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Michelle Woolmore
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Network Rail Infrastructure Limited
Baskerville House
Centenary Square
Broad Street
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Navdeep Brahmhatt-Gold
Network Access Manager
West Midlands Trains Limited
134 Edmund Street
Birmingham
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Dear Michelle and Navdeep,

Eleventh supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and West Midlands Trains Limited (WMT)

We have today approved the above supplemental agreement submitted to us formally on 2 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 provide WMT with Firm access rights for the following services which have been running void on the network:

- 1 additional weekday service from Crewe to Northampton introduced in the May 2019 timetable;
- 1 additional weekday service from Birmingham New Street to Walsall introduced in the May 2020 timetable;
- 1 additional weekday service from Birmingham New Street to Rugeley Trent Valley introduced in the December 2019 timetable; and

- 4 additional weekday services from Walsall to Birmingham New Street introduced in the May 2020 timetable.

The agreement also provides WMT with contingent rights to stop Crewe-Northampton and Crewe-Birmingham services at Longport. This is the result of work with East Midlands Railway and Network Rail to remove these calls from East Midlands Railway services to improve performance. Additionally, the agreement changes the timing load on a number of services from Class 323 to Class 350.

Industry consultation

Network Rail undertook the usual industry consultation in January and February 2022. Great Western Railway, Chiltern and CrossCountry provided e-mails in support of the application. No other responses were received from the consultees.

ORR review

Our review of the application raised no operational, performance or economic concerns. The application did, however, raise some contractual concerns. The initial application submitted by the parties was incomplete. As part of our review, we had to request additional information from the parties and correct drafting errors.

As noted above, the significant service changes included in this application are already running on the network. The identification of services running void of contract by WMT is a result of work we requested that Network Rail and train operators carry out, to identify any discrepancies between access rights and services in operation. We have highlighted to Network Rail and train operators the inherent reputational, financial, and contractual risk in void services operating on the network.

We understand that the industry is going through a prolonged period of change, and that the pandemic has caused significant operational challenges. However, some of these services have been running on the network without access rights since before the pandemic. We are pleased that Network Rail and WMT acted swiftly to rectify this issue once it was identified, and expect the parties to keep their access rights position under review.

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 black ink, appearing to read 'David Reed', is positioned below the text 'Yours sincerely'.

David Reed