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Abigail Greenfell
Manager, Licencing and Network Regulation
ORR
One Kemble Street
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16th June 2011

Dear Abigail,

AMENDING LICENCES TO GIVE PASSENGERS THE INFORMATION THEY NEED TO PLAN AND MAKE JOURNEYS - A CONSULTATION

I am responding to Bill Emery's letter of the 29 March, 2011. I know that the other two Govia TOCs, Southeastern and London Midland share very similar views to us, but they will be writing separately to confirm this.

We are grateful for the opportunity you have given us to consider your proposals at some length and for the opportunity you provided us to understand your thinking more fully when we met with you and your colleagues on 10th May.

As we said to you at our meeting we wholeheartedly agree with you that good information for passengers before and during their journeys is a key aim. Significant progress has been made on the planned timetable, but we accept that information during the journey, particularly at times of severe disruption, based on recent experience shows that there is still much room for improvement. We are fully engaged with the national Passenger Information During Disruption programme, led by the National Task Force and for the longer term we are working with industry partners to develop proposals for more significant improvements to the industry's information systems and processes for inclusion in the Initial Industry Plan in September.

As we explained to you, we understand the importance of this issue to passengers and as a private sector, customer focused business we are intrinsically motivated and incentivised to listen to our passengers and to take action to meet their needs and concerns. This is why in addition to the national PIDD activity we have initiated a work programme locally in Southern to improve the resilience of our information systems, processes and culture with the objective of addressing shortcomings identified during previous service disruption incidents. You can see therefore, that passenger information is something that we already take seriously and are setting out to improve, within the current licence obligations.

That said, we are also a company which bid for our franchise contract against a clearly defined set of rights and obligations. The competition was keenly contested and our pricing of our bid reflected our legitimate expectations about the outcomes that we are expected to deliver against the specification set by government. Your decision to impose a new licence condition on us cuts completely across this franchising process.

In view of this of this background we have significant reservations about whether seeking to improve information provision to passengers through the licencing route is either necessary or the most appropriate mechanism to address this issue. You explained your thinking on this but our reservations remain.

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We are particularly concerned that your proposals will place an additional, unfunded obligation on us. We do not know the financial implications of addressing the proposed obligation and if there is a material net cost associated with complying with the licence, we do not have the ability of many other private sector companies to change services or prices to meet this cost. As a result it is vital that we know how any material additional net costs that arise from a new licence condition will be met.

As we said during our meeting which my colleagues from Southeastern and London Midland also attended, we feel strongly that if funders and regulators believe that this is an area where further impetus or more rapid progress is required (in addition to the current expenditure and programmes of activity) then the change provisions in our existing Franchise Agreements provide a ready mechanism for achieving this. Another option would of course be to address this issue as each Franchise comes due for renewal. In making this point we also note that there is a sharp contrast between the unfunded position of the TOCs on one hand and Network Rail on the other who will be able to meet any additional funding needs arising from the new obligation as part of the CP5 review.

As we explained we also have significant reservations about the draft proposal itself. Our key concerns are as follows;

- Your proposal divides a single business process into two parts: a Network Rail part; and a TOC part. There is no guiding mind or party with overall responsibility for the whole process. Nor is there any consideration about mechanisms to ensure that what is provided is efficient. We are concerned that one of the outcomes of the current draft may be to cause industry parties to concentrate on their individual obligations rather than focussing on co-operating with other industry parties to improve the overall information process. If this concern materializes, then despite the positive intention you may have, the effect of the licence condition may be to worsen passenger information provision.
- We believe that TOCs should be in the lead in determining what is needed for passengers. We should work together with Network Rail to deliver better information to passengers, and we believe our relationship with Network Rail should be underpinned by a licence obligation and contractual commitments. To support this, and to ensure that the best value for money solutions are developed, a transparent charging policy should be developed as part of the CP5 determination for information services provided by NR. This philosophy is not in our view reflected in the current draft proposals and it should be.
- The licence as drafted will in practice put compliance with the information obligation ahead of any other consideration. You said that this was not your intention but as we illustrated with examples from our recent experience, this may be another unintended consequence of your proposal. We discussed the fact that there will inevitably be instances where a trade-off has to be made between getting accurate information to passengers, and the operational management of the trains for the benefit of passengers. There will also be times when the information available to pass on to customers will be sparse or even non-existent at certain points during a major disruption event. There should be an explicit recognition of these practical operational considerations in the drafting of the licence which we firmly believe must be expanded in the enforcement policy.
- In your consultation you give no indication of how licence compliance will be assessed, and how perceived breaches will be addressed, particularly in the early years. When we met you indicated informally that enforcement action would only be contemplated where there is clear evidence of serious and systemic failings. We impressed upon you the importance of an enforcement policy which is specific to this issue being made available at the same time as decisions are made on the application of this licence.

As you will note we have objections to your proposals at both a level of principle and in relation to the specific drafting of the proposed licence condition. Whether we ultimately feel able to accept such a change will however depend on whether you are able to address our legitimate concerns through revisions to the current draft licence and at the same time publish a proposed enforcement policy that demonstrates an approach which is both reasonable and proportionate.

Yours sincerely,



Chris Burchell
Managing Director