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Michael Albon
Executive, Access & Licensing
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

Great Western Railway

Milford House
1 Milford Street
Swindon, SN1 1HL

GWR.com

Dear Michael

First Greater Western Limited (GWR): application under s17 for directions in respect of a Track Access Contract: response to Network Rail comments

I write in response to the letter from Richard Turner at Network Rail (NR) dated 31 July in respect of the above application.

Open Access.

NR advises that it is unable to support the application, despite acknowledgement that the application arises from a request to GWR from the Secretary of State. NR cites the need to maintain capacity available in the knowledge of aspirant Open Access operators which may seek rights within the timeframe of the application. GWR finds the position adopted by NR in this respect unacceptable, and disproportionate.

The vast majority of GWR's services will have been operating for many years and our additional services will have been running for around 18 months at this point, at DfT's direction. We note that recent approved Open Access applications on other routes have been bid and accepted for operation in white space around established operations.

For several years now GWR has been granted rights caveated on expiry for certain services on the basis that an aspirant operator (Go-op) has expressed an intention to seek rights for local and middle distance services and that Network Rail has been uncertain of capacity as a result of the then unproven enhanced GWR aspiration. However, the enhanced GWR aspiration is now firmly established and is the subject of separate applications to the ORR for the timetable period commencing December 2019, which reflect the timetable that has been offered to GWR by Network Rail for this period.

Network Rail is unable to support sale of rights given its inability to ascertain whether capacity will exist for GWR's franchise service and the aspirant two Open Access operations. This is why GWR has applied under Section 17.

In its response NR has identified the Service Groups where it would not be able to support the grant of rights. In respect of the Grand Union application (for Paddington – South Wales services)

Network Rail has included EF08 Thames Valley branches and EF09 North Downs. In our view the exercise of rights in either Service Group would have no effect on such an operation.

Whilst understanding Network Rail's predicament given the lack of clarity and constancy in the OA applications and in awareness of capacity that might be available, we therefore contend that this discretion which NR has developed in recent years is disproportionate to need. We do not understand why NR has failed to recognize the importance of maintaining established operations and the needs of existing end users.

There has not in either current OA case been a consultation made on a Track Access Contract. In GWR's view the presumption needs to be that applications already made centred on established operations should take precedence. In the case of GWR these services are also subject to the requirements of its franchise, and from December 2020 for the requirements of the next franchise.

Where capacity assessment is not available, such rights could if necessary be subject to something like a Defeasance clause (as per the West Coast rights a few years ago) where rights could be removed by the Office of Rail and Road at a later date to avoid the existence of rights unable to be fulfilled by Network Rail. Such Defeasance provision or similar needs limiting such that if both of the two OA May 21 applications currently made to the Office of Rail and Road fail the Economic Equilibrium Test or the Not Primarily Abstractive Test or are withdrawn for May 2021, then the Defeasance clause (or similar) expires.

Crossrail Delay.

In addition NR advises it is unable to support the application in respect of rights for certain GWR's inner London suburban services on the basis that platform capacity may not be available at London Paddington. This situation arises from the delay in the opening of the Crossrail Central Operating Section and the industry has jointly sought to minimize the adverse impact to customers from this delay with Heathrow Express waiving its specific right to dedicated use of two platform faces, which permits Crossrail to provide an initial augmented service and GWR to maintain the level of service to local stations between Paddington and Reading agreed between the DfT and TfL for the full Crossrail service.

GWR has actively engaged with the DfT and Heathrow to seek extension of the agreement with Heathrow Airport Limited to waive its rights to sole use of two platforms for a further period from March 2021 until the date the Central Operating Section is in use by Crossrail. If necessary GWR rights in EF06 should be subject to a caveat that they expire at PCD Dec 2020 if by the priority date for PCD 2020 timetable the HAL agreement has not been extended. Similarly any application for rights into Paddington main station by the Crossrail operator should have an equivalent caveat. This gives time for discussions over scope to take place if agreement with HAL is not forthcoming.

Yours sincerely,



Robert Holder
Network Access Manager