

Ian Williams
Track Access Manager
Office of Rail Regulation
One Kemble Street
London WC2B 4AN

22nd July 2011

Dear Ian,

Review of the Decision Criteria in Part D of the Network Code

Many thanks for your letter of the 10th June 2011 regarding the proposed changes to the Decision Criteria. This letter represents a formal response on behalf of both CrossCountry (XC) and Arriva Trains Wales (ATW).

Whilst we do not necessarily disagree with industry colleagues with regards to the Decision Criteria perhaps being unclear or poorly written (and therefore require re-drafting), it should be noted that our main concern with the Criteria actually relate to their current lack of application in the timetable planning process. We have extensive examples of where Network Rail has not been applying the Criteria as defined, which may be due to a lack of awareness as much as a lack of understanding. In fact, our experience of the Criteria's application is that it seems to be limited to timetabling disputes, during which the Criteria are often reviewed retrospectively by Network Rail in order to justify capacity allocation decisions that have already been made. We therefore welcome this review if it will improve both the clarity and understanding of the Criteria by all parties.

We agree that ranking the Decision Criteria would be complex and unlikely to produce a result that could be agreed by such a wide variety of operators with fundamentally differing commercial priorities, and therefore welcome the ORR's view that this option should not be taken forward.

We have no issues with existing Criterion (a) becoming a primary 'objective', but would like to point out that the frequent citation of this Criterion during access disputes (as stated in the proposal) is likely to be due to its subjective wording rather than its direct value, as suggested. In other words, its current obtuse wording means that it can be applied to support a wide variety of arguments. Notwithstanding this, we believe that the wording of the objective should be refined from the proposed '*to share capacity on the Network*' to one which seeks to '*allocate capacity on the Network*', after all, the reason that the Decision Criteria is being applied is actually because the capacity *cannot* be shared, hence the applier of the Criteria is seeking to prioritise the allocation of capacity rather than share it.

Also, we do not agree with the proposal to completely remove current Criterion (b);

'(b) seeking consistency with any current Route Utilisation Strategy which is either (A) published by the Strategic Rail Authority or the Department for Transport before 31 May 2006 or (B) established by Network Rail in accordance with its Network Licence

As its deletion would completely remove the RUS's position in influencing the timetable planning process. We do not agree that the role of the RUS is (or should be) limited to Track Access

Applications, as this does not take into account occasions whereby two competing operators are seeking 'new' paths over the same congested infrastructure, yet neither have access rights in place. An example of this was TTP350 in 2010, whereby reference was made to the GW RUS' recommendations in order to prioritise between two competing applications. Furthermore, if the conclusions of the recent 'Rail Value for Money' study are taken forward, then it is likely that future RUS documents will have less focus on capital and infrastructure solutions, and more focus on making better use of existing capacity. In which case, the RUS' future role in prioritising scarce capacity will actually become more important and it would be illogical to divorce this from the timetable planning process.

We agree and support the proposal for a new Criterion that considers that 'journey times are as short as possible', which will form the new Criterion (e).

Finally, whilst there is no specific new Criterion relating to 7DR or the application of Route Categorisation principles, it is likely that some form of protection against the excessive degradation of weekend services will be offered through the application of new Criteria 'c' through to 'g', and this is welcomed.

We trust that you will find these comments useful.

Yours sincerely



James Carter
Track Access Manager

0121 200 6177
07825 969373