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11 March 2022

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Customer Manager, LNW Route
Network Rail Infrastructure Ltd
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Birmingham
B1 2ND

Chris Hassall
Head of Commercial Contracts
First Transpennine Express Ltd
8th Floor, Bridgewater House
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Dear Robert and Chris

Approval of the 39th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and First Transpennine Express Limited dated 8 March 2016

We have today approved the above supplemental agreement submitted to us formally on 11 March 2022 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. This letter explains the reasons for our decision.

Purpose

The purpose of this agreement is to grant First Transpennine Express (FTPE) the rights to make additional calls at Cramlington and Reston (from March 2022) stations. The Cramlington rights were intended to start from the Principal Change Date 2021 but delays in the Sale of Access Rights and industry consultation processes have meant that this application has been submitted significantly later than the start date. The station calls at Cramlington have therefore been operational since 12 December 2021 and were introduced to FTPE's contract by means of a General Approval which is due to expire on 12 March. The amendments effected by the 39th SA will commence upon ORR approval and will expire on the Expiry Date or earlier termination of FTPE's track access contract.

Industry consultation

Network Rail undertook the usual industry consultation. Comments in support were received from First Greater Western, Cross Country Trains and West Yorkshire Combined Authority.

GB Railfreight expressed concern that the additional calls would impact upon its ability to run its Anglo-Scottish Intermodal services between Newcastle and Edinburgh. FTPE advised that it was aware of no issues in this respect and that its planning team was confident that there is sufficient capacity for the new station calls. GBRf was content with this response and has confirmed it has no further concerns.

ORR review

Our review of the application raised a number of operational and performance queries, namely assurance that the proposal would not impact upon acceptable performance thresholds and that mitigations are in place to prevent issues with trains running in electric mode without Network Rail authorisation. FTPE and Network Rail have answered these queries to our satisfaction.

As noted above, some of these station stops are already operational and were contractualised by means of a General Approval (GA). ORR has recently carried out a review of the use of GAs as a way of putting rights in place where the process has failed, and in particular whether they have been used for valid purposes as specified in the guidance. It is our opinion that new calling points, at stations not previously included in the operator's track access contract, do not fall under the scope of the GA. We are aware that FTPE and Network Rail do not agree with our interpretation of the guidance, but we have advised both parties of the potential reputational, financial and contractual risk should it transpire that the station calls were not covered by the terms of their contract during the time the GA was intended to apply.

We understand that the pandemic has caused significant operational challenges to the industry as a whole and that some of the delays in this application have been outside the control of the operator and Network Rail. However, we expect that both parties will monitor their access rights position closely in future and plan for any upcoming applications to reach ORR within appropriate timescales.

Our duties under section 4 of the Act and our decision

We have concluded that approval of this supplemental agreement strikes the appropriate balance in discharging our statutory duties under section 4 of the Act; 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)).

Conformed copy of the track access agreement

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.

Public register and administration

Electronic copies of this letter, the approval notice and the agreement will be sent to the Department for Transport and Network Rail's Policy and Access Team. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Louise Beilby'. The signature is written in a cursive style with a long horizontal stroke at the end.

Louise Beilby