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Dear Sarah and Gordon,

Determination of a Supplement to the Track Usage Price List: Class 387

1. The Office of Rail and Road (ORR) has today issued a Notice of Determination of a Supplement to the Track Usage Price List, submitted to us by Network Rail on 15 December 2015 under Paragraph 9 of Part 2 of Schedule 7 to the Track Access Contract (TAC) between Network Rail Infrastructure Limited (Network Rail) and Govia Thameslink Railway Limited (GTR). Network Rail had submitted a similar proposal to ORR on 15 June 2015 but this was superseded by the December proposal. The purpose of this letter is to set out the reasons for our determination.

Purpose of the change

2. The purpose of this supplement is to amend the Passenger Variable Use Charge (VUC) Rates section of the Track Usage Price List to include Class 387 Motor (387/M) and Trailer (387/T) vehicle types, which have been operating on the network since December 2014.

Consultation

3. There is no requirement for industry consultation in this matter.

Initial proposal (15 June 2015)

4. On 15 June 2015, Network Rail asked ORR to consent to a proposal to supplement the list, as set out above. The letter stated the proposal had been agreed between

Network Rail and GTR and, unusually, proposed two different rates, one based on maximum speed of 110mph (the maximum speed that the Class 387 is capable of running) and one on a maximum speed of 100mph (the maximum speed it is limited to on the GTR routes it is running on). The letter did not indicate if either party had a preference for one of the two rates. It subsequently transpired that Network Rail and GTR were not agreed on the rate they wanted ORR to consent to.

4. Paragraph 9.8 of part 2 of Schedule 7 sets out the process for ORR to determine a rate when the parties disagree and, on 7 December 2015, we asked Network Rail and GTR, if this was the case, to refer the matter back to us, together with an explanation of the reasons for the disagreement.

Revised proposal (15 December 2015)

5. On 15 December 2015, Network Rail sent us a revised submission, accepting that the parties had failed to reach agreement over which maximum speed value should be used to calculate the rate and setting out the differing proposals from Network Rail and GTR. The revised submission was received by ORR on 8 January 2016.

6. Network Rail proposed a rate of 387/M 7.77 p/vm, 387/T 6.69 p/vm, based on 110mph running. They said that they considered *“110mph to be the maximum speed when the vehicle type was built and that there is no physical constraint which prevents Class 387 vehicles from reaching 110mph. VUC rates should not be geographically disaggregated and therefore “physical constraints” should only refer to constraints that apply to all Class 387 vehicles, regardless of their route of operation.”* They asked ORR to make a determination.

7. GTR proposed a rate of 387/M 7.26 p/vm, 387/T 6.28 p/vm, based on 100mph running. They said that they considered, *“the infrastructure limitations of the route over which the 387 vehicles will be running to constitute a physical constraint”*. GTR also noted that the Class 387s will not be able to exceed 100mph on any of the Routes that GTR operate, so this should be the maximum speed used to calculate the VUC.

Network Rail’s Variable Usage Charge Guidance

6. This guidance, published in April 2013, sets out the process for the calculation and approval of new VUC rates in Control Period 5 (CP5), including the vehicle characteristics that need to be input in NR’s VUC calculator. The sections relating to “maximum speed” and “user calculated operating speed” state the following:

*□ **Maximum speed:** The maximum speed of the vehicle type should be entered into this field in miles per hour. If the ‘user calculated’ operating speed field (see, below) is left blank, this maximum speed value will be converted into an ‘operating’ speed to be used for charging purposes using the standard formula⁵. The operating speed of a vehicle is a representative ‘average’ speed at which the vehicle type typically travels on the network and is used for charging purposes. The vast majority of vehicle operating speeds are calculated formulaically based on the vehicle’s maximum speed. The maximum speed entered into the field should be the lowest of:*

- *the maximum speed specified when the vehicle type was built, assuming that this continues to be a physical constraint which the vehicle type cannot exceed; or*
- *the maximum speed specified by the operator, assuming this is a physical constraint which the vehicle type cannot exceed.*

□ User calculated operating speed: *If an operator considers that the standard formula used to estimate a vehicle's operating speed, based on its maximum speed, gives rise to a result that is not a reasonable estimate of the vehicle's true operating speed it has the option to calculate an operating speed based on the published timetable. If an operating speed based on the timetable is entered into the user calculated operating speed field, this value will be used in the VUC calculation rather than the operating speed derived from the vehicle's maximum speed.*

ORR review

7. We considered the proposal from a technical and economic viewpoint and discussed a number of issues with Network Rail and GTR. We asked them to confirm that the correct unsprung mass figures had been used and GTR confirmed that this was the case. We also stated that the agreed charging regime for CP5 does not permit multiple rates for any given vehicle class that depend on the operator's maximum speed.

8. After further discussion with Network Rail and GTR, it was established that they had not agreed on the rate they were proposing and we asked them to refer the matter back to us, under Paragraph 9.8 of Part 2 of Schedule 7, so that we could make a determination. As set out above, Network Rail wrote to us, on 15 December 2015, setting out the differing proposals.

9. ORR has had a number of discussions with both Network Rail and GTR during the course of our review and have considered all the information they have submitted, in particular Network Rail's VUC Guidance. We consider that we have sufficient information to be able to make a determination.

ORR determination

10. ORR determines that the Track Usage Price List shall be supplemented by the inclusion of the rate proposed by Network Rail (387/M 7.77 p/vm, 387/T 6.69 p/vm). This rate was calculated using a maximum speed of 110mph. We have taken account of the following when making this determination.

11. Network Rail's VUC Guidance is clear about what maximum speed value should be entered into the VUC calculator and describes it as "a physical constraint which the vehicle type cannot exceed", and the lowest maximum speed of either that specified when the vehicle type was built or that specified by the operator. ORR agrees with Network Rail that the maximum speed in these circumstances should be 110mph (i.e. the maximum specified when the vehicle type was built). It notes that the VUC Guidance does not define

“physical constraint” as the speed of vehicles resulting from the speed limit of a particular route.

12. The VUC guidance also sets out that an operator has the option of calculating a user calculated operating speed if the “standard formula” for calculating the VUC gives rise to a result that is not a reasonable estimate of the vehicle’s true operating speed. This calculation would need to be discussed with Network Rail and sufficient supporting information would need to be provided to both Network Rail and ORR. If GTR had concerns about the rate, then this option was available to them but they have not taken it.

13. In this case, Paragraph 9.12 of Part 2 of Schedule 7 to the TAC means the supplement shall have retrospective effect from the date of introduction of the vehicles.

Yours sincerely

A handwritten signature in black ink, appearing to be 'JR' with a long horizontal stroke extending to the right.

Jonathan Rodgers