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12 May 2015

Nick Coles  
Customer Relations Executive  
Network Rail Infrastructure Limited  
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1 Eversholt Street  
London  
NW1 2DN

James Shuttleworth  
Commercial Manager  
West Coast Railway Company Limited  
Jesson Way  
Crag bank  
Carnforth  
Lancashire  
LA5 9UR

Dear Nick and James,

## **Directions relating to the Track Access Contract between Network Rail Infrastructure Limited and West Coast Railway Company Limited**

1. On 8 May 2015 the Office of Rail Regulation (ORR) directed Network Rail Infrastructure Limited (Network Rail) and West Coast Railway Company Limited (WCRC), (jointly the parties), under S18 of the Railways Act 1993, enter into a Track Access Contract (TAC), enclosed with the directions, by no later than 11 May 2015. The purpose of this letter is to explain the reasons for our decision.

### **Background**

2. On 30 April 2015 WCRC submitted an application for a new TAC, to take effect from 11 May 2015 to 31 October 2018, for regular scheduled passenger steam services on the West Highland Line between Fort William and Mallaig between May and October each year. The service is known as the Jacobite. The previous contract for this annual service expired on 31 October 2014 at the end of last year's season.

### **Consultation**

3. Network Rail undertook a shorter than usual industry consultation between 19 and 29 April 2015. Comments were received from London Overground Rail Operations Limited, Virgin Trains and First Great Western with no objections. Transport Focus responded with support for the application. Northern Rail requested clarification from



Network Rail on the situation relating to WCRC's safety certificate which Network Rail provided.

## **ORR review**

### *Capacity and performance*

4. The contract requested covers the operation of services which have been running for many years and we have no concerns over the capacity required or the performance implications.

### *Safety*

5. As a result of safety concerns following a SPAD (signal passed at danger) near Wotton Bassett Junction on 7 March 2015 whilst operating a passenger service under its charter trains track access contract, on 1 April 2015 Network Rail issued a notice suspending that contract and WCRC's non-passenger track access contract and set out seven actions it required of WCRC before it would lift the suspension. On 7 May 2015 Network Rail wrote to WCRC to say that as it had satisfactorily addressed the actions set out in the suspension notice it was lifting the suspension of its track access contracts.

6. We have also been investigating this serious incident and the actions which WCRC has taken to improve its safety procedures, management systems and staff competence regimes and will continue to monitor WCR services for assurance that it is operating safely. We are also undertaking further assessments to determine whether health and safety laws were breached, and the appropriate enforcement action required. This could include revocation of WCRC's safety certificate. Our approval of this access contract is without prejudice to any conclusions we may reach.

### *Specification of access rights*

7. Schedule 5 of the contract included a provision for departure time ranges for the full term of the contract. We were concerned that this appeared inconsistent with the approach Network Rail has taken with other operators seeking access rights beyond the Principal Change Date (PCD) in December 2016. Precisely how Network Rail's new approach to the specification of access rights from PCD 2016 will be applied in practice has been the subject of extensive discussions with the industry through the Rail Delivery Group which has not yet reached a conclusion. For those train operators who have sought rights beyond that date we have therefore approved "quantum only" rights as an interim measure. Once there is more clarity on this, we expect Network Rail to discuss adding any additional specification to the contracts through a supplemental agreement.

8. Although the Form P included reasons for the departure time ranges, as there was very limited time available to discuss this issue with the parties due to the late submission of the application, we directed an additional provision to be included in the contract to terminate the departure time ranges provision from PCD 2016.



## **ORR's conclusions and directions**

9. In considering track access applications, we must ensure that our decisions are consistent with our statutory duties under section 4 of the Act. We are satisfied that approval of this contract is in this case. The section 4 duties which have had particular relevance when considering this application were:

- to protect the interests of users of railway services;
- to promote the use of the railway network in Great Britain for the carriage of passengers and goods;
- to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance
- To take into account the need to protect all persons from dangers arising from the operation of railways;

10. We issued directions on 8 May 2015 for Network Rail to enter into the contract and the parties did so on the same day.

### *ORR's public register*

11. We are required under section 72 of the Act to maintain a public register, which includes every direction to enter into an access contract and every access contract. Please provide two copies of the signed contract no later than 14 days after the date upon which the contract is entered into, as required by section 72(5) of the Act.

12. In placing any contract on the public register, we are required to have regard to the need for excluding, so far as that is practicable, the matters referred to in sections 71(2)(a) and (b) of the Act. These cover:

- (a) any matter which relates to the affairs of the individual, where publication of that matter would or might, in our opinion, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of that particular body of persons, whether corporate or incorporate, where publication of that matter would or might, in our opinion, seriously and prejudicially affect the interests of that body

13. When you submit a copy of the signed contract, please list any aspects of the contract which you wish us to consider excluding from our register and explain why you consider they meet the requirements of sections 71(2)(a) or (b).



14. A copy of this letter will be sent to Madeline Matthews at Network Rail.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andrew Whittington', is positioned above the printed name.

**Andrew Whittington**