7 June 2011

Stations & Depots Team
Office of Rail Regulation
1 Kemble Street
London WC2B 4AN

Dear Sir/Madam,

Consultation on a revised contractual regime at stations – Proposed changes to the station access conditions

This letter sets out TfL's response to the consultation on a revised contractual regime at stations. It incorporates comments from TfL and London Underground. TfL supports the objectives of the consultation, to incentivise efficient operation of stations and to enable investment by third parties including TfL.

It is disappointing that the proposals do not have the backing of Contract Reform Task Group (CTRG) and it is not clear from reading the document how many of ATOC's concerns have been fully addressed in this draft. We agree with ATOC that a better approach might have been to build upon and improve Part C, which has weaknesses, but could be improved without the associated costs and delays of introducing a major change at this stage.

It is not clear how the proposals fit with the DfT policy that train operators take long leases at stations. It is important that changes to the SACs are not introduced while structural changes in the industry are underway which may render these proposals out of date. TfL, as concession manager of London Overground and the future Crossrail, concession wants to ensure that the changes will be compatible with long leases. As such our response is made in the context of the existing current station leasing structure where station leases are coterminous with DfT franchises and the London Overground concession duration. We would need to reconsider our response to the proposals were a different structure to be in place.

TfL is the funder of LUL, London Overground and the future Crossrail concession and should be treated in the same way as DfT in its role as franchising authority.

Paragraph 6.5
We are unconvinced of the need to change the standard SACs. ORR already has the power to initiate changes in the SACs and should ensure that the

administrative burden on the industry is not excessive as a result of any change.

It should also be made clear exactly what the figure of 80% of operators refers to and whether all operators have the same voting rights regardless of their interest in a station.

Paragraph 6.8
The existing SACs already accommodate the concept of Exempt Activity. If an activity turns out to be more intrusive than anticipated, the responsible party should still be liable for loss to other users and should not be able to avoid this responsibility by declaring an activity Exempt. Subject to the above, other operators do not need an ability to object to Exempt activities.

Even for non discretionary changes, the party implementing the change will have some discretion over how to implement the change. The relevant party should therefore be required to go through a change process to the extent of its discretion. The existing SACs recognise this in condition C9 but would benefit from elaboration.

We agree with ATOC that a single financial impact threshold would be difficult to determine and that non quantifiable factors such as impact on brand and customer perception which are also important to an operator can be affected by station change.

Paragraph 6.12
We have some concerns over the proposal to contract directly with third party developers. The £50,000 threshold for a Specific Contributor appears very low in the context of station works and associated property developments. It is also unclear whether the threshold for a Strategic Contributor's Qualification of £250,000 relates to a single station or the organisation's total contribution.

A developer will be concerned with commercial issues and not with the rail industry. At present a third party has to align itself with an industry representative who will obtain change approval on its behalf. Often this role is fulfilled by Network Rail which leads negotiations and listens to the industry's views. TfL would like to understand who takes the risk in the event of a developer failing part way through a station project. There needs to be a party with responsibility for reinstating the station and keeping it operational. At present this risk is with Network Rail but the cooperation agreement appears to remove this risk.

The existing form of indemnity in condition C3.4 is well understood and requiring relevant operators, some of whom may call infrequently at a station, to settle a form of agreement with another party seems unnecessarily burdensome. If there is a need to place limits on a proposer's potential risk this needs to be explained and agreed with users.

Paragraph 6.15
We do not believe it is appropriate or sensible to attempt to specify the grounds on which a party can object to a proposed change. Change procedures can apply to a range of diverse activities and not all are foreseeable.

We do not believe it is appropriate to separate compensation from grounds for objection. Separating the two would reduce the negotiating position of operators as they could no longer object to a proposal if offered unsatisfactory compensation. For example, LOROL benefited from being able to object to Sydenham corridor platform extensions which provided no benefit to LOROL until the extent of costs falling on the SFO was agreed.

Paragraph 6.16
We support the need to register change proposals with ORR which should bring a level of certainty about whether a change is approved and its exact terms. We also support allowing proposals to lapse after a certain period.

Paragraph 6.22
It should be clarified how the escalation and dispute process will proceed if the Cooperation Agreement and specifically the compensation amount cannot be agreed. If the mechanism to object to the Station Change is lost, this needs to be clear, to avoid a situation where changes can be implemented, with costs falling to an operator with no recovery mechanism agreed.

The Cooperation Agreement envisages costs only being funded through to the end of the franchise agreement. This is not appropriate in the case of London Overground or Crossrail operations where TfL may need funding for longer.

Paragraph 6.26
We support ATOC's comments on the appropriate terms for the provision of alternative accommodation.

Condition C5
This entitles Network Rail to require entry into an Asset Protection Agreement as a condition of its acceptance as well as a property agreement with any specific contributor. These leave Network Rail with a high degree of control over whether the matter proceeds. As the industry is considering long leases for stations, the SFO may itself in the future be in a position to enter into a property agreement.

Yours faithfully,

Carol Smales

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TfL London Rail