option would be to:

a) set LTCs set on the basis of station-specific costs for the six highest usage stations in each of our five regions; and

b) set LTCs on the basis of category averages for all other stations.

[7] This approach applies to operational property expenditure, which accounts for over 80% of LTC charges. A slightly different approach that does not rely on station categories is used for Station Information and Security Systems (SISS).

[8] Page 43, Williams-Shapps Plan for Rail

5.11 This would result in the total number of station-specific LTCs rising from 20 to 30, with:

a) 12 stations moving from a category average approach to a station-specific approach (Bath Spa, Cardiff Central, East Croydon, Glasgow Central Low Level, Glasgow Queen Street High Level, Glasgow Queen Street Low Level, Highbury & Islington, Liverpool Central, London Marylebone, Oxford, Paisley Gilmour Street, and Stratford); and

b) 2 stations moving from a station-specific approach to a category average approach (Guildford and London Cannon Street).

5.12 We acknowledge that more fundamental revisions to the LTC approach could be considered, for example, basing the choice of station-specific forecasts, and station categories themselves, on measures other than passenger usage. However, as noted above, in the longer term, we have considerable doubts over the benefits of continuing to calculate and levy individual charges for each of our 2,500 stations. In particular, a detailed pursuit of cost reflectivity at the level of the individual charges at each station is not justified by the incentive effects of station charges, which are not relevant to the majority of services, apart from Open Access. Therefore, we do not propose, and would not support, a more fundamental revision of the LTC framework as part of PR23.

Q14: Better metrics that could be used to allocate LTC-related expenditure between operators. Potential benefits and costs of these alternative metrics relative to the current approach.

5.13 We accept that in principle, apportioning LTCs between train operators based on their share of the number of passengers at each station, rather than their share of the number of vehicle departures at each station, might marginally improve the cost-reflectivity of the charges they face. However, on the basis of the information currently available to us, we share ORR's view that the administrative costs of such an alternative approach are likely to be very significant, and outweigh the benefits of improved cost-reflectivity, which may be relatively minor.

5.14 The costs of establishing and maintaining data on passenger numbers at every one of our 2,500 stations is likely to be prohibitive. We note that DfT currently collects some data of this nature for its annual survey of rail passenger numbers and crowding. However, this is limited to only 33 stations,[9] i.e. little more than 1% of all stations. Moreover, DfT data relies on information gathered by train operators - it is likely that a system used for charging train operators would have to use independently gathered information, which would require entirely new processes.

5.15 The cost-reflectivity benefits of a passenger number approach are likely to be modest:

a) There is likely to be a strong correlation between vehicle numbers and passenger numbers - so it is not clear that an approach based on passenger numbers would lead to a material difference in allocations.

b) While passenger numbers might drive the cost of some station assets (e.g. ticket barriers, escalators), vehicle numbers or other variables related to vehicle numbers such as train length drive the cost of other station assets (e.g. platforms and canopies). Therefore, it is not clear that an approach based on passenger numbers would in fact be more cost-reflective.

[9] https://www.gov.uk/guidance/rail-statistics-information

c) In principle it would be possible to design an approach to cost allocation based on a combination of vehicle numbers and passenger numbers but this would add a great deal of complexity to an already highly complex stations charging regime.

5.16 ORR also refers to the possibility that an approach based on passenger numbers could send better signals to train operators about the effect of their operational decisions on stations and station assets. However it is not clear what the benefits of these signals would be:

a) Operators are not directly responsible for the number of passengers on a given service of a given vehicle configuration, and it seems highly unlikely that any indirect control that they might have (e.g. fares policy) would be materially influenced by marginal changes in station cost allocations.

b) Most operators will be on funder-specified contracts which gives them very little or no freedom to influence the number of vehicles or passengers calling at each station.

5.17 Therefore, we believe that the costs of an approach based on passenger numbers will outweigh the benefits, and consider that LTCs should continue to be apportioned based on vehicle departures in CP7.

Q15: Proposal to class stations that open within a control period as 'new' for a fixed five-year period from the date of opening

5.18 We support ORR's proposal that the 90% discount to the operational property element of the LTC applied to new franchised stations opening during a control period should be applied for a fixed five-year term from the date of opening, regardless of what point in the control period that opening occurs.

5.19 However, where new station discounts initiated at CP7 result in the tail end of those discounts running into CP8, we consider that this should be taken into account in setting CP8 LTCs. Specifically, these tail end discounts should not undermine the established principle that, for stations whose LTC is set under the category average approach, total forecast charges in a control period are set at the level necessary to recover total forecast MRR costs in that control period. This could be achieved by:

a) identifying CP8 total forecast operational property MRR costs for a route, for all stations not charged on the basis of station-specific costs;

b) subtracting from that MRR costs total, aggregate CP8 operational property LTCs for stations in that route opened during CP7 and therefore qualifying for a tail end new station discount in CP8; and

c) recovering remaining net MRR costs for that route from remaining stations on that route using a category average approach.

Q16: Relative merits of making the QX fixed element a regulated charge for managed stations

5.20 We continue to believe that ORR regulation of the entirety of the QX charge at managed stations, including the fixed component, would be the most effective means of securing the funding necessary to serve the best interests of passengers and their safety at those stations. This would avoid the unsatisfactory compromises and funding shortfalls that result from the current protracted negotiated process, which potentially lead to worse outcomes for passengers.

5.21 Examples of unsatisfactory outcomes in recent years include:

a) an under-funding of Customer Service Assistants (CSAs) at London Victoria, leading to failed DfT security checks and the need to divert funding from non-QX sources in order to recruit additional CSAs;

b) an under-funding of CSAs at Manchester Piccadilly, leading to potential safety risks from overcrowding on the island platform and the need to divert funding from non-QX sources in order to recruit additional CSAs; and

c) an under-funding of Shift Station Managers at Edinburgh Waverley, leading to potential risks of insufficient supervision and the need to divert funding from non-QX sources in order to recruit an additional manager.

5.22 As ORR notes, current ISACs do not provide for ORR to regulate the fixed component of the QX charge at managed stations, so such provision would need to be inserted via amendment of the ISACs. Such an amendment could be initiated either by Network Rail, or by ORR:

a) a Network Rail-initiated amendment would require approval from at least 80% of users at every managed station, but if such approval were forthcoming could be implemented in a minimum of three months; whereas

b) an ORR-initiated amendment would not require approval from users, but could be implemented in a minimum of six months.

5.23 ORR has suggested that a Network Rail-initiated amendment would be preferable. Such an amendment could be aimed at:

a) introducing a power for ORR to regulate QX charges; and/or

b) facilitating smoother negotiations, for example by clarifying the cost categories recovered by the fixed element of the QX charge, or amending those cost categories so as to remove some costs (e.g. maintenance) from the scope of the QX charge altogether and transferring recovery of those costs to LTCs (recognising that even after such facilitating changes, many of the challenges of the current negotiated approach would remain).

5.24 However, our previous experience of attempts to implement even modest amendments to SACs indicates that we would be highly unlikely to gain the 80% approval that this would require from users, under current contractual arrangements with operators.

5.25 An example to illustrate the problems of amending SACs relates to amendments (in 2010 to 2013) aimed at streamlining the governance process for future amendments to SACs. ORR had originally tasked Network Rail to take the lead in proposing reforms. However, ORR noted that while the industry was generally supportive of the changes, there was a wide divergence of views on the detail of many of the proposed modifications, and that Network Rail had been unable to develop a joint industry proposal that had widespread stakeholder support.[10] As a result, ORR took over the lead in proposing and initiating amendments to the SACs.

[10] Paragraphs 2.3 to 2.6, *Consultation on a revised contractual regime at stations - Proposed changes to the Station Access Conditions and Independent Station Access Conditions: emerging conclusions*, ORR, March 2012

5.26 Another example from 2018 relates to an attempt by Network Rail to initiate much more modest amendments. At PR18, ORR modified the inflation indexation element of Network Rail's overall financial framework from a Retail Prices Index (RPI) basis to a Consumer Prices Index (CPI) basis. As part of this, ORR initiated amendments to SACs to change LTC indexation provisions from RPI to CPI. However, ORR's amendments did not update all references to RPI in the SACs. RPI remained as the indexation basis for two relatively minor terms which determine rights of parties to participate in the SAC amendment process: the values for the 'Financial Impact Test'; and the 'Station Investor's Qualification'. ORR asked Network Rail to initiate an amendment to the SACs and resolve this anomaly by switching the indexation of these values to CPI, in order to create a consistent approach to indexation in the SACs. Despite the minor and the seemingly relatively uncontentious nature of the proposed amendment, we were unable to gain the 80% approval rates required:

a) Only 35% of consultees for the England & Wales ISAC responded to our consultation. Even if all respondents had agreed to the proposed amendment, that would not have been sufficient to pass the 80% approval rate, which requires positive approval rather than the absence of objection.

b) Of the consultees that responded, a number objected to the proposed amendment. Some objections implied that approval would only be given if Network Rail could guarantee no financial detriment to the consultee under any circumstances as a result of the amendment - a hurdle so high it is very hard to see how any material amendment could pass it.

5.27 We believe that if we were to propose modifications to address the current problems with QX negotiation process, either to introduce a power for ORR to regulate fixed QX charges or to modify the ISACs to facilitate smoother negotiations, we would again face similar challenges. These could relate to a wide divergence of views on the detail of the modifications, a shortfall in responses to our consultation process, and resistance from some operators on the grounds that we would not be able to guarantee no financial detriment under any circumstances.

5.28 Therefore, we:

a) do not consider there is any realistic prospect of success for a Network Rail-initiated amendment to ISACs of this nature;

b) do not believe that such approach could deliver comparable benefits to an ORR-initiated amendment to enable regulation; and

c) request that ORR gives further consideration to taking the lead in initiating the necessary changes to ISACs to enable it to regulate fixed QX charges.[11]

[11] If ORR were to initiate such changes, this would also provide an opportunity for ORR to resolve the indexation inconsistency relating to the 'Financial Impact Test' and the 'Station Investor's Qualification'.

Chapter 6: Inflation Indexation

Q17: Proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)

6.1 We are content for CPI to continue as the inflation index used to update CP7 price lists for access charges and payment rates in other mechanisms. As indicated by ORR:

a) this does not amount to agreement that all of our input prices will rise by CPI, and we expect the effect of specific changes in our input prices relative to CPI to be considered in ORR's assessment of operating, maintenance and renewals costs for CP7; and

b) decisions on whether or how network grants are indexed are a matter for funders that ORR will need to reflect in its overall conclusions on funding.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

Nexus does not have any views on the approach.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

In relation to QX at franchised stations, Nexus would welcome work to increase the transparency of these charges and ability to benchmark charges, including methods used to calculate/allocate overheads and other central/shared costs. As observed in the consultation document the QX process/arrangements may be affected by the outcome of the Williams-Shapps Plan and carrying out such work could help facilitate transition of station management into Great British Railways.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail’s cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

Nexus does not have any views on this proposal.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

Nexus does not have any views on this proposal.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

Nexus does not have any comment on this item.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail’s assessment of eligible costs to be recovered through the VUC?

Nexus does not have any comment on this item.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail’s engineering trains?

Nexus does not have any views on this proposal.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry’s understanding of the principles and evidence underpinning the calculation of the VUC?

Nexus does not have any suggestions for this item.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

Nexus does not have any views on this proposal.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

Nexus does not have any views on this proposal.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

Nexus does not have any views on this proposal.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

Nexus does not have any views on this proposal.

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

Nexus is supportive of the principle of this approach, however as Nexus only calls at one station at which LTC applies to (the other stations either being on the Nexus network, or being run directly by Nexus for Tyne & Wear Metro services only on Network Rail infrastructure), the changes in methodology as a result of a Periodic Review can result in major changes to LTC costs compared with TOCs that call at multiple stations where increases and decreases at individual stations are likely to balance out. In addition, as a non-franchised TOC Nexus is not held financially neutral for any such outcomes, creating budget pressures.

Therefore if Sunderland Station were to be included as a ‘large/complex’ station, and it resulted in a major change in the LTC for this station, Nexus would seek to be held financially neutral for this change.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

Nexus considers that use of passenger metrics would disincentivise operators to grow customer numbers and make best use of the rolling stock capacity. Whilst use of Vehicle numbers is by no means a perfect methodology, it is relatively simple and also provides a relatively good level of financial stability (in terms of the percentage of the overall QX a TOC is liable for) for TOCs accessing a station given the number of Vehicles does not normally change by a large amount in timetable changes.

Question 15: Do you have any views on our proposal to class stations that open within a control period as ‘new’ for a fixed five-year period from the date of opening?

There are no views on this approach, but on a related point Nexus would request the ORR considers situations where there is a substantial rebuild of a large part of a station, especially where not funded by Network Rail. Nexus recognises there is a balance between taking account of such circumstances and complexity of operating such a system, but would welcome this being considered further.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

Whilst Nexus does not call at any managed stations so this does not apply to Nexus, as outlined in the response to Question 2, Nexus would support increased transparency and consistency in calculation of QX charges more generally.

Chapter 6: Inflation Indexation
Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail’s access charges (and payment rates in other mechanisms where we set the method of indexation)? Nexus does not have any views on this proposal.

Are there any other comments you would like to make?

Thank you for taking the time to respond.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

NTL believes that consideration should be given to the need to move away from DMUs to EMUs and other more environmentally friendly traction. It is understandable that the access charges are there to recover direct costs from operators, however, if net zero targets are to be achieved, then it would make sense for a separate set of environmental charges to be considered.

Given the prevailing industry context, a thorough review of industry charging should be undertaken when key concepts have been clarified. This may result in CP7 being a "short" control period pending new arrangements.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

Given the large number of New Station and Restoring Your Railway schemes, led by the availability of Government funding, NTL believes that improved guidance on variable and station charges, and their calculation, would be beneficial when forecasting the costs to operators for these schemes.

NTL also believe that the freight operator “market can bear” test will require particular attention, given the UK decarbonisation strategy.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail’s cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

NTL would suggest that improved operator visibility of charge derivation would be beneficial.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

NTL believes that the merit in removal of the FTAC wash-up can only be assessed in conjunction with availability of a methodology to predict the impact of service increases / decreases in future Control Periods. One solution may be to have a shorter “fixed” timeframe of, say, 2 or 3 years. Whilst this may not align with current Control Period’s it will allow the industry to project and therefore plan with a higher degree of confidence.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

NTL supports the proposal to retain the PR18 phasing in policy for freight and charter operators.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail’s assessment of eligible costs to be recovered through the VUC?

No comments

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

NTL's position is that, Whilst the impact on any individual operator is likely to be immaterial, VUC's should be applied to Network Rail engineering trains for the sake of clarity and completeness.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

No comments

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

NTL would suggest that publication of the modelled consumption for metered trains may be beneficial. We would anticipate that this issue will, however, diminish over time as new rolling stock replaces old, although access to the necessary data to aid development of metering business case(s) may prove beneficial at a national level.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

NTL agrees with simplification of the framework, given this element is not in use

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

It is NTL's position that Network Rail should remain incentivised to reduce transmission losses.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

No Comments

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

The proposal as set out is logical, but given the current industry context, a simple "roll forward" may be more appropriate pending new arrangements.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

NTL suggests that allocation of LTC-related expenditure between operators should be determined on a "per timetabled seat" basis.

Question 15: Do you have any views on our proposal to class stations that open within a control period as 'new' for a fixed five-year period from the date of opening?

NTL believes that Stations should be class stations as 'new' until the end of the Control Period during which they opened.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

NTL is clear that the industry as a whole need to work together in order to produce suitable outcomes for both passengers and staff. Regulation of QX charges could inhibit this process. NTL would therefore suggest that allocation of QX expenditure between operators should be determined on a "per timetabled seat" basis.

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)?

No comments

Are there any other comments you would like to make?
NTL would value industry workshops considering the questions outlined as part of the consultation.

Thank you for taking the time to respond.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

Full name	Steve Taylor
Job title	General Manager
Organisation	Rail Wagon Association
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*This information will not be published on our website.

Response from the Rail Wagon Association

1. The Rail Wagon Association (RWA) represents the interests of owners, keepers, users, designers, manufacturers, hirers, ECMs, consultants, maintainers and operators involved in rail freight wagons based in the UK. With 27 members, we cover over 95% of the wagons operating in the UK, including the infrastructure fleet.

2. We welcome the opportunity to comment on the PR 23 – Review of Network Rails access charges and do not wish to keep our response confidential.

Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

The prevailing industry context is one of change and uncertainty but also opportunity. The Williams Shapps Plan for Rail provides a high level direction of travel for freight with promises of protection of access and targets for volume growth. The PR23 charges review must be undertaken in that context and not result in a charging structure which undermines the freight growth aspiration stated in the Plan.

It is also important to understand the changes in costs incurred by many RWA members since the last charging review. These include increased costs due to the administrative burden of customs controls for the movement of spares and materials to/from the EU, growing labour and skills shortages and the impact of changes to red diesel taxation. All have impacted financially on rail industry companies.

Similarly, the review of charges must consider market changes such as the reduced volume of bulk commodities such as coal available to rail, and the emergence of freight movements on passenger type vehicles.

The future volume of freight moved will depend on the level of track access charges and the degree of certainty provided by the charging regime. Delivering the Williams Shapps vision of a growing freight business, underpinned by growth targets, will require a track access framework and charge level which is supportive of investment in the new wagons and infrastructure required to accommodate that growth.

Against this background, RWA agrees with the overall approach to PR23 set out in the ORR consultation document.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

We welcome the acknowledgement of the need to engage with industry to set out more detailed positions and undertake further work on some areas. We believe that the latter should include a review of the existing phasing in of VUC increases for freight.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

We note that the allocation methodology is well established and allocates costs in line with recognised economic principles.

We also note the intention of Network Rail to review the traffic characteristics that are currently used to allocate traffic-avoidable costs. This review must be transparent and subject to scrutiny if it is to avoid undermining the general acceptance of the methodology.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

No comment on concession-style agreements but please note the following on Infrastructure Cost Charges (ICCs) for Freight.

We believe that the use of ICCs for freight in the Freight Specific Charge (FSC) is becoming less relevant and should be reviewed within the legislative framework for the following reasons:

- At present, the FSC is applied to ESI coal, ESI biomass, Iron Ore and Nuclear traffic raising £500k, just 0.02% of total track access income.
- The volume of ESI coal will be virtually nil by the advent of CP7 and the ROC subsidy for biomass generation will have ceased in early 2027, making it less able to baseload and less able to bear the FSC.
- The threat of ORR reviewing which commodity can be captured by the 'what the market can bear' test every 5 years, is a source of uncertainty for any party considering investing in new freight wagons and/or infrastructure.
- If the FSC is retained, the market test must take into consideration the cost changes which have occurred over the last few years including those mentioned in our answer to Q1, namely Brexit, labour shortages and red diesel. Changes such as these do not conveniently fall every 5 years. What the market can bear during the PR process, is not what it can bear for the five years of the Control Period.

We note that in PR18, it was stated by one of ORR's consultants that Drax had invested heavily in wagons and the associated port infrastructure and was therefore captive to rail and the FSC. Such sentiments, which come specifically from the application of the FSC mechanism, are not conducive to companies investing in rail.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

We note that the legal framework led to a policy of reducing the caps on VUCs over CP7 and that such a move will increase the cost of track access significantly for some freight flows.

Most of the freight traffic which is not on rail is very price sensitive and higher track access charges are unlikely to encourage modal shift. Moreover, to burden existing railfreight with additional cost at a time when the industry is facing increased pressures (as we set out elsewhere in this response) could well prejudice existing flows.

Given the stated intention of the Williams Shapps Plan to grow the volume of rail freight, we advocate that the current VUCs be maintained at least until the implementation of the Plan is better understood.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

A significant issue with the current track access regime is the extent to which charges provide an incentive for those investing in rail wagons to do the right thing. The current and well known example is track friendly bogies. The access charging regime does not reward the use of track friendly equipment sufficiently enough to cover the higher cost incurred, thereby dis-incentivising their use.

This issue will become more widespread as the freight industry looks at the adoption or otherwise of Digital Automatic Couplings. The use of technology to improve monitoring of freight wagon equipment has the potential to bring benefits to the rail infrastructure but requires the right incentives for wagon keepers and users to invest.

Consequently, we believe that the review of Network Rail's findings in PR18 should go wider than which are the eligible costs to be included. The VUC reqime needs to be flexible enough to recognise where the provision of enhanced equipment on a freight wagon provides system benefits.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

ORR states in its consultation document that charges provide incentives to reduce network costs and encourage efficient use of the network. We note that Network Rail has chosen non-track friendly bogies for its new engineering wagon fleet.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

Understanding the principles and evidence underpinning the calculation of the VUC would be useful for wagon owners and users in evaluating the important cost elements when considering an investment. However, as new build projects can be quite long (18 months plus) certainty about future charging regimes and the overall level of charge are more important factors.

Uncertainty and insufficient reward for choosing infrastructure friendly equipment are issues which must be addressed.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

No comment

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

No comment

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

No comment

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

No comment

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and

costs of these alternative metrics be, relative to the current approach? **Question 15: Do you have any views on our proposal to class stations that open within a control period as ‘new’ for a fixed five-year period from the date of opening?** **Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?** No comments
Chapter 6: Inflation Indexation
Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail’s access charges (and payment rates in other mechanisms where we set the method of indexation)? No comment

Are there any other comments you would like to make?
We note ORR’s comments in paragraphs 2.19 – 2.22 regarding Environmental Outcomes. However, a track access charging regime that runs contrary to the prevailing policy objectives of tackling Climate Change, Getting to Net Zero and De-carbonisation through modal shift, would be difficult to justify to the British public.

Thank you for taking the time to respond.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

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Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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*This information will not be published on our website.

This response is on behalf of independent owning group and freight operator members of RDG. All references to RDG in this response are references to independent owning groups and freight operators. This response does not represent the views of Network Rail.

Chapter 2: ORR's proposed approach and priorities
Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context? The Rail Transformation Programme does present an opportunity to simplify the access charging framework, at least for passenger operators who will have contracts with Great British Railways (GBR). However, given that the Rail Transformation Programme is at an early stage, RDG believes that there should only be limited changes to access charges at this time whilst further work is developed on how the overall rail system will function in the future. For rail freight, it is key going forward that the future charging regime is used to support and incentivise modal shift to rail, and the wider decarbonisation of both the railway and the economy. RDG welcomes ORR's intention to focus more closely on environmental outcomes and hopes this element can be strengthened through the PR23 process and into the next Control Period.

For this reason, it is key that environmental outcomes (and knock-on effects) are given due consideration when discussing the proposals set out in this consultation and those to come.

Whatever the future contractual architecture of the railway looks like, RDG agrees with ORR that the charging framework must continue to support and provide certainty to operators, while also giving the right signals and incentives to Great British Railways.

Finally, whatever changes ORR makes to the charging framework, it is important to have transparency around cost causation and allocation between services and funders.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

There is a need to make sure that the future access charges framework retains enough flexibility to accommodate reform. We believe there is a case for reviewing charges relating to fixed costs for passenger operators to make sure that they are proportional and easy to understand. In the future contractual structure, it is possible that passenger operators contracted by GBR may not be required to pay access charges, but it will remain important that the cost allocation process is transparent and supported by industry.

RDG agrees that whilst wide-ranging changes to the charging framework are not appropriate at the current time, the incremental changes set out by ORR are worth considering within PR23.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

RDG is supportive of the approach to use Network Rail's cost allocation methodology to allocate fixed costs to operators providing that full transparency and regulatory oversight is retained.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

RDG agrees with the ORR view that the FTAC wash-up should not be reintroduced as it would be cumbersome and resource intensive.

We would welcome further discussion on the overall relationship between FTAC and the current grant funding mechanism as we do not believe this is as transparent or effective as it could be.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

It is important to consider how and indeed whether to phase in the further increase of Variable Usage Charge (VUC) for freight and charter services in the light of wider rail reform.

For some freight customers and commodities, charges will increase significantly under the current trajectory (especially for construction traffic). Given that new legislation scheduled for 2024 could change the way that access charges are required to be calculated, freight operator members of RDG believe it would make sense to hold VUC constant (as happened for two years at the outset of CP6).

Commodities that will see increased charges also include those which will be key areas for rail freight growth in future, particularly once the rail freight growth target outlined in the white paper is set. Proceeding with the increase to VUC rates could have the result of deterring new and existing customers from using rail, constraining rail freight growth and thereby being counter to the Government's decarbonisation and levelling up agendas. Growth in rail freight and the modal shift to rail will be key if we are to decarbonise the railway and the wider economy.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

RDG has no additional evidence to provide. RDG supports the proposed ORR review of the costs to be recovered through the VUC as part of PR23, as there was not sufficient time in PR18 to undertake the exercise.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

ORR should assess the benefits of applying VUC to Network Rail's engineering trains in terms of improved transparency on costs and the incentives it would provide against the additional resource burdens and increased costs of administration. Only if the benefits clearly outweigh the costs should ORR go ahead with this proposal.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

RDG's view is that improved transparency and granularity regarding train speed data used to inform VUC calculations would be welcomed. Improved transparency would enable operators to better understand and interrogate the calculations where necessary.

It is recognised that work has already taken place to breakdown VUC by fleet, and independent owning group members of RDG support the provision of further granularity by accounting for different geographical areas and different speeds across the passenger network.

For freight operators, an improved interface to Network Rail's VUC calculator that allows a user to model various scenarios easily would be beneficial. In particular, the ability to calculate expected VUC charges for vehicles in the R&D stage would be an advantage. Retaining the simplicity of having a VUC set on a national basis remains a key priority for the freight operators.

Any changes though should only be made if they are expected to have a positive impact on behaviours and help to inform better decisions that could, for example, improve cost efficiency.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

RDG agrees that there is merit in ring-fenced funding for on train metering. Given the importance of accurate on-train metering and the costs involved in installation on rolling stock, a ring-fenced fund would be beneficial and should help accelerate and incentivise the process. Before committing to this however, it would be prudent to investigate and understand why more passenger trains are not currently using or being fitted with meters.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

RDG would support the removal of the PFM mechanism, providing that this does not discourage the use of on-train metering. This risk could be assessed through the review of barriers to on-train metering proposed in Q9.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

Many independent owning groups and freight operator members consider that it is not necessary to remove the loss incentive mechanism presently as it has brought some benefits to the rail industry. The loss incentive mechanism provides a framework that enables the impact of losses incurred through electricity feeding arrangements to be internalised within decision making processes. However, consideration should be given to whether the benefits it brings may be outweighed by additional administrative costs and resourcing.

There is a wider question that should be considered – how charging can incentivise the use of low-carbon traction, particularly in the freight sector. Currently it can be more expensive to run an electric service than a diesel-hauled train. This commercial penalty creates a perverse incentive, and the ORR should consider what levers are at its disposal for the charging regime to account for the environmental impact of different services.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

EAUC is an effective mechanism and should not be adjusted beyond the necessary recalibration process.

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

RDG agrees with the proposal for station-specific expenditure forecasts for large/complex franchised stations. This would be a good opportunity to enhance cost reflectivity and overall transparency. Basing the LTC on the actual circumstances of relevant stations will help ensure that funding needs can be met, and policy objectives are achieved more easily. It will also provide operators with greater transparency, allowing them to better budget for known and expected works in the long-term. Existing NR survey information for stations should be used to help inform this process.

It would be useful to know how ORR intends to classify a large/complex franchised station and how that, and any relevant criteria, will be agreed with relevant SFOs. To allow for better forecasting, the approach will need to reflect all obligations at a particular station (i.e., not just those that are priority issues or relevant for a particular control period).

Charges levied for each large/complex station should be spent on those specific stations and not subjected to ‘route spending’ which often sees LTC funds recovered by NR dispersed across an operator’s stations.

PR23 provides an opportunity for the industry to be more open about the station charging regime and address a number of issues that are regularly cited, these include the lack of a link between what operators pay and the outputs at stations; a lack of funding available for NR to undertake the obligations LTC should fund; and differences across regions and SFOs as to what is included within LTC.

Greater transparency would enable and allow greater collaboration on station priorities. The wider Rail Transformation Programme could provide an opportunity for removing the LTC for GBR-contracted operators, but transparency on station costs will still be needed across the board.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

RDG agrees with ORR’s position that there is no clear case for changing the current approach. It is likely that other metrics would not be as robust and reliable as vehicle counts. For example, passenger counts can be significantly affected by one-off events whereas vehicle counts are more stable, can be easily calculated and used to apportion expenditure between operators. As QX and LTC should share a common calculation, it makes sense to use vehicle counts for both.

Question 15: Do you have any views on our proposal to class stations that open within a control period as ‘new’ for a fixed five-year period from the date of opening?

RDG agrees that a reduced LTC for new stations for a five-year period from opening makes sense. This would avoid stations being arbitrarily affected by the dates of a particular control period. It would also be useful to investigate applying similar LTC reductions to stations that have been heavily redeveloped. In many cases a station that has undergone significant redevelopment has many similarities with a brand-new station and has the same level of defects liability period for contemporary assets.

It would be useful to understand exactly how the 10% figure is derived and whether this is appropriate for every station. Alternative, more nuanced options could involve basing it on the whole life cost model for a particular station, with costs applied from the year it enters service. While this may result in some increased administration, it could also serve as a more tailored and accurate approach.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

RDG supports the change in principle, although more information on the basis and reasoning for which costs are proposed to become regulated would be useful.

Any effort to promote a more transparent approach to station charging is welcome and creating a regulated QX charge that covers the maximum practical range of costs would help to streamline the process of setting the QX charge. While the existing process does work, it is complex and often results in no change following a challenge.

However, when making such a change to the QX fixed element, it could be beneficial to also make other complementary changes. For example, expanding the current definition to cover heavy maintenance, not just light, could help address the maintenance backlog across the station portfolio. Expanding the definition to cover wider station maintenance would add merit to the proposed change.

Other areas of Managed Stations QX could also benefit from review and regulation such as route charges, utility calculations, retail split and cleaning. A better understanding of how the regulated management fee is calculated would also be beneficial.

RDG would welcome further engagement on this proposal to ensure industry agrees with the proposals before final approval is sought.

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)?

Most independent owning group and freight members of RDG agree with ORR's position of maintaining CPI as the general inflation index used. However, RDG notes the continued misalignment with fares which are still adjusted by RPI.

Are there any other comments you would like to make?

RDG would support further work being undertaken with regard to rolling stock depot charges, along the lines of those proposed for station charges, as the current arrangements are complex and do not provide transparency on cost allocation.

Regarding ICCs for freight operators, RDG stands ready to engage with ORR as it develops its approach. However, a full market-can-bear test may be unnecessary. With the ongoing exception of (ESI) coal, there has not been significant change in the relevant commodities under ICC. A more moderate test based on those that have changed since the last market-can-bear test may be more appropriate and reduce uncertainty for freight operators.

PR23 – Review of Network Rail's access charges

Response from Rail Freight Group

September 2021

1. Rail Freight Group (RFG) is pleased to respond to the consultation on the PR23 Review of Network Rail's access charges. No part of this response is confidential.

2. RFG is the representative body for rail freight in the UK, and we campaign for a greater use of rail freight, to deliver environmental and economic benefits for the UK. We have around 110 member companies including train operators, end customers, ports and terminal operators, suppliers including locomotive and wagon companies and support services.

General Comments

3. Access charges are fundamentally important to the success of rail freight, The periodic review of the structure and level of those charges is therefore important for the sector and future growth, including for freight operators, existing and new customers and those investing in the industry.

4. Access charges are a significant component of rail freight costs, which in turn determine how attractive rail freight is for customers when compared to other modes. This means that charges must be affordable and fair.

5. Access charges also signal intent from Government and Network Rail. If the market believes that charges are likely to change significantly, this will undermine confidence and thus investment and modal shift. Charges must therefore be predictable and stable.

6. Access charge can also act as an incentive on behaviour if they are aligned to key outcomes. However, these incentives will not be effective unless they are clear, and sufficiently differentiated, and target areas of real priority for the sector.

7. We recognise that this review is being undertaken during a time of significant change for the railways. The proposed changes to the access framework signalled by the Williams Shapps Plan for Rail are likely to encompass changes to the structure of access charges, including to the fundamental principles set down in regulation. This creates an opportunity to improve some aspects of charging, but also creates significant risk. Potential changes to the nature of independent regulation could also increase that risk, and we support continued strong regulation of charges and of track access.

8. This is also a period of significant change and disruption in freight and logistics. The COVID pandemic has highlighted the vital importance of freight, but has also brought cost challenges, disruption and labour shortages. Rail is not insulated from this disruption, nor the cost exposure that ensues, and whilst there are good opportunities to grow rail, the commercial position is none the less fragile.

9. Given the scale of work necessary to develop and implement any new processes and regulations, we support the proposal not to make any fundamental changes to the charging framework in PR23 in addition. Further, we would support the outcome of PR23 being the basis of access charges in CP7 regardless of the outcome of the reform workstreams, as this would provide continuity and stability for the industry.

Comments on Specific Questions

10. *Question 1* As outlined above we agree with the general approach set out for PR23 in the context of rail reform. Providing stability during a programme of significant change is particularly important at this time, and the approach set out seeks to manage this appropriately.

11. *Question 2* We agree with the initial proposals and further work subject to the comments below.

12. Whilst the consultation sets out clearly the process and timescales for ORR activities during PR23, we note that significant parts of the work to calculate charges are undertaken by Network Rail. It would be helpful for this industry if there was a clear understanding of the combined process, and a common approach to consultation, as during PR18 some members felt that they had not been sighted on some activities until very late.

13. *Question 3* We have no comment on this proposal. However, given that the forecast number of passenger trains for CP7 could be lower than for CP6 due to COVID, it is important that the allocation of fixed costs between operators does not increase the costs allocated to freight (where the market can bear it).

14. *Question 4* No comment.

15. *ICCS for Freight Operators We* note the proposed approach for PR23 which appears reasonable. Any work undertaken should take into account the expected increase in variable costs during CP7 (subject to review), as well as increases in other costs such as the loss of red diesel relief in handling equipment and rental increases, so that the overall financial position is understood.

16. Governments in Scotland and Westminster now have committed policies to encourage modal shift to rail and this should be noted in the context of this

review.

17. *Question 5* We recognise the legal framework which requires full wear and tear costs to be recovered through the VUC, and hence the policy of phasing in charges over CP7. Nonetheless this still leads to a very significant increase in access charges for some commodity groups. There should be clarity over the profile, as it has been indicated that the full rates will apply in the last year, not from the end of CP7.

18. Analysis during the review should refresh the assessment of VUC rates, both in total and between markets and wagon types to ensure that the approach is fair and balanced. If the process leads to increases over and above those expected the capping policy must also be reviewed to avoid shocks to the market.

19. *Question 6* We consider that a light touch review would be relevant, noting that the legal basis of charges may be changed during future reforms.

20. *Question 7* The question here is whether or not being required to pay VUC would cause NR to be subject to the same incentives as other operators. Some members have felt it unjust that they are encouraged through charges to buy significantly more expensive wagons with track friendly bogies (the cost of which is not covered in full by the charges discount), whilst NR have bought cheaper wagons with standard bogies for their own wagons. Applying a VUC charge, albeit circular, could help provide an incentive in future, and will also provide better cost information to help inform NR decision making.

21. More generally, the discount for track friendly bogies should be reviewed to ensure that the incentive effects are sufficient to cover the cost differential, and that any changes also reflect previous investment choices made by operators.

22. Question 8 We agree that greater understanding of charges particularly for end customers would be helpful. However, the ability of operators or customers to change services to lower charges is fairly limited in reality particularly with fixed assets. Given the potential for the basis of charges to change through reform we would consider a light touch approach to be proportionate here.

23. Question 9 We would support a fund to encourage the fitment of meters, however as any fund would not be likely to be open until 2023/24 at the earliest there is a risk that the prospect of a fund will deter investment now. As there are only a few classes of freight locomotive that are unfitted it would be worth looking on a case by case basis to determine the best approach. We understand that there are significant technical issues with metering a Class 92 locomotive, so we would not support mandatory metering of these units.

24. Question 10 No comment.

25. *Question 11* No comment.

26. *Question 12* We support this proposal. However the increased charges for electric traction are a disincentive to its use, and this is an area that might be considered in any reform of charges.

27. *Questions 13-16* No comment.

28. *Question 17* We support this proposal.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

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Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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*This information will not be published on our website.

Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

We consider that the status of Fixed Track Access Charges for network usage should be reviewed as part of PR23. These constitute a significant financial risk for funders like us who have previously been exposed to changes in these charges despite having little influence over how they are determined. Our views on this are discussed further in the response to questions three and four.

It is also important that there is clarity on the position of operators that use bespoke access arrangements to Network Rail infrastructure such as London Underground (LU). These access arrangements must be recognised and maintained as new industry structures and processes are developed.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

Please refer to our responses to the consultation questions for our views on the proposals made. Our main concern relates to the future of the Fixed Track Access Charge as stated in the response to question one above.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

We consider that the requirement for charging fixed costs to operators (through the Fixed Track Access Charge (FTAC)) and therefore to funders of the network requires further consideration. The process used introduces significant financial risk for funders outside central government like us. It leaves us exposed to the outcome of decisions over the balance of cost recovery between the FTAC and the Network Grant and also to the decisions of other operators which result in reductions to the volume of service they run, leading in turn to increases in the proportion of FTAC we pay. There is little that we can do to influence these decisions yet we have to bear their consequences which are increasingly challenging given the financial context post Covid.

It would be fairer for the government to meet the fixed cost of network operations in its entirety through the Network Grant, recognising its central role in the management of the network and control of its costs as envisaged by the Williams - Shapps Plan for Rail. Under the new structure the FTAC just represents a "money go round" between operators and Network Rail given that there is little the former can do to directly influence it so there is no significant value in maintaining it.

Any such change to the arrangements for fixed cost charging would need to consider the position of LU and the income they receive to cover infrastructure costs on the Metropolitan line (from Chiltern) and the route from East Putney to Wimbledon (from Network Rail). LU would need to retain the ability to recover the costs they incur as a consequence of National Rail operations on these routes.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

As stated in the response to question three we do not consider that the FTAC should continue. If it does then it should be apportioned in a manner that keeps changes to costs compared to the previous Control Period to an absolute minimum, to reduce the financial risk to funders outside central government. Not reintroducing the FTAC wash-up would support this approach.

In the absence of an FTAC wash up mechanism consideration should be given as to how to incentivise the industry to reduce fixed costs, given the high proportion of total costs that they represent and the significant loss of revenue the industry has suffered as a result of the ongoing effects of the Pandemic. Indeed, given the financial position of the industry post Pandemic every effort should be made to improve the efficiency of Network Rail through the Periodic Review process. This could be done most effectively through direct agreement between government and Network Rail over how fixed costs can be reduced, with other funders and operators being involved in this discussion to ensure it is as thorough and wide ranging as possible.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

Freight and charter operators should pay the variable costs their operations impose on the network in full.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

We have no comment to make in response to this question.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

This could be useful if it ensures these trains have track friendly characteristics. Any impact from such a reform is likely to be marginal given the relatively low volume of traffic it would cover.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

We have no comment to make in response to this question.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

We support the ring fenced fund to incentivise on train metering, given the environmental imperative to ensure power is used as efficiently as possible. It should encourage closer attention to be paid to the energy consumption characteristics of trains.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

We support this, as the Partial Fleet Monitoring approach is clearly of little value to operators because none of them has made any use of it.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

We have no comment to make in response to this question.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

We support this, as there is no clear rationale for any change.

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

If the categorisation of assets is done in a sufficiently comprehensive manner it should be possible to apply this to all types of station to achieve a fully consistent approach. Further consideration should be given to this before adopting a bespoke approach for large and complex franchised stations.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

We have no comment to make in response to this question.

Question 15: Do you have any views on our proposal to class stations that open within a control period as 'new' for a fixed five-year period from the date of opening?

We consider this approach to be appropriate.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

This approach has merit provided that the process for generating the regulated charge is transparent and that the categories it covers are comprehensive and reflective of potential operator requirements. Regulation would ensure the reasonableness of such charges.

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)?

We support the retention of CPI as the general inflation index for Network Rail.

Are there any other comments you would like to make?

We have no other comments to make.

Thank you for taking the time to respond.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

c2c is the passenger train operator running services between London Fenchurch Street and Shoeburyness, serving 26 stations in east London and south Essex under a National Rail Contract concession ("**NRC**") with the Secretary of State for Transport ("**DfT**"). c2c is the third operator to have migrated from the franchise agreement model to the NRC and accordingly is well-placed to comment on the prevailing industry context noted by the ORR.

In particular – as recognised by the ORR – the NRC is a new model of contract between the DfT and the private sector based largely upon the concession model. In very simple terms, under the NRC model, c2c takes limited cost risk, with an annual budgeting process to establish costs and deliverables for the next year. The DfT assumes revenue risk. It is widely expected that once the future model for the industry has been implemented and Great British Railways ("**GBR**") has been implemented, GBR will become responsible for awarding Passenger Service Contracts ("**PSCs**"). The terms of the PSCs are not yet known and it is also possible that the NRC for c2c could apply for some of Control Period 7. Accordingly, some of c2c's comments in this response assume that a similar approach is adopted in the PSC in relation to costs as has been adopted in the NRC. Whether this assumption proves to be correct will emerge in time, although c2c expressly reserves the right to make further comments and representations as: (i) more detail on the PSCs emerges; and (ii) the ORR's approach to setting access charges as part of PR23 becomes clearer.

We therefore agree that these are matters that the ORR should be taking into account in its overall approach to PR23. We recognise that there will be non-GBR users of the railway network, to which the charging (and performance) frameworks for the industry will be highly relevant in future, notwithstanding the arrangements that c2c may be a party to in future.

With c2c assuming limited cost risk, the financial impact of the ORR's proposed approach is largely a question for the DfT/GBR. Of course, c2c, as a good and efficient operator, is keen to ensure that the network and stations are delivered in a way that best meets its customers' needs, whilst ensuring an appropriate balance against the costs of doing so: the deliverables must represent good value for money for c2c and, ultimately, the taxpayer. We think Network Rail (and by implication GBR) needs to be sufficiently empowered and have a degree of flexibility in its funding to drive industry efficiencies.

In its approach to PR23 – and specifically access charges – we would ask the ORR to take into account the annual business and cost budget planning cycles that operators on NRCs are required to comply with. In particular, c2c (and, we suspect, DfT/GBR) would welcome certainty about charges for future years in preparing those business plans and cost budgets (which takes place in the latter part of each calendar year).

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

We agree that retaining the charging system in a substantially similar form to CP6 is the most appropriate starting point given the prospect of wholesale reform set out in the Williams-Shapps Plan for Rail.

Other areas the ORR should consider include:

- as mentioned in our 10 September letter to Daniel Brown at the ORR (Director, Economics, Markets and Strategy) our view is that funding settlements should reflect the construction costs of assets, as well as whole life costs. Maintenance of assets has historically been passed between organisations and whilst we welcome the overall standards rising, there remains a huge backlog of essential maintenance to deliver a higher standard and passenger benefits. This is particularly pertinent for c2c with the introduction of a station quality regime in its NRC. A focus on existing facilities to ensure funding is available to increase accessibility, asset availability and resilience – particularly in the context of climate change – to ensure more value can be delivered from the current asset base – is key;
- sufficient funding is needed to ensure the railway can fully and properly adapt to the impact of climate change, including land slippage – and we think schemes to ensure the railway is more resilient in particular areas need to be accelerated;
- on infrastructure assets, we would encourage the ORR to take into account review and management of critical spares across the network in establishing the funding and access charges. Good management of critical spares will aid overall asset and operational sustainability;
- the ability to undertake recalibrations of charges when significant modifications are made to existing rolling stock during the course of a Control Period (where that significant modification has the impact of reducing the impact on the track);
- ensuring Network Rail (or its successor GBR) is appropriately incentivised to deliver a cost-effective network that enables c2c to meet its contractual requirements to the DfT

and which delivers the expectations of c2c's customers (we recognise the interlinked nature of this point with the discussions on Schedule 8); and

- recognising that c2c adopts the 99-year full repair and insure lease model for stations on Essex Thameside and therefore takes more responsibility for stations than in some other places on the network, encourage closer alignment between track work (including possessions) and stations work.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

We agree that the methodology is relatively well-established and is intended to ensure consistency across operators, which is welcomed. The methodology works well in practice from our perspective. We would suggest making clear how c2c as a business feeds into the forecast traffic levels on the network and so including information on the process by which this information is obtained would, in our view, be helpful as we think we can meaningfully contribute to the discussion.

The opportunities for simplification mentioned in the consultation would also be welcomed, as making it more easily understandable without recourse to external support (which can be expensive) can only be a good thing. We agree with the note of caution offered by the ORR that simplification should not be at the expense of transparency, which we discuss further below.

In relation to the parts of the network upon which c2c operates, which are relatively self-contained, we agree that the suggested additional work to make the methodology more cost-reflective for CP7 is likely to be disproportionate to the benefits which would be delivered. Nevertheless, we do think it is important to incentivise Network Rail to drive efficiencies, including through understanding the long-term cost drivers and considering opportunities to deliver cost benefits. It is partly through understanding these that challenge can be offered and cost efficiencies can be delivered, so we do think it is important that more work is done in this area, even if it is not reflected in the access charges for CP7. We therefore welcome Network Rail's commitment to do this.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

We agree with this proposal. One of the themes of our response is c2c's ability to plan its business and cost budget with a reasonable degree of assurance, consistent with the behaviours incentivised in the NRCs. With a move towards many of Network Rail's functions being consolidated into the same organisation which also awards PSCs (and is expected to take significant cost risk thereunder) we are not persuaded that this mechanism is likely to be helpful going forward.

Combined with the uncertainties surrounding the post-pandemic recovery of rail patronage and associated service requirements, we are not confident than an appropriate traffic baseline could properly be established in the current environment and the work involved would be disproportionate to the benefits delivered. We would hope that by the commencement of Control Period 7, this level of volatility will have eased off and it will be possible to understand a baseline, although we recognise that much of the work would need to be undertaken when the underlying evidence base remains unclear.

With the suspension of the mechanism due to the pandemic, it is difficult to understand the impact that this is likely to have on a business such as c2c's. Development at Barking Riverside and other potential causes for increased traffic could also have a large impact on the traffic baseline used to calculate the FTAC and it is difficult to know how this would be factored in. Clearly, the main point is that it would need to be taken into account in an appropriate manner when calculating the fixed element of the FTAC then any washup impact should be minimal.

This all needs to be considered in the context of the wider picture and the amount of grant funding that the DfT will make directly to Network Rail (or GBR) in future, factoring into the High Level Output Specification and Statement of Funds Available process. If grant funding made available to Network Rail decreases, then the amount of funding that Network Rail will need to recover through the FTAC is likely to increase (albeit that, for concession-style agreements with the DfT/GBR, this is likely to cycle back to the relevant body). Clearly, the opposite would be the case if grant funding to Network Rail increases. This would need to be carefully considered as part of the annual cost budget cycle mentioned elsewhere in this response, so certainty is needed in this area.

On balance, therefore, we support this proposal and the approach to not re-introducing the FTAC wash-up.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

We express no view on this proposal.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

Whilst we offer no specific additional evidence in this area, we agree that a more thorough (rather than light touch) review by the ORR is appropriate for PR23. It may be helpful for the ORR to consider variable usage charges (or their equivalents) for other railway infrastructure (such as High Speed 1, to which the same Commission Implementing Regulation will be relevant) to consider consistency of approach across infrastructure managers.

In our response to Question 2 above, we mention recalibrating charges when modifications are made to existing rolling stock during the course of a Control Period. From past experience of undertaking rolling stock modifications intended (in part) to reduce the impact on the track – and as a consequence the VUC – but no interim review of the VUC being permitted, we think this is particularly pertinent. We note the ORR's opening comment "*We also plan to work with Network Rail to seek to improve how VUC rates and the underlying evidence base are communicated and presented to stakeholders, to strengthen the incentives provided through* *this charge.*" It will only provide a real incentive if it is possible to amend the charges other than once every five years.

We note that the charges for the "minimum access package" (which the VUC is loosely intended to cover) must be set at the cost that is directly incurred as a result of operating the train service (paragraph 1(4) of Schedule 3 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016). We accept that: (i) in setting the charges, it is permissible to take into account the degree or period of utilisation of the railway infrastructure; (ii) it is desirable to give Network Rail certainty of its income over the longer term; (iii) Network Rail may well award long term maintenance contracts; and (iv) there needs to be some threshold (either way) for triggering a review of the VUC, else there could be a perpetual cycle of interim reviews. However, we think at present that threshold is set too high.

The directly incurred costs are just that: the cost that Network Rail directly incurs as a result of c2c operating its train service. If c2c (or another operator) is able to reduce those directly incurred costs through taking steps to reduce the impact of its rolling stock on the infrastructure, this should be a whole-industry win. It should be possible for Network Rail to award maintenance contracts which give it the ability to realise these savings on behalf of the industry and lead to a reduction in the VUC for the operator. Going forward, with greater vertical integration being a political aim and with Network Rail being absorbed into GBR, who will be responsible for the PSCs, this should be seen as an example of desirable industry collaboration. As the ORR recognises, this will continue to be relevant for non-GBR-awarded passenger services, as well as for the freight sector. The principles of fair, transparent and non-discriminatory treatment and cost reflectivity dictate that each industry user should at least cover the costs they generate through their use of the network.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

We agree that the potential benefits from implementing the suggested change described in the consultation document is likely to far outweigh the implementation costs. Effectively, the costs Network Rail incurs through operating engineering trains to undertake track maintenance work is a cost it necessarily incurs to undertake that track maintenance work. We agree that the financial impact will be nil or negligible and therefore we agree that the costs of implementing far outweigh the benefits.

Whilst the point is fair that Network Rail should be incentivised to reduce the impact its own activities have on its infrastructure, that can be better achieved through other incentives, recognising that procuring new engineering trains could be very costly for the industry.

The above said, we do think there is a case for greater transparency, even if that does not necessarily lead to a payment. It would be helpful for the industry as a whole – including c2c – if more information were available on the net impact of c2c's trains operating on the network – highlighting and then removing the impact of Network Rail's engineering trains.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

A detailed report explaining the full VUC process could be useful. We acknowledge that there are a lot of variables which go into the calculation, so gaining a better understanding would be valuable for future modelling of costs and making more informed decisions.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

The majority of c2c's fleet is formed of class 357 electric multiple units, all of which are already fitted with on-train metering. c2c's new class 720 electric multiple units will also be delivered with on-train metering installed. By the time Control Period 7 commences (and indeed some time before then) c2c expects to cease using the small number of class 387 units in its fleet which are not fitted with meters. Accordingly, a ring-fenced fund is unlikely to be relevant for c2c.

However, it is worth noting that any ring-fenced fund potentially abstracts money from other schemes which could be beneficial to the wider industry. In effect, c2c could end up subsidising the installation by other operators – and ultimately the rolling stock owners – to install metering when there is no discernible benefit for c2c. Instead, some consideration may wish to be given to the post-year wash ups that take place and whether they could offer a better incentive. The advantage of metering is that it measures actual traction electricity consumption – and the operator is properly charged for the energy that it actually consumes (this being cost-reflective). Whilst we recognise that there will always be some energy lost through the transmission process, it is perhaps in the volume wash up or the cost wash up that non-metered operators could be incentivised – perhaps bearing a bigger proportion of the wash-up risk to incentivise meter installation.

We note that c2c has recently encountered an issue where the metering on some of our units stopped working and as a result an estimate was used. Whilst most of the estimates were then replaced with the correct metered charges, some were not and we struggle to understand why Network Rail was not sufficiently agile to do this. Network Rail's explanation was as follows:

In normal circumstances, you will see a common cycle of one week where you are charged estimated and the following week the charges are reversed due to the 7-day window operators have to submit their meter readings. That then means, depending when journeys fall within our billing cycle (charge files produced every Monday night/Tuesday morning), you will see these charges changing.

However, as the missing readings would be sent outside of the 7-day window and we exported journeys from May onwards, we cannot go back and export and make adjustments to the missing data as it will only capture and export data from the last export date for each unit. I know we've had a different scenario with the units from Hasler that are sent by SNC Lavalin, but because they've not sent the 'current' data until the historic data is received, that's how we're able to rectify that.

This seems absurd in 2021, when wash-ups take place in various parts of the track access arrangements and the intention behind this was cost-reflectivity. We think there has to be merit in ensuring that "historic" information can be corrected when more information becomes available to better reflect the traction electricity that has been consumed. This is something the ORR should consider in its work in this area.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

Each fleet of rolling stock used by c2c by the time Control Period 7 commences should be fully fitted with meters. The PFM charging approach is therefore unlikely to be relevant for c2c and accordingly we have no objection to it being removed.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

Transmission losses remain a cost to the industry as a whole and, more specifically, are ones which operators are expected to cover in part. c2c is keen to ensure that Network Rail is properly incentivised to reduce transmission losses – for example, there may be small-scale fixes that Network Rail can implement to stop traction electricity escaping into other assets alongside the railway, especially where Network Rail is not responsible for maintenance, repair and renewal of those other assets. Whilst we accept that the number of interventions that are cost effective are likely to be large scale and not cost effective, we remain of the view that it is appropriate for there to be some incentive on Network Rail to reduce transmission losses.

Our view is that there is value in exploring how best to re-design the mechanism so that it works as intended and we disagree with the proposal to remove the loss incentive mechanism altogether.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

We agree with this proposal.

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

Stations on the Essex Thameside route for which c2c is the Station Facility Owner are managed under a 99-year lease and the Essex Thameside Station Access Conditions 2014 (Full Repair and Insure leases). c2c calls at stations operated by third parties and equally third parties call at c2c stations. c2c can therefore offer certain insights from the perspective of managing a portfolio of stations on a long term basis and having much greater responsibility for station maintenance and repair than some other operators. We therefore believe we can offer a balanced view having considered both the operator and repairer perspectives.

One of the advantages of the current model is that as spend is averaged out across a portfolio of stations, the funding is available to be used across that portfolio of stations. Any risk contingency funding is also then available to be used across the portfolio. Whilst we appreciate the issues identified – i.e. the charge for an individual station does not necessarily reflect actual expenditure at that station and the potential consequences thereof, we do not necessarily agree with the proposed approach identified by the ORR.

We think the approach has the potential to push up the costs of the industry, which is not desirable in the prevailing circumstances identified by the ORR at the start of the consultation paper. We also believe the approach is inconsistent: i) it is not clear how the largest or most complex stations would be identified or selected (we acknowledge that this is something the

ORR would intend to work on with Network Rail); ii) if adopted, then there is surely a case for doing the same for all stations (or smaller portfolios of stations) individually to ensure all stations are cost-reflective, which hugely increases the administrative burden for the industry as a whole, bringing into question whether the benefits are truly proportionate to the costs.

We appreciate the ORR's intentions are good and would enable greater cost reflectivity and transparency. However, this comes with a number of risks: i) Some stations may be strategic stations or interchange stations – where necessarily spending may be higher by virtue of footfall even if the stations themselves are not large or complex; ii) Contingency funding will typically be built into budgets to recognise that events will happen (for which funding will be needed) where expenditure is needed. Contingency funding will typically be split out across the portfolio, recognising that an unexpected event may well happen at one station over a period of time, but is unlikely to happen at all stations. By removing particular large stations from the portfolio and accounting for them individually, multiple pots of contingency funding will be needed, and the aggregate of those is likely to be higher as a consequence of the level of risk combined with the ring-fenced nature of the funding; iii) Given the need for separate accounting, there could be reduced flexibility to award cross-portfolio contracts or to respond quickly and efficiently to unexpected incidents that do arise; iv) as a consequence, the need for in-period interim reviews and ability to increase charges will become particularly key and measures would need to be included in the access documentation to facilitate this, with ORR involvement as well.

We therefore do not agree that the benefits of cost reflectivity and transparency outweigh the burdens and potential increased costs for the industry as a result.

We would also welcome increased guidance from Network Rail on the calculation of both LTC and QX charges.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

We agree that there is no clear case for changing the current approach. Whilst we acknowledge the potential difficulties cited by the ORR (same number of vehicle departures but different levels of passengers) we think that adopting any other approach could present practical difficulties. For example, c2c operates a number of interchange stations between services and operators, where passengers do not necessarily pass through ticket gatelines when changing services. It could therefore be difficult to allocate passengers to particular operators (and a disproportionate amount of time is likely to be needed to reach an agreed picture on passenger numbers and their allocations). Whilst there are difficulties associated with the vehicle departures mechanism, it remains (in our view) the closest proxy to passenger numbers which can be applied relatively easily in practice. We therefore suggest retaining this approach.

Question 15: Do you have any views on our proposal to class stations that open within a control period as ‘new’ for a fixed five-year period from the date of opening?

Whilst each individual station and its associated costs will vary and very much depend on the relevant circumstances, we do agree that the costs of maintaining and renewing stations early in their life are likely to be substantially lower than other stations, although recognising that a whole life approach to asset maintenance, repair and renewal is clearly preferred. Adopting a standardised approach could result in some winners and some losers but we accept the underlying principle and this could be one option.

For the reasons set out in our response to Question 13, we disagree in general with the proposed approach of extracting particular stations out of the portfolio and levying the LTC on a per-station basis for each of those individual stations. However, if there is a situation in which this approach could be used more appropriately, new stations would be one of them. Taking new stations outside of the portfolio approach would avoid the identified skewing effect. It would also allow a period of time – and 5 years does appear, on the face of it, to be reasonable – to develop experience and an evidence bank of what maintenance, repair and renewal requirements are likely to be needed for that new station, on a whole-life basis, in future. This experience and evidence can then be used appropriately when the station is brought inside the wider stations portfolio once the 5-year period expires.

Assuming that the above is not an option, we agree with the simple and uniform approach proposed by the ORR.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

We disagree with the suggested approach and do not believe that making the QX fixed element a regulated charge for managed stations has nearly sufficient merit to take this forward as an area for further development as part of the PR23 process. We think this is an area where the charging approach should remain in a substantially similar form to the current Control Period, consistent with the ORR's overall approach set out in the consultation document.

We accept there could be benefits for the industry as calculating QX charges can be time-consuming and complex. Consistency of approach from Network Rail across all operators would also be desirable, especially if it helps reduce workloads and other difficulties. Of course the devil would be in the detail of the guidance and without a draft of that, we are unable to express a view. However, we do not agree that making QX a regulated charge fixes the identified problem.

The split between light maintenance (recoverable through QX) and heavy maintenance (recoverable through LTC) is relatively well-understood within the industry and could be further supported by the guidance referred to above. We do not believe there is much, if any, uncertainty about which activities fall within the scope of which charge. It is important that each operator has the ability to influence the services and standards at each of the stations used by its customers.

Delivering passenger experience and putting passengers first is at the heart of what operators do – and for operators such as c2c who have migrated to the NRCs, this is vital as their performance (and ultimately what they are paid to deliver the services) depends upon various regimes. Service quality is one of the measures against which operators are assessed and so it is key that c2c (and other operators) retain the ability to influence service quality, set standards and have a level of control over the quality offered to passengers, so they are able to deliver on the requirements of their contracts with government. This is particularly the case at some of the most well-used stations, which a significant proportion of passengers will pass through and experience.

Going forward, it appears that service quality will continue to play a key part in the passenger proposition and the PSCs. Provided that what the DfT is asking from operators is consistent across all NRCs/PSCs, an expectation is that what operators are asking Network Rail to deliver should be consistent.

The ability to challenge Network Rail to deliver cost efficiencies would – as identified by the ORR – be lost and this is concerning in the prevailing circumstances in which the industry is operating today. We recognise, of course, that in future GBR may move away from the current position. However, to the extent that NRCs/PSCs reward operators on the basis of performance and that performance is in any way linked to managed stations, operators will need control or significant influence over the standards being delivered at stations. Until the future industry model is known in detail (and we accept it may be appropriate to revisit this issue at that point in time depending on the GBR-operator relationship) it would be dangerous to remove these important protections.

If the ORR were minded to pursue this route further, appropriate dispute escalation and resolution mechanisms would need to be introduced (including ORR involvement) to challenge proposed decisions on service provision and charges so that they were not simply waved through. We fear that this could lead to more disputes and wasted industry time, whether disputes are made under section 17 of the Railways Act, the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, any replacements of those provisions as part of the Williams-Shapps Plan for Rail, or otherwise.

We also believe that at a time when the industry is considering future relationships and models, it is important not to be introducing new swathes of drafting into the Station Access Conditions to allow for a reopener (which we accept would be required if this were pursued) and set out the process which Network Rail would need to follow to properly justify the charges it proposes to levy for a particular year. We think this would be disproportionate and there are relatively few merits of pursuing this approach.

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)?

Our view is that the CPI inflation index is better reflective and is the more appropriate inflation index, although of course this is a question best posed to the DfT/GBR who are likely to assume that cost risk in future. In any event, notwithstanding any future risk allocation under the NRC/PSC, CPI inflation seems most appropriate for the reasons outlined by the ORR.

Are there any other comments you would like to make?

c2c welcomes the opportunity to work collaboratively with the ORR, Network Rail and other industry stakeholders in relation to the matters set out in this consultation specifically, and also more generally in relation to the PR23 process. We would be happy to discuss further with you any of the specific views expressed in this paper.

Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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*This information will not be published on our website.

Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

For PR23, WMRE supports the ORR proposal not to make fundamental changes to the track and station access charging frameworks.

The development by the Rail Transformation Programme of a new access system for Great British Railways (which will manage both infrastructure and passenger service contracts) is likely to be on the basis that passenger operators awarded contracts by Great British Railways (GBR) will not be required to pay access charges. This should considerably streamline the contractual arrangements and payments between government, GBR and the operators.

Furthermore, it remains to be determined whether the current access charge framework will form the basis of charging for freight, open access and charter operators in the Great British Railways era or whether a new, significantly simplified, approach.

Any new approach should focus on maximising use of network capacity and reflect (and seek to minimise) the marginal costs to infrastructure owner of 3rd party operators using its infrastructure and electricity supply.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

This appears to be sensible, but ORR should continue to review whether such changes are actually worth progressing in the light of the emerging Rail Transformation Programme work.

No other priority areas are apparent.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

We agree that this is a sensible approach, pending the establishment of Great British Railways.

An alternative methodology could significantly increase complexity and create new data requirements at a time when the focus should be on process simplification.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

We agree with the approach:

- to maintain the status quo at this time
- for ORR to work with DfT to consider how the proposed Great British Railways funding arrangements may affect other devolved rail authorities who commission passenger services (which may in future include the West Midlands Rail Executive)
- to consider how GBR (Network Rail System Operator in the interim) is incentivised to accommodate additional publicly-contracted services whilst at the same time not unduly affecting performance.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

We broadly support this proposal and further future review. Particular care needs to be taken to ensure that freight and charter operators can actually bear the cost of such charges on an ongoing basis.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail's assessment of eligible costs to be recovered through the VUC?

The ORR should explore with DfT and Her Majesty's Government whether there is an opportunity to encourage further decarbonisation of the transport network through a reduction in or wholesale replacement of the EAUC and EC4T variable usage charges.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

Applying VUC to Network Rail's engineering trains appears to be nonsensical for the reasons stated.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

No comment.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

No comment.

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

No comment.

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

It appears to be a sensible simplification of the overall regime.

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

The ORR should explore with DfT and Her Majesty's Government whether there is an opportunity to encourage further decarbonisation of the transport network through a reduction in or wholesale replacement of the EAUC and EC4T variable usage charges.

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

Whilst this appears at first glance to be sensible, it is also acknowledged that it places “an increased administrative burden in calculating individual LTCs for more stations” which may be inappropriate at this time given the process of moving towards a new GBR-led industry structure.

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and costs of these alternative metrics be, relative to the current approach?

The rationale to the LTC approach will need to be reassessed to reflect changes to the industry cost structure and responsibilities under Great British Railways.

Question 15: Do you have any views on our proposal to class stations that open within a control period as ‘new’ for a fixed five-year period from the date of opening?

As the sponsor of a number of new station schemes already in delivery, this would appear to be a sensible proposition which is strongly supported.

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

This appears to provide a welcome simplification of the process.

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail’s access charges (and payment rates in other mechanisms where we set the method of indexation)?

No comment.

Are there any other comments you would like to make?
1. The creation of Great British Railways and a new concession model for provision of passenger train services is likely to result in an entirely new industry structure under for which previous complex internal industry charging mechanisms may no longer be fit for purpose or even relevant. 2. The ORR needs to objectively and dispassionately support the wholesale transformation and simplification of the rail industry structure which improves accountability and reduces overall industry costs, even if this restructuring results in a reduced role for ORR as a regulatory organisation. 3. The future role for devolved or partially-devolved bodies in specifying and managing local rail networks in the GBR era remains uncertain. However, there is a clear appetite for greater democratically accountable control over local and regional rail services, stations and networks in England which may drive the requirement for new governance and financial relationships with the rail industry, government and local bodies such as West Midlands Rail Executive. It is clear that in the English regions, devolution of power will only work effectively with the: • appropriate levers of control, decision-making and partnership with GBR • commensurate devolution of funding • appropriate allocation of risk between HMG/GBR and local bodies • a degree of regulatory protection for local bodies (in which the ORR may have a strong role)

Thank you for taking the time to respond.