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16 May 2019

Tamzin Cloke  
Route Contracts Manager  
Network Rail  
Baskerville House  
Centenary Square  
Broad Street  
Birmingham  
B1 2ND

Chris Hassall  
Head of Commercial Contracts  
First TransPennine Express Limited  
8th Floor  
Bridgewater House  
60 Whitworth Street  
Manchester  
M1 6LT

Dear Tamzin and Chris

**Approval of the twenty second supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and First TransPennine Express Limited (FTPE)**

1. We have today approved the above supplemental agreement submitted to us formally on 15 May 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 set out the reasons for our decision.
2. The purpose of this agreement is to extend a number of existing firm rights that would otherwise expire at the Subsidiary Change Date (SCD) 2019. These consist of some East Coast Mainline (ECML) rights that have been limited by Network Rail's ECML policy and some rights into Scotland from Manchester (Airport and Piccadilly). The rights will now all become contingent and run from SCD 2019 to SCD 2020.
3. The industry consultation ran from 23 December 2018 to 24 January 2019. South Yorkshire PTE raised a query in relation to the Castlefield Corridor, to which Network Rail responded. Cross Country raised some queries about the detail of the application, to which FTPE responded. West Yorkshire Combined Authority made some wider industry comments but supported the application. Transport Focus, Nexus and Arriva Rail North supported the application.
4. London North Eastern Railway (LNER) raised a number of queries regarding access rights and performance on the ECML and said that it objected to the application.

It noted that there had been a number of performance issues since the May 2018 timetable change. It asked for its concerns to be addressed and acceptable contingency arrangements to be put in place.

5. In response, FTPE detailed changes to the December 2018 timetable that it felt had dealt with many of the issues raised. It also provided evidence of improvements to performance levels since December 2018 and explained that new rolling stock would be introduced from May 2019.

6. In a letter to FTPE of 26 February 2019, LNER withdrew its objection to the application, saying that the introduction of the new rolling stock in particular would address many of its issues and will result in improved timetable resilience.

7. We have reviewed this application and noted the concerns expressed by LNER. We are pleased with the engagement between FTPE and LNER regarding these matters that resulted in a sensible resolution. We do not have any performance or operational concerns regarding this application and expect discussions regarding the mitigation of potential performance impacts to continue after services have begun operation.

8. 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)).

9. 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.

10. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport to Peter Craig at Network Rail. Copies of the approval notice and the agreement will be placed on ORR's public register and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Rodgers', with a long horizontal flourish extending to the right.

**Jonathan Rodgers**