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Mr Rob Mills
Office of Rail Regulation
One Kemble Street
London
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28th January 2013

Dear Rob

Thank you for taking the time to speak to me previously.

Having read the consultation document relating to Schedule 4 and Schedule 8 Performance regimes it is clear there are serious risks for the charter train business in this area. As we discussed, there are a lot of worried organisations who see this as a threat. Most are small enterprises, and some are charities which are volunteer led, and they do not have the resources for what some in the media have described as costing £500,000 a year.

Although at present owning few railway assets, Steam Dreams is a committed industry customer, with an annual turnover of over £3m employing directly and indirectly some 40 people. The company's plan for 2013 sees some 60+ train days providing approximately twenty three thousand passenger journeys. Our commitment is such that a 3-year contact was agreed between Steam Dreams and DB Schenker in 2012 for the operation of trains through as far as spring 2015, indicating clearly that we have long-term plans to remain within the industry. The company's aim is not only to continue but to expand, providing increasing numbers of passenger journey opportunities year on year. The totality of this business, it has to be remembered, is operated entirely within the spare capacity of the Network, continuing to fulfil the aspirations of the original Charter Trains Consultation document published by the Rail Regulator in 1996.

Given the scope of the consultation it is not appropriate to answer all of the questions, but below I have set out our answers to the two relevant items utilising your numbering system for clarity.

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Question 44

Having reviewed the documentation it is clear that what is described by the ORR as a subsidy should not continue, but to remove the cap from the charter train industry would remove stability, financial security and cause unnecessary hardship. Whilst it is

recognised that the industry should shoulder the burden highlighted in the consultation document (section 7.13) the provision of a cap avoids this small part of the wider rail industry being subjected to financial penalties that would bankrupt some companies. The charter industry is a small element of the wider industry where many millions of pounds flow between parties and it is unreasonable and unrealistic to expect such small organisations to be able to participate in these areas.

One would ask that the ORR recognises the number of small enterprises of less than 10 employees, charities and other organisations that make up this sector. The cap provides assurance that no impossibly large bills would fall due beyond an organisations financial means. If an increase in costs on a train by train basis is taken, by route of an ACS, this will allow the combined industry to sustain a workable position and resolve the issue of the subsidy (as defined by the ORR) in this consultation.

Question 45

In reviewing the consultation it is clear that the ORR wishes to see an end to the charter train cap providing a false subsidy. Given that if an appropriate mechanism can be found this would not see a significant increase in the cost of use of the network we do not take issue with this objective. The area where we have concerns is around the mechanism chosen.

The charter train market is not sufficiently strong to carry large risks, nor is it appropriate that it does so. The preferred proposal in the consultation is not possible as the ORR has suggested, namely insurance is taken out to cover the risks. After consultation with the relevant suppliers in this market it is clear that a

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private insurance company would not provide cover for the following reasons:

a. The liability is in theory limitless, and in any case could be significant

If the cap is totally removed then the limit of delay costs from a single incident can not be calculated. An insurance company doesn't know whether it is providing cover for an incident at ten thousand or one million pounds. Although there is a track record, as the ORR will no doubt be aware past performance would not make positive reading for any party trying to negotiate a reasonable premium.

b. There is no limit on the number of claims that could be made.

In any year there have been occasions when the cap has been exceeded more than once. This of course varies by operator and by year but again makes it unviable for the

private insurance industry to provide cover. Even if cover could be arranged, if recent years are to go by it would be a one year only premium as the insurance underwriters realise the size of the risk and their potential exposure.

c. The private insurance companies add another layer of complexity and another profit tier.

At present under industry structures insurance companies have no route into the Track Access Agreement and so would have to accept a claim at face value or instigate significant legal proceedings whereby delay attribution and so forth would be challenged. It is highly likely that a company faced with a £100k bill under schedule 8 would challenge the delay attribution, which by industry agreement is only ever managed to minimise overall delay to passengers. That would be at direct odds with an insurance company seeking to minimise exposure and which has no contractual relationship with the other parties or their end customers. The first claim would almost certainly end up in litigation and bring into question the whole arrangement. Finally, the insurance companies will want to cover their administrative activities and try and make a profit, meaning that a performance regime that is designed to make trains run on time now has a

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party involved who wants to make a profit out of an element of it. This can only lead to an overall increase in industry costs. This would be wholly at odds to the desired reallocation of existing costs proposed by the ORR.

d. A more appropriate way forward

In the consultation document (section 7.14) reference is made to an ACS being an alternative way forward and this is something we would welcome. When considering the challenges of incident caps provided by private insurance companies the ACS route would remove almost all of them whilst achieving the industry objectives. An ACS can be worked out on a company by company basis such that the risk is as reasonably allocated as possible, recognising that by their nature some charter operations pose less risk than others due to issues of complexity, geographic location, traction type and so forth. Network Rail should be well placed to negotiate a suitable with each of its customers which when averaged out at the current rate would not unduly affect parties further along the contractual chain. Given the volume of trains involved and the value required to be reallocated the cost per train would most likely be in the low hundreds. Such a mechanism would provide stability to the sector whilst resolving the subsidy issue as described by ORR. There is a commercial incentive to limit the size of any ACS and this can only be done by appropriate actions to ensure good performance. The ACS therefore also incentivises the charter train industry to continue to deliver the best performance possible on an improving basis, in line with the rest of the industry.

We remain committed to delivering the best possible operational performance on the national network. Analysis of the steam locomotives that Steam Dreams hires for almost all of its trains shows an average failure rate of around 15000mbc, not outwith industry norms In terms of an operation whereby the delays caused by a Steam Dreams charter train exceeded the cap this has not happened in over 18 months and then it was only a marginal exceedence.

We hope that the above information will assist you in your examination of this area and allow you to reach a conclusion that enables the Charter Train sector to flourish. If I can provide any further information then please do not hesitate to contact me.

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Yours sincerely

Graeme Bunker
Chief Executive