25th January 2013

Dear Sirs,

We are a stakeholder within the operation of Charter Trains over Network Rail.

We are a Registered Charity and own and operate a number of iconic steam locomotives working with DB Schenker Rail (UK) Ltd and West Coast Railway Company Ltd as the TOCs and various promoters who hire our locomotives for day trips throughout Great Britain.

We appreciate that we have benefitted from the cap on penalty arising from poor performance directly relating to deficiencies in Traction & Rolling Stock in the past and understand that Network Rail have subsidised the operation of charter trains in the recent past. Clearly that is not sustainable and we understand that.

We obviously wish to continue to operate our steam locomotives on the main line and see the main reasons being firstly that they are very popular; secondly only the main line (rather than preserved railways) affords the possibility to show what a steam locomotive is capable of; thirdly that charter trains brings tourism and business to remote parts of Britain and finally that railway heritage is an important part of the international heritage appeal of UK.

The preferred (ORR) choice of removal of the cap altogether could be catastrophic to a stakeholder such as ourselves as we would be unable to mitigate the financial risk. We have investigated obtaining private insurance cover as the consultation suggests but this is unavailable for any sums over £5,000 and anyway would have to be connected with an unexpected breakdown and not for delays owing to other factors (weather conditions; poor fuel quality etc). The fact that it is termed a penalty causes difficulty in obtaining insurance and even if it were available the likely premiums would be un-affordable.

The penalty regime matrix is perhaps an unnecessary and imperfect instrument introduced by railway privatisation to penalise poor performance causing consequential delays to train services operated by other TOCs and FOCs, which in turn are either publicly listed companies or subsidiaries of foreign state railways. It should be noted that the majority of TOCs are currently receiving Government subsidies. By their nature charter train operations tend to be irregular and often one off itineraries initially promoted by private individuals or groups arranging a special charter from point A to B, frequently crossing TOC boundaries (ie these could not be operated by a single TOC) or alternatively tour operators promoting itineraries on a hoped for commercial basis. These charters do not produce vast profits even when fully booked since demand for tickets is very sensitive to price and it should be remembered that no external funding is available in the event of losses being incurred. The imposition of an uncapped penalty regime with or without expensive insurance cover either in the market or via an ACS arranged by Network Rail being available threatens the very continuation of the charter/special trains concept since these predominantly one off itineraries would be incapable of absorbing the financial burden of arranging insurance cover for such excursions and remain viable.

Our suggestion to the ORR to mitigate the subsidy is by the levying of an additional Access Charge Supplement (ACS) whereby Network Rail can effectively act as insurer. The subsidy in recent years could be assessed over the likely future numbers of charter trains and levied equally over those operations. The cap could then be retained and a balance reached between the magnitude of the cap and the ACS i.e. the higher the cap the lower the ACS per operation – the lower the cap the higher the ACS.

We hope that you will consider our reasoning and the suggested proposal in your consultation.

Yours faithfully,

The Board of Trustees