

John Trippier
Senior Executive, Access & Licensing
Telephone: 0207 282 2122
E-mail: john.trippier@orr.gov.uk



16 December 2019

Richard Turner
Customer Relationships Executive
Network Rail Infrastructure Ltd
Western House
1 Holbrook Way
Swindon
SN1 1BD

Robert Holder
First Greater Western Limited
Network Access Manager
Milford House
1 Milford Street
Swindon.
SN1 1HL

Dear Richard and Robert

First Greater Western Limited (GWR): 38th Supplemental Agreement

1. On 12 December 2019 we approved the 38th Supplemental Agreement (SA) to the track access contract dated 4 March 2016 between Network Rail Infrastructure Limited (Network Rail) and First Greater Western Limited (GWR). This letter explains our decision.
2. The 38th SA contains the additional rights required by GWR in order to operate its December 2019 timetable. It includes substantial amendments to GWR's access rights from the Principal Change Date (PCD) 2019 to the end of its Track Access Contract (PCD 2020). GWR said this will allow it to realise the benefits of investments to provide improvements in frequency, speed and capacity on the Great Western Railway. The proposed new services are required by the franchise agreement including its provisions for Service Level Commitment (SLC), capacity and meeting and creating demand.
3. In summary, the main thrust of GWR's changes are to utilise the new Class 800 and 802 fleet on intercity and limited London area services to improve speed and frequency including:
 - Additional two trains per hour Paddington - Bristol Parkway - Bristol Temple Meads between the peaks;

- Additional limited stop services in the peak London - Bath - Bristol and London - Cardiff;
- An hourly through London - Cheltenham service each hour;
- A limited stop Paddington - Penzance service every two hours and a limited stop Paddington - Plymouth stop in the alternate hour;
- 11 Reading to Basingstoke services;
- A service for Berks and Hants stations every two hours;
- Two trains per hour Plymouth - Penzance;
- Enhanced Paignton - Exeter services;
- Through Cardiff - Penzance services; and
- Higher frequencies on Saturdays and Sundays.

Industry Consultation

4. GWR initially applied for all of its December 2019 rights in a proposed 39th SA which it submitted to ORR on 1 July under section 22A. However, the majority of rights were subsequently agreed with Network Rail. Those rights were then removed from the 39th SA and included within the new, agreed, 38th SA. The 38th SA was informally submitted to ORR on 28 August 2019.

5. As all the rights had already been consulted on, the parties relied on the relevant responses from the consultation on the 39th SA which ended on 30 July 2019. These are discussed below.

6. Chiltern objected to the extension of some London Paddington services to and from Banbury. It considered these services to be primarily abstractive as they would compete with its franchised services and create a negative impact on the public sector funder's budget. It considered the 'Not Primarily Abstractive' (NPA) test should be undertaken for these services. Chiltern also raised a number of operational and performance issues including a list of TPR non-compliances.

7. Network Rail responded to Chiltern on 5 August 2019. On the NPA test, it advised that there was no requirement to apply this to services operated by a franchisee on its franchise routes. Furthermore, it pointed out that the Franchise agreement permits the running of services additional to the SLC. On the operational and performance points of concern, Network Rail advised that it was working with Chiltern to resolve clashes identified in relation to TPR non-compliances but in some instances Network Rail considered that TPRs were compliant. Network Rail went on to outline its plans to mitigate the concerns raised and Chiltern accepted this position.

8. MTR Crossrail sought confirmation that all the access rights GWR was applying for in the December 2019 timetable had been validated and queried the process Network Rail would undertake for services that had been rejected. It did not consider there to be

sufficient available capacity to operate the December 2019 GWR level of service on the relief lines once the full Crossrail timetable was introduced. It also objected to any sale of rights to GWR beyond December 2020 because of platforming risks at Paddington, a point relevant to GWR's S17 application for a new Track Access Contract (from PCD 2020).

9. Network Rail responded to MTR Crossrail on 29 July 2019, with subsequent iterations, to address the different concerns it had raised. This included background information/clarification with how the rejected services for December 2019 would be managed. It also highlighted the ESG work producing the Crossrail Concept timetable which contained the proposed services with the exception of the semi fast Paddington – Slough - Maidenhead peak service. A response was provided on the issue of Paddington platforming rights post December 2020 under the S17 application.

10. Freightliner expressed concerns with access for Heathrow Airport fuel trains and growth in Somerset quarries traffic. It subsequently advised that it had applied for 21 Firm Rights between Grain and Colnbrook (in connection with transportation of aviation fuel) under S22A of the Act. In an email dated 3 October, Freightliner advised that it had been offered the entirety of its December 2019 rights. Therefore, for this application, Freightliner no longer had any issues.

11. First MTR SWR raised concerns relating principally with the enhanced North Downs service (3tph Reading – Gatwick), relevant to GWR's 39th SA. These rights are not included in this agreement.

12. XC Trains raised concerns over a number of iterations that included performance issues around key pinch points such as Reading, Bristol Parkway, Cheltenham, Cardiff and Bristol Temple Meads including the impact of attach/detach and shunting of units. Additional concerns were also raised on whether the South Wales services had been planned compliantly for December 2019.

13. Network Rail provided additional information and assurances to XC Trains on the following points: further modelling for XC northbound services beyond Didcot; assurance around the agreed regulation statement for between Reading and Oxford; concerns around the attachment and detachment planned at BTM; and, concerns around the operation of GWR services at Cheltenham.

14. XC Trains noted that it was committed to working with its industry partners in delivering a successful timetable change. It noted that in resolving its concerns here, there have been some great examples of collaborative working – particularly in the last few weeks. In conclusion, provided the assurances and measures offered by Network Rail are delivered, XC Trains removed its objections.

Our review

Chiltern's request for the NPA test on Banbury extensions

15. We use the NPA test to help us balance our potentially conflicting duties to promote competition on the one hand while having regard to the effect of our approval on the funds available to the Secretary of State.

16. We would not usually undertake the NPA test on services proposed by one franchisee which may compete with another franchisee of the same funder. It is not unusual to see competition between franchised operators where services overlap and we would expect the funder to have taken account of any revenue abstraction and the effect on premium or subsidy payments when either specifying services in the franchise in the first instance or in allowing a franchisee to increase its services above train service requirement.

17. The DfT's general view is that the NPA test should not be carried out on franchised operations. DfT has also confirmed to us that it does not consider these extra services proposed by the Great Western Franchise to be "open access". Franchise Agreements allow operators to seek to run services in excess of their train service requirement and where they do, they would fall under the definition of franchise services in the franchise agreement and therefore also the public service contract definition. Revenue from this service counts as franchise revenue for the purposes of the franchise agreement financial mechanisms such as profit share. DfT also noted that the route in question is squarely in established geography of the GWR franchise and that GWR already runs trains between Oxford and Banbury. The operation of open access services and services outside the specified franchise geography are not permitted businesses under franchise agreements.

18. Chiltern requested the NPA test on the basis that the services between Oxford and Banbury would compete with its own franchised services and so impact on the public sector funder's budget. We asked DfT if it had any concerns over the impact of the GWR services on the funds available to the Secretary of State. DfT confirmed that the Secretary of State considers the availability of funds 'in the round' across all franchised operators and it does not believe that approval of the GWR services will lead to a material change in the funds available to the Secretary of State. As the funder has raised no concerns, and that the proposed services are also franchised services for the same funder, we did not consider it appropriate to undertake the NPA test in this case.

19. We conducted a high level review of the agreement. We noted that industry feedback through the consultation process had provided significant scrutiny to the agreement. We did not raise any additional points with the parties.

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



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

22. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website. I am also copying this letter without enclosures to Peter Craig at Network Rail.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. Trippier', is located below the 'Yours sincerely' text. The signature is written in a cursive style with a long horizontal stroke at the top.

John Trippier