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16 December 2019

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Sue Rhymes
Head of Commercial (stations & Operations)
First Trenitalia West Coast Rail Limited
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Dear Paul and Sue

Approval of the 27th supplemental agreement to the track access contract dated 1 September 2011 between Network Rail Infrastructure Limited and First Trenitalia West Coast Rail Limited (Avanti West Coast)

1. We have today approved the above supplemental agreement submitted to us formally on 16 December 2019 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to explain the reasons for our decision.
2. The agreement gives Avanti West Coast the rights necessary to extend one London Euston to Preston service to Blackpool North on Fridays only, calling at Kirkham and Wesham and Poulton-le-Fylde. The rights take effect today and last for the remainder of Avanti West Coast's track access contract.
3. The application was submitted informally on 10 October 2019 by West Coast Trains Limited. The franchise was transferred to Avanti West Coast on 8 December 2019 so the formal submission was made by the new train operator.
4. Network Rail undertook the usual industry consultation between 21 August and 17 September 2019. Comments were received from Arriva Rail North (ARN) and Grand Central (GC).
5. ARN initially had concerns over how the proposed service would interact with its services between Kirkham and Wesham and Blackpool North/South. However, as this application is for one additional weekly service at around 21:30 between Preston and Blackpool, ARN has confirmed it has no objections.



6. GC said that this service was not a franchise obligation so was effectively an “open access” extension to a franchised service. As such, GC expected ORR to satisfy itself that the application passes the ‘not primarily abstractive’ (NPA) test.

7. We explained to GC that we do not consider these extra services proposed 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.

8. We would, however, according to our guidance, expect to apply the ‘not primarily abstractive’ test to a new service, which might be open access or franchised, which would compete with an existing open access service and which, if it caused the existing open access operator to withdraw from the market, could reduce overall competition on the network. GC confirmed it would not withdraw from the market as a consequence of this approval.

9. GC also pointed out inaccuracies in the way the rights were proposed to be added to Schedule 5. This was corrected before formal submission

10. Our review of the application raised no other operational, performance or economic concerns that should preclude our approval of the application.

10. 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)).

11. 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.

12. 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

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