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OFFICE OF RAIL AND ROAD

14 September 2017

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Network Rail Infrastructure Limited
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Phil Dawson
Regulation & Track Access Manager
East Coast Main Line Company Limited
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Dear Mark and Phil,

Approval of the fourth supplemental agreement to the track access contract between Network Rail Infrastructure Limited and East Coast Main Line Company Limited

1. The Office of Rail and Road (ORR) has today approved the fourth supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and East Coast Main Line Company Limited (Virgin Trains East Coast "VTEC"), submitted to us formally on 13 September 2017 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to set out the reasons for our decision.

Purpose of the agreement

2. This agreement provides rights for 12 additional Saturday services in each direction between London Kings Cross and stations on the East Coast Main Line, including Leeds, York, Newcastle and Edinburgh.

3. These rights commence on the Principal Change Date in December 2017, and expire on the Subsidiary Change Date in May 2018.

Consultation

4. Network Rail consulted the industry on these services in January 2017.

5. Nexus, South Yorkshire Passenger Transport Executive, Transport Focus and West Yorkshire Combined Authority all supported the application.



6. Govia Thameslink Railway (GTR) initially responded to the consultation raising concerns about capacity on fast lines, platform capacity at London Kings Cross and capacity at Peterborough. Following further correspondence between VTEC and GTR, GTR removed its objections and supported the application.

7. Grand Central raised a number of concerns about the application, including the economic impacts of services on Grand Central's revenue, and the nature of the services in relation to the Public Service Contract.

ORR's review

8. We reviewed the application and it did not raise any operational concerns.

The NPA test

9. Our published Criteria and Procedures state that we would expect to apply the NPA test to new services, which might be open access or franchised, which would compete with an existing open access service and which, if it caused the existing open access operator to withdraw from the market, could reduce overall competition on the network. In line with this, we conducted the NPA test and considered the financial impact of the new services on existing open access operators.

10. The new services comfortably passed the NPA test. Our analysis of the financial impact on Grand Central showed that the additional VTEC services would abstract revenue from Grand Central services, but at a level where it is unlikely that this would have an impact large enough to cause Grand Central to reduce its services or leave the market.

Public Service Obligations

11. Grand Central raised similar concerns regarding Public Service Obligations in relation to the 57th Supplemental Agreement to VTEC's previous track access contract, and our consideration of the issue can be found in the decision letter related to that agreement. In general, our view is that the issue of Regulation 1370/2007 is a matter for DfT, not for us, as regulator.

ORR's conclusions

12. Following our review of the application, we are content that there are no operational, performance or economic concerns which should preclude our approval.

13. 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; 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

14. 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 VTEC. ORR's copy should be sent for my attention.

Public register and administration

15. 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.

16. Copies of this letter, the approval notice and the agreement will be sent to Keith Merritt 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.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Reed', written in a cursive style.

David Reed