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17 September 2015

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Dear Mark and Phil

Directions in respect of the 48th, 49th and 50th supplemental agreements to the track access contract between Network Rail Infrastructure Limited and East Coast Main Line Company Limited

1. The Office of Rail Regulation (ORR) has today issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail Infrastructure Limited (Network Rail) and East Coast Main Line Company Limited (Virgin Trains East Coast, "VTEC") to enter into the 48th, 49th and 50th supplemental agreements to the track access contract between them, as formally requested by VTEC on 6 May 2015. The purpose of this letter is to explain the reasons for our decision.

2. These applications were consulted on and submitted along with the 51st and 52nd supplemental agreements which contain access rights to extend some existing Newcastle services to and from Edinburgh. Some of the consultation responses therefore include references to these supplemental agreements. The 51st and 52nd supplemental agreements are still under consideration and this decision relates only to the 48th, 49th and 50th supplemental agreements which are dealt with in turn below.

48th Supplemental Agreement – Stirling

Purpose of the agreement

3. This agreement gives VTEC the rights necessary to extend one of its existing Edinburgh <> London services in each direction to start and finish at Stirling. The rights are contingent and apply on weekdays only. They enable an additional direct journey opportunity each way between Stirling and London King's Cross in addition to the one



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direct journey opportunity provided by VTEC's Inverness service. The rights commence on the Principal Change Date (PCD) 2015 and will expire at the end of VTEC's current track access contract on PCD 2016.

Consultation

Industry Consultation

4. Network Rail undertook the usual industry consultation. Responses were received from:

- First ScotRail - which requested detailed F3 prints. These were supplied by VTEC and no further comments were received.
- Alliance Rail - which commented on all VTEC's applications that it had concerns that the rights sought will in effect seek to be 'rolled forward' and seen as existing rights rather than be considered fairly alongside the other current ECML long-term access applications. Alliance made further comments regarding PSO services and the indemnity provisions included in the East Coast franchise. Specifically relating to the 48th supplemental, Alliance sought confirmation of the status of the services beyond 2016. In its response, VTEC confirmed that the rights had been included in its section 17 application for a long-term contract.
- DfT - which provided no comment on any of VTEC's applications.
- First Hull Trains - which commented on all of VTEC's applications that it had reservations over the performance impact of additional services on the ECML; would like to know the Regulating Policy for the new services; and raised concerns over the affect these services could have during times of engineering blockades. First Hull Trains also raised the possibility of revenue abstraction on new Doncaster-London services. In its response VTEC advised that it was confident that all its proposals could be accommodated; that there would not be any changes needed to Network Rail's Long Distance Regulation Policy as a result of the amendments; and that the only applications which would impact materially on engineering work are those for additional weekend services i.e. the 50th and 52nd supplemental agreements. (The 52nd supplemental agreement is still under consideration.) VTEC said it would expect NR to continue to allocate capacity in accordance with the Decision Criteria when it required engineering access. In relation to revenue abstraction VTEC said that any revenue impact would be minimal given the levels of dedicated (operator-only) tickets.
- Grand Central – which raised the issue of revenue abstraction in relation to all of VTEC's applications for short and long-term access rights.
- Transport Focus - which supported the application and noted the benefits of the additional services for passengers. Transport Focus noted that the early departure



time planned from Stirling (05:25) and the 17 minute dwell time at Edinburgh were unfortunate.

Statutory Consultation

5. ORR undertook the usual statutory consultation of Network Rail. Network Rail said it was still considering some operational aspects of the application and may be able to support this application on completion of its assessment. Network Rail noted that no amendment had been proposed to Appendix 1 of Schedule 8 to include Stirling as a monitoring point, which it would require.

6. VTEC noted in its response to NR that it would amend Appendix 1 of Schedule 8 and provided a revised agreement containing the amendment on 15 September 2015.

7. On 9 September 2015 Network Rail confirmed that it was now content to enter into the supplemental agreement.

Our review

8. Following our review of the application we are content that there are no operational concerns outstanding. We are content that Stirling has been included as a monitoring point in Appendix 1 of Schedule 8. We are satisfied that this application raises no financial or economic implications that require further investigation. We are also satisfied that VTEC has satisfactorily addressed the issues raised by consultees during consultation. We deal with Alliance Rail's concern about the status of the new rights (in all three supplemental agreements) in VTEC's long term application in paragraph 25.

49th Supplemental Agreement – Sunderland

Purpose of the agreement

9. This agreement gives VTEC the rights necessary to extend one of its existing Newcastle <> London services to start and finish at Sunderland. The rights are contingent and apply to weekdays only. They will enable VTEC to operate a direct service between Sunderland and King's Cross which will provide the 6th direct service each weekday. The train from Sunderland will provide an arrival into King's Cross before 10:00 and the evening return service will provide a later departure than the current last direct train of the day. These services will run non-stop between Newcastle and Sunderland. The rights will commence on PCD 2015 and will expire at the end of the current track access contract on PCD 2016.

Consultation

Industry Consultation

10. Network Rail undertook the usual industry consultation. Responses were received from:

- Grand Central - which commented that any rights agreed should be consistent with the capabilities of the infrastructure at Sunderland (particularly with regard to train length); should not lead to a reduction of performance on the route between Newcastle and Sunderland (particularly with regard to operations at Heaton Depot); and should not conflict with existing firm rights of current operators on the route between Newcastle and Sunderland. Grand Central also raised the issue of abstraction in relation to all of VTEC's applications short and long-term access rights. In its response, whilst acknowledging that the proposed rolling stock is longer than the platform at Sunderland VTEC said it was working with Network Rail on a solution for safe operation at this station. VTEC also said it did not believe the new services would materially impact on train performance on this route. VTEC said it did not understand how their rights could conflict with the existing firm rights held by others as it was only asking for contingent rights.
- Alliance Rail - which commented on all of VTEC's applications that it had concerns that the rights sought will in effect seek to be 'rolled forward' and seen as existing rights rather than be considered fairly alongside the other current ECML long-term access applications. Alliance made further comments regarding PSO services and the indemnity provisions included in the East Coast franchise. Specifically relating to the 49th supplemental agreement, Alliance noted that the application 'would offer a peak time arrival in London (something Grand Central is prevented from doing)' and 'would appear to be the forerunner of a number of further applications that would see the monopoly supplier use its significant access advantages and state support to try and drive competition from the market'. Alliance also noted some operational concerns in relation to the application, but said that these could be resolved through discussions between Network Rail and VTEC. In its response, VTEC said it 'does not accept that it is in any way attempting to drive competition from the market'. It said it was able to offer the additional service at marginal cost (by extending the existing Newcastle service to and from Sunderland), and that it would complement the existing Grand Central services.
- DB Tyne & Wear Metro (DBT&W) – which raised a number of concerns relating the access rights; how they may impact on DBT&W's firm rights; how the service would be accommodated at Sunderland station; and contingency arrangements in the event of delay. In its response, VTEC confirmed that the proposal would not adversely impact on DBT&W's services as it has been designed around them. VTEC pointed out that the requested rights were contingent only so DBT&W's firm rights would take precedence in the timetable process. In its response, whilst

acknowledging that the proposed rolling stock is longer than the platform at Sunderland VTEC said it was working with Network Rail on a solution for safe operation at this station. VTEC noted that they require a dwell time of longer than 5 minutes at Sunderland for these services and for the evening service this will require the re-platforming of one DBT&W service. In a further response, DBT&W requested to be kept informed regarding the work VTEC was undertaking with Network Rail to find a solution at Sunderland station regarding platform length. It also asked for discussions about contingency arrangements at Sunderland to commence quickly.

- Nexus - which supported the application subject to there being no adverse impact on DBT&W's services and the comments raised by DBT&W during the consultation being addressed. Nexus also sought clarity on the impact on DBT&W in the event of delays and/or cancellations to VTEC's service. In its response, VTEC said they would work with the industry on locally robust contingency arrangements and with Nexus and DBT&W to agree passenger handling arrangements.
- DfT - which provided no comment on any of VTEC's applications.
- First Hull Trains - which commented on all VTEC's applications that it had reservations over the performance impact of additional services on the ECML; would like to know the Regulating Policy for the new services; and also raised concerns over the effect these services could have during times of engineering blockades. First Hull Trains also raised the possibility of revenue abstraction on new Doncaster-London services. In its response VTEC said it was confident that all its proposals could be accommodated on the ECML and no changes were needed to Network Rail's Long Distance Regulation Policy. It added that the only services which could impact materially on engineering work were the additional weekend services (in the 50th and 52nd supplemental agreements). VTEC said it would expect NR to continue to allocate capacity in accordance with the Decision Criteria when it required engineering access. VTEC said that any revenue impact would be minimal given the levels of dedicated (operator-only) tickets.
- Transport Focus - which supported the application and noted the benefits of the additional services for passengers.

Statutory Consultation

11. ORR undertook the usual statutory consultation of Network Rail. Network Rail said it would be able to support the application if the following issues were resolved:

- A driver's walking route would be required at Sunderland to facilitate the necessary reversal of the train. NR and VTEC have agreed a programme of work that is underway to design and cost this facility. VTEC noted in its response to NR that good progress had been made on the design of the proposed walking route and it would be content to include a condition precedent in the contract associated with



the use of these rights to ensure that a walking route is built prior to the commencement of services.

- Sunderland should be included as a viable transfer point (VTP) in Schedule 4. VTEC agreed to this.
- Sunderland should be included as a monitoring point in Appendix 1 of Schedule 8. VTEC agreed to this.

12. VTEC supplied a revised agreement to us on 16 September 2015, and we are content it deals with the points raised above.

Our review

Operations

13. Following our review of the application we are content that VTEC has satisfactorily addressed the issues raised by consultees and there are no operational concerns outstanding.

Economic analysis

14. Our Criteria & Procedures explains that we would expect to apply the ‘not primarily abstractive’ (NPA) test to “a new service, 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”.

15. CH2M HILL, our economic consultants, undertook the NPA test on these proposed services. Their report published on 29 May 2015 identified that this application achieves a generation : abstraction ratio of 0.4 : 1 with all of the abstracted revenue coming from Grand Central.

16. At the ECML industry hearing on 12 June 2015, Grand Central asked to meet ORR to discuss concerns it had about the abstraction effects of the new VTEC services. At the meeting on 13 July 2015 Grand Central confirmed that whilst it still had concerns about the additional services proposed in VTEC’s long-term contract from December 2016 it confirmed it had no remaining concerns with VTEC’s applications for additional rights to be added to its existing contract up to December 2016.

50th Supplemental Agreement – Leeds Saturdays

Purpose of the agreement

17. This agreement gives VTEC the firm rights necessary to operate one additional Leeds <> London return service on Saturdays. The current frequency on Saturdays for this service group is generally hourly with some additional services providing a half-hourly



service. These additional services will help fill gaps in the current timetable, expanding the half hourly frequency from Leeds to London until 10:05 and similarly from 16:03 to 19:30 from London to Leeds. The new services are required to relieve overcrowding. The rights will commence on PCD 2015 and will expire at the end of the current track access contract on PCD 2016.

Consultation

Industry Consultation

18. Network Rail undertook the usual industry consultation. Responses were received from:

- Grand Central - which raised the issue of abstraction in relation to all of VTEC's short and long-term access rights.
- Alliance Rail - which commented on all of VTEC applications said it had concerns that the rights sought will in effect seek to be 'rolled forward' and seen as existing rights rather than be considered fairly alongside the other current ECML long-term access applications. Alliance made further comments regarding PSO services and the indemnity provisions included in the East Coast franchise. Specifically relating to the 50th supplemental agreement, Alliance sought confirmation of the status of the services beyond 2016. In its response, VTEC advised that these rights had been included in VTEC's section 17 application for long-term rights.
- DfT - which provided no comment on any of VTEC's applications.
- First Hull Trains, which commented on all of applications that it had reservations over the performance impact of additional services on the ECML; would like to know the Regulating Policy for the new services; and also raised concerns over the affect these services could have during times of engineering blockades. First Hull Trains also raised the possibility of revenue abstraction on new Doncaster-London services. In its response VTEC said it was confident that all its proposals could be accommodated on the ECML and no changes were needed to Network Rail's Long Distance Regulation Policy. It added that the only services which could impact materially on engineering work were the additional weekend services (in the 50th and 52nd supplemental agreements). VTEC said it would expect NR to continue to allocate capacity in accordance with the Decision Criteria when it required engineering access. VTEC said that any revenue impact would be minimal given the levels of dedicated (operator-only) tickets.
- West Yorkshire Combined Authority - which supported the application and would like further additions to the Leeds services.
- Transport Focus - which supported the application and noted the benefits of the additional services for passengers.



Statutory Consultation

19. ORR undertook the usual statutory consultation. In its response Network Rail said that it had no objections to this supplemental agreement and would be willing to enter into it as proposed.

Our review

Operations

20. Following our review of the application we are content that VTEC has satisfactorily addressed the issues raised by consultees and there are no operational concerns outstanding.

Economic analysis

21. Our Criteria & Procedures explains that we would expect to apply the 'not primarily abstractive' (NPA) test to "a new service, 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".

22. CH2M HILL, our economic consultants, undertook the NPA test on these proposed services as part of a wider assessment of applications on the ECML. Their report published on 29 May 2015 identified that this application achieves a generation : abstraction ratio of 0.83 : 1, the majority of which is abstracted from Grand Central.

23. At the ECML industry hearing on 12 June 2015, Grand Central asked to meet ORR to discuss concerns it had about the abstraction effects of the new VTEC services. At the meeting on 13 July 2015 Grand Central confirmed that whilst it still had concerns about the additional services proposed in VTEC's long-term contract from December 2016 it confirmed it had no remaining concerns with VTEC's applications for additional rights to be added to its existing contract up to December 2016.

ORR's conclusions

24. In considering the agreements 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 issuing directions in respect of these agreements is consistent with our section 4 duties, in particular those to:

- protect the interests of users of rail services;
- promote 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;



- contribute to the development of an integrated system of transport of passengers and goods; and
- enable persons providing railway service to plan the future of their businesses with a reasonable degree of assurance.

25. The rights in these supplemental agreements have been approved up to the end of the current track access contract in December 2016. There should be no assumption that any of these rights will be approved in the long-term access contract which VTEC has applied for from December 2016 onwards.

Conformed copy of the track access contract

26. 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

27. In accordance with section 72 of the Act, we will place a copy of the agreement on our public register. VTEC has not asked us to redact anything (as provided for by section 71(2) of the Act) prior to placing it on the register.

28. Copies of this letter, the directions 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 Madeline Matthews at Network Rail and to all consultees with outstanding issues at the time the agreement was first submitted to ORR or emerged during ORR's consultation.

Yours sincerely

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

David Reed