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Dear Mark and Chris,

Approval of the seventh supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Grand Central Railway Company Limited

1. The Office of Rail and Road (ORR) has today approved the seventh supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and Grand Central Railway Company Limited (Grand Central), submitted to us formally on 27 September 2019 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 of the agreement

2. The agreement gives Grand Central contingent rights to run one additional daily return service between London Kings Cross and Sunderland from the Principal Change Date in December 2019 to the Subsidiary Change Date in May 2021.

Background

3. Grand Central originally submitted an application under Section 22A of the Act in May 2018 for firm rights until the end of its track access contract in 2026. That application included:

- an additional daily London-Sunderland service each way;
- an additional daily service each way between Doncaster and Bradford which would split and join with a London-Sunderland service at Doncaster to form an additional London – Bradford service;



- a new daily service between London and Wakefield;
- additional stops at Peterborough in the London-Wakefield service and in one London-Sunderland service.

4. Network Rail did not agree to that application as it conflicted with its current policy only to sell additional rights on the East Coast Main Line on a contingent basis, time-limited to May 2021 until it has a clearer view on the long-term capacity situation. Network Rail was also concerned about the possible performance impacts of the proposed splitting/joining moves at Doncaster.

5. Following discussions with Network Rail and us, particularly on the performance implications of the services and initial analysis against our NPA test, Grand Central withdrew the Section 22A application on 5 September 2019 and replaced it with this agreed Section 22 application.

Consultation

6. Network Rail consulted the industry on Grand Central's earlier Section 22A application in March 2018. Responses were received from DfT, Govia Thameslink Railway, Nexus, Transport Focus, Tyne & Wear Metro, Virgin Trains East Coast, and West Yorkshire Combined Authority.

7. DfT raised a number of concerns with the original application including: whether the services would add significant additional benefits for passengers (particularly at Peterborough); the performance impacts of the service (in particular, the splitting/joining moves at Doncaster); interaction with HS2 from 2033; and significant concerns about abstraction. Govia Thameslink Railway also raised concerns about performance, particularly around splitting/joining moves at Doncaster, and concerns that the services would not be able to be accommodated alongside existing services on the ECML. Virgin Trains East Coast also raised concerns over revenue abstraction, ECML capacity and performance, the impact of Peterborough calls and splitting/joining at Doncaster.

8. Nexus and Tyne & Wear Metro wanted to ensure that the services would not clash with or have an adverse impact on its services. West Yorkshire Combined Authority strongly supported the application and Transport Focus offered conditional support.

9. As the latest application is a sub-set of the proposed access rights already consulted on in advance of the section 22A application, we agreed with the parties that a further consultation would not be necessary.

ORR's review

10. The most contentious elements of the section 22A application were the Wakefield services, calls at Peterborough, performance implications of splitting and joining at Doncaster, and the duration of the rights sought. Grand Central's latest application has removed those elements leaving just contingent rights for one additional service each way

between London and Sunderland on Grand Central's core route with its existing calling pattern.

11. We agree with Network Rail that sufficient capacity exists for these services (at least in the short term) and they do not raise any operational or performance concerns.

NPA test

12. Where new proposed open access services would compete with franchised services we conduct an NPA test. In the test, we use economic modelling to evaluate the impact of the proposed services in terms of new revenue they are likely to generate and revenue they are likely to abstract from other operators' services.

13. We have a long-standing policy of not approving new open access services that we consider would be primarily abstractive of an incumbent's revenue. In practice, this means we will not normally approve new services with a generation/abstraction ratio of less than 0.3:1 (i.e. that do not generate at least 30p of new revenue for every £1 abstracted from incumbents). The threshold is set at a relatively low level that reflects the value we place on the benefits competition can bring.

14. As discussed in paragraph 5 above Grand Central resubmitted its application for its Sunderland services only. It also resubmitted its demand forecast for the NPA test based on these services only, which forecast a generation/ abstraction forecast ratio of 0.32:1. Our own forecast for these services was 0.34:1. Based on this we are satisfied that the proposals would not be primarily abstractive.

ORR's conclusions

15. Following our review of the application, and taking account of the views of the parties and consultees, we are content that there are no operational, performance or economic concerns which should preclude our approval of this application. We are also satisfied that the additional services will bring benefits to passengers.

16. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this agreement is consistent with our section 4 duties, in particular those relating to:

- protecting the interests of users of rail services;
- promoting the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of the railway network, to the greatest extent that ORR considers economically practicable;
- contributing to the development of an integrated system of transport of passengers and goods;

- promoting competition in the provision of railway services for the benefit of users of railway services;
- having regard to the funds available to the Secretary of State; and
- enabling persons providing railway service to plan the future of their businesses with a reasonable degree of assurance.

Conformed copy of the track access contract

17. 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 Hull Trains. ORR's copy should be sent for my attention.

Public register and administration

18. In accordance with section 72 of the Act, we will place a copy of the approval notice and the agreement on our public register. The parties have not asked us to redact anything (as provided for by section 71(2) of the Act) prior to placing it on the register.

19. Copies of this letter, the approval notice and the agreement will be sent to Keith Merritt and Dan Moore at the Department for Transport. Copies of this letter and the agreement will be placed on the ORR website. I am also copying this letter without enclosures to Peter Craig at Network Rail, Phil Dawson at LNER, Tom Causebrook at GTR and Emma Mons-White at Tyne & Wear Metro.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Reed', is written over a light blue horizontal line.

David Reed