



Robert Cook
Head of Strategic and Policy Projects
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

28 January 2019

Dear Robert

Response to statutory consultation on proposed changes to Network Rail's network licence

We write in response to ORR's statutory notice dated 20 December 2018 in which ORR sets out its proposals to make changes to our Network Licence (licence). No aspect of this response is confidential, and we are content for it to be published in full.

Since the last modification of the licence at the start of control period 5 (CP5), we were reclassified as a public sector organisation, we have significantly transformed our business and consequently made changes to our business operating model. We have worked with ORR to develop a control period 6 (CP6) regulatory framework that supports such changes. We agree that these factors represent drivers for fundamental change to the licence and that CP6 presents a clear opportunity to better align the licence with our operating model and the CP6 regulatory framework.

We support of the proposed changes to the licence, many of which were requested by Network Rail to better reflect our business structure, particularly across each of our route businesses and the System Operator (SO). We further support an update of the licence more generally to reflect requirements brought about by changes to the CP6 regulatory framework.

1. Structure of Network Rail

1.1 Geographic route businesses and the SO

We agree with embedding the role and accountabilities of Route Businesses and the SO in the licence. However, as ORR is aware Network Rail's Board is due to consider proposals in late January which may lead to changes to our business operating model and to the accountabilities of specific business units. Once the detail of these proposals and any decisions of the Board are known in early February, we will engage further with ORR to understand the implications from both a licence and managing change policy perspective and whether we need to consider changes and clarifications.

1.2 Freight and national passenger operators

We have no objection to ORR's requirements to include additional protection for the interests of freight operators and national passenger operators in respect of services crossing more than one

route. We have structured and will continue to ensure that our business is structured to properly take into account the interests of all classes of freight and passenger operators, including aspirant operators.

1.3 Governance conditions

We have implemented changes to our internal governance arrangements to enable us to achieve our overarching corporate strategies and objectives and to hold ourselves to account within a devolved business operating model. We therefore support the licence reflecting, at a high level, the requirements to establish, maintain and comply with governance arrangements that enable each Route Business and the SO to perform their functions and comply with their obligations effectively. Increasing the accountability and transparency of Route Businesses and the SO is part of our devolution agenda, therefore Route Businesses and the SO are given choice about from where to procure goods and services. However, it is vital that as a single legal entity, we retain an ability to adopt a national procurement strategy where it is demonstrated to be the most efficient and economical way of operating the network in accordance with our network management duty. We therefore support the licence obligation containing this important caveat.

1.4 Managing change

It is necessary that the licence recognises that the current business operating structure is capable of being changed subject to compliance with the processes within ORR's managing change policy. Therefore, we support this obligation.

We would encourage this obligation and the managing change policy to be interpreted and applied by ORR as enabling changes which are necessary and appropriate to safeguard the benefits of devolution, make effective and economical decisions and to respond flexibly to changing circumstances.

2. Core duties

Delivering for our customers together with passengers and freight users is at the heart of what we do and therefore we support core obligations being given appropriate prominence in the licence. We believe that this will help to maintain focus on matters which are fundamental to the industry and integral to the success of our business; network management, stakeholder engagement and passenger information.

2.1 Network management responsibilities

As we explained in our response to ORR's Draft Determination consultation on the licence review, the allocation of obligations is complex, particularly where more than one part of the business has an accountability for processes which makes up a system captured by a single licence obligation. One of our original concerns was in respect of capacity allocation where there is one process in which interfacing, yet distinct, business units are primarily accountable for different individual elements. We support ORR's movement in approach so that each individual accountability is recognised as an obligation at an appropriate level of detail. We believe that this will enable ORR to better achieve its aims of more clearly holding Network Rail to account and that by specifically highlighting if licence enforcement action is as a result of Route Businesses or the SO, this will drive positive behaviours.

The complexity of business activity needs to be understood in both the application and interpretation of the licence. The draft licence now recognises that a business unit primarily accountable for a specific obligation may have assistance from other business units in order to discharge that obligation. We will continue to develop strong governance and assurance arrangements between interfacing business functions so that the relevant Route Business or the SO (as the case may be) can ensure that it will comply with a relevant licence obligation allocated to it.

2.2 Stakeholder engagement

Stakeholder engagement is a fundamental part of how we seek to continuously improve our business performance to meet the requirements of stakeholders. We support updating this obligation to broaden the definition of a stakeholder and we will continue to treat stakeholders in ways appropriate to their reasonable requirements. We have committed to improving and reporting on stakeholder engagement in CP6 and are developing our stakeholder engagement framework. The framework is underpinned by our Stakeholder Relations code of practice which sets out high level principles about how we will treat our stakeholders. These principles reflect ORR's broad expectations for good stakeholder engagement , which should be effective, inclusive, well governed and transparent.

3. Information requirements

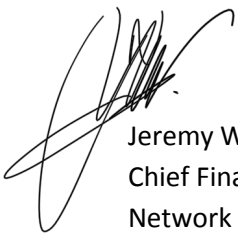
As we explained in our response to ORR's Draft Determination consultation on the licence review, we need to understand the types of scenarios which ORR believes is appropriate to require a Route Business Managing Director or the SO Managing Director to confirm the accuracy or completeness of information given to ORR in response to an information request. We understand that this will not be an automatic requirement but are keen to ensure that this doesn't become an inefficient or onerous process, particularly for periodic reporting and ad hoc information requests. We expect clarification to be provided through ORR's data protocol in due course.

Acceptance of changes

On behalf of Network Rail, please accept this letter as consent to the proposed changes to the licence as set out in ORR's statutory notice dated 20 December 2018.

As set out above, we will engage further with ORR following the meeting of our Board in which it will make decisions in respect of potential changes to our business operating model.

Yours Sincerely,



Jeremy Westlake
Chief Financial Officer
Network Rail