WEST COAST RAILWAY COMPANY LTD

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Dear Rob

Re: Consultation on Schedules 4 and 8 Possessions and Performance Regimes

Thank you for taking the time to meet with us, last week, in regard to the above consultation and more specifically in respect of how it may affect charter operations.

Background
As you are aware, charters are stand-alone, open-access operations. Successive Regulators have always acknowledged the role of charters and the benefits, direct and indirect, which they provide to the wider industry and economy. West Coast Railway Company (WCR) has been a licenced Train Operator since 1998 and is the predominant operator of these services.

In recognition of the relative disparity in size, between charter operators and other mainstream sectors of the rail industry, the provision of a financial cap on delay penalties affords protection from:

- Mis-match in business sizes
- Unfair application of delay
- NR remains banker/underwriter

The cap also recognises and provides for a reduced level of payment, in the case where NR is at fault and repays the Operator.

The present levels of cap and access charges were determined for the current Control Period by ORR, prior to the commencement of CP4, and are common for all charter operating companies. CP4 saw a reduction in access charges, compared to the previous Control Period, when common access charges were first introduced. Prior to that, individually-negotiated access charges had been established, with a wide disparity of charges and conditions (including cap limits); in simple terms, this equated to the higher the cap, the lower the access charge.

The excess (quoted as £660,000 for the first three years of CP4), however, has now been seen by certain industry elements as public subsidy and Network Rail has requested that the excess, over and above the cap, should therefore be taken into account, for their budget for CP5.

Effects of removal of cap
The current Consultation proposes revision of the cap arrangements (at present, just under £6000). If it were to be removed entirely, loss of cap would mean:

- Unlimited liability, which would be wholly unaffordable to charter TOCs (certainly for those unable to provide subsidy/cross-subsidy from other operations) or sub-contractors, such as owners/providers of traction and rolling stock.
- Closure of businesses.

There are also wider economic effects, should this business close:

- Tourism – there are many destinations and communities, large and small, who now rely on charter trains for significant sources of income, eg. Carlisle, Fort William and Mallaig. The temporary suspension of 'The Cambrian' steam service, between Machynlleth and Pwllheli, on the Cambrian Coast (due to ERTMS implementation), has amply demonstrated the negative effect on the local economy, after only a couple of seasons' build-up.
- While the charter 'performance budget' may benefit from this proposal, the overall Network Rail and taxpayers' position would considerably worsen. WCR is a multi-functional TOC, providing 'unseen' ancillary activities, such as train-crew and locomotives for snowploughing, ice clearance and *ad-hoc* short-notice transfer moves, moving on-track machinery to and from worksites. The loss of this service would have serious Schedule 4 and 8 implications under the star model and cost considerably more than £660k shortfall referred to in the consultation.

Insurance as an alternative to cap
Under the Consultation's 'emerging view', it has been proposed that the cap excess be taken up by insurance, although it was admitted that not even the most basic research had been undertaken to establish whether this was either possible or practical. We can conclusively state that it isn't, on either count.

There is a very limited insurance market available to the rail industry; indeed, it has taken three years to produce a restricted risk policy, to cover sub-contractors under the current cap. Insurers will not even consider cover to replicate that which is effectively covered by the cap; underwriters will only consider specific causes, rather than blanket cover, and they place firm limitations on their exposure. Apart from uncovered loses, the cost of such limited cover will be prohibitive (noting that a minimum 30% margin is expected by insurers), certainly for the smaller suppliers, and the time to agree and settle claims will add to this.

In the highly unlikely event that suitable insurance were available, the amount which NR pays back to an Operator require substantial improvement to be more equal and equitable than at present, given the current proven levels of inaccurate attribution of delay. Derek Parry, of Bluefin Insurance, has written to you in more detail on this matter, under separate cover.

Retention of cap with Access Charge Supplement
An alternative proposal, whilst retaining the cap, is to mitigate the cap excess, by the introduction of an Access Charge Supplement (ACS). This would effectively estimate

the aggregated excess, for the whole of CP5, and then redistribute it, as a fixed charge, across the whole Control Period and billed for each 28-day Period.

This would be a return to an earlier structure of access contract (and one held by WCR), prior to the alterations for CP4. Whilst WCR would prefer retaining the *status quo*, it is prepared to consider this model, as it can at least allow all those involved in charter train operations to be aware of the likely limits financial imposed upon them. WCR would, however, assume that the establishment of Access Charge, cap and ACS becomes the matter of commercial negotiation between the individual Track Access beneficiary and NR, rather than the current cross-party common set of charges.

It should be noted that even this model, together with a possible closer alignment to Freight performance charging will almost inevitably force an increase in charter charges overall, which is unwelcome in what is still a very fragile market.

The wider context of Performance

Although we note that the Consultation restricts itself to Schedules 4 and 8, we believe it is appropriate to comment on the general principal of financial performance and penalties, as we believe it is time for a full review of the whole concept. Whilst accepting that, 20 years ago at the time of rail privatisation, performance had a role to play, the time for that is now over, other than perhaps to put a financial value on delay.

With a growing policy of 'joint' or partnership control of rail operations (such as Alliances), it is becoming increasingly difficult to identify where causes of delay really lie. Such a performance regime is an attempt at perfect regulation on an imperfect system; charter timing/planning, in particular, is an imperfect art, rather than a precise science.

More specifically, the true cost of administration needs to be scrutinised. It has been estimated that approximately 500 people in the rail industry are directly employed in the management of performance and that the system costs some £30m per annum. Given that this is nothing more than an internal system, which has no external benefit (certainly, to the travelling public or taxpayer), it is an unnecessary further burden on the rail industry and serious consideration should given for it to be scrapped at the earliest opportunity.

Yours sincerely

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West Coast Railway Company Ltd