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22 July 2024

Response to Network Rails representations in relation Grand Central Railway Company's proposed 24th Supplemental Agreement

Dear David

Thank you for your email dated 03rd July 2024, inviting us to comment on Network Rail's (NR) representations in relation to our proposed 24th Supplemental Agreement.

Grand Central Railway Company Ltd (GC) has reviewed the response from NR and we have the following comments.

It is disappointing that NR has taken such a generic approach to the responses provided to each of GC's applications. The first two pages and last two pages are the same response across both applications, and we can therefore only assume this to be the case across all 83 applications submitted. This is especially concerning given that NR was expected to conclude Phase 1 of the process on 28th June, using timetable outputs for December 2024, as set out in its letter to ORR of 5th June 2024. Phase 1 stated that NR anticipated that *"Timetable production outputs for December 2024 can be used to inform December 2024 rights but if interacting will need to be dated"*.

GC therefore believes that given the December 2024 was published on 14th of June, some reference to its outputs and how these would be used in considering applications for access rights required for December 2024, should have been provided – even if it was to support the extension of contingent rights, or time limited firm rights. For NR to suggest it has been unable to provide even an initial view on the access rights sought in GC's 24th Supplemental Agreement is therefore surprising.

Whilst we appreciate the process set out by ORR has led to an unprecedented level of applications (83 unsupported) we would have hoped that NR would have been able to prioritise some of the more straightforward applications, of which we believe the 24th Supplemental Agreement would have been one.

In its response NR makes a very generic statement that *"Whilst Network Rail was made aware by Grand Central Railway Company Limited that they would be applying for the proposed access rights as requested in ORR's letter, Network Rail has not yet had an opportunity to fully consider its position on this application and whether it can eventually support the proposed access rights."*

NR issued Grand Central's 24th Supplemental Agreement on 8th March 2024, at least 4 weeks before the ORR issued its letter to the industry regarding the 20th May track access process. The above statement suggests that whilst initial conversations had been held with NR regarding the application,

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no consideration as to NR's position had been made at any point prior to the May 20th deadline for application submission.

In its application, GC has sought to convert existing contingent rights for one of its North East services and for station calls at Peterborough in some services to firm rights. All services for which the conversion of access rights is sought are operating in the current timetable, have been offered for the December 2024 timetable and are included in the most recent iteration of the proposed East Coast Mainline (ECML) Event Steering Group (ESG) Timetable.

GC requested NR to commence industry consultation on 8th March 2024, to protect its position during the timetable development process by demonstrating an expectation of rights, given its existing contingent rights are due to expire in December 2024. At this point in time, NR had not made clear its intention in relation to the extension of its previous ECML access rights policy nor its intention to convert existing contingent rights to firm, should the implementation of the ESG timetable have gone ahead as anticipated in December 2024.

Following the deferral of the ESG timetable, NR has still not clarified its intention with regards to extending existing contingent rights to ensure operators have the appropriate rights for the commencement of the December 2024 timetable and ensuring operators have sufficient confidence for business continuity. Regardless of its current position, in its previous ECML access rights policy, NR did not dismiss the conversion of existing contingent rights to firm, instead stating that it would assess applications on a case-by-case basis.

Whilst GC did not submit its application to the Office of Rail and Road (ORR) until 20th May 2024, in line with the access rights process established, NR on behalf of GC commenced industry consultation on the application in early March and GC has continued to engage with NR on the matter of its ECML access rights policy and our 24th Supplemental Agreement. We would have therefore expected that GC's application was a strong candidate to being considered on a 'case-by-case' basis and we therefore remain disappointed that NR has been unable to provide a more detailed and individual response to GC's application given the duration they have been aware of it.

We note a number of other operators have now followed suit in applying to convert contingent rights to firm rights for December 2024. For the avoidance of doubt, where services are currently operating, are offered as part of the December 2024 timetable and are included in the ESG timetable we are supportive of these conversions in order to better inform the base on which other applications are considered against.

In its response under the heading "Network Rail Review of Form P and associated documents," we note NR's comments regarding regulated Railfreight growth target for CP7. It is not clear the relevance of this statement specifically in relation to GC's application and therefore we would welcome further clarity from NR on its inclusion and relevance.

NR's letter of 5th of June stated that its approach *".....will have to balance the need for business continuity, so that current services may continue to operate and timetable changes can be made when there is low risk of negative outcomes for passengers and freight users, with the need to avoid prejudicial decisions that could unduly favour one party where aspirations interact."*

NR appears to have given little consideration to business continuity, given it has been unable to provide a clear view on conversion and extension of GC's existing contingent rights for services currently operating in the timetable – some of which have been operating since May 2022. This is especially clear given the entire timetable process for December 2024 has concluded with a number of operators having services in the timetable for which access rights expire prior to the implementation date. It is surprising that NR has not taken the opportunity to provide clarity on the approach for access rights on the ECML in its representations to applications of this nature.

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In Annex B, NR has identified where it believes that GC's 24th Supplemental Agreement could interact with other applications submitted as part of the 20th May process. The table set out in Annex B shows very little in terms of interacting applications and appears to show more about the geographic regions against which any ECML & Leeds applications interact with. In any case NR appears to have made no effort to categorise applications and the table simply suggests that all applications are considered equal. This means that where an operator has contingent rights, is currently operating a service and has been included in the ESG timetable potentially conflicts / interacts with applications for entirely new services which, may at this stage be nothing more than aspirational. We would welcome further information from NR on how it proposes to address any conflicts of this nature.

Considering NR's generic response, it is disappointing that NR has been unable to support the conversion of GC's existing contingent rights to firm rights, especially given the fact that contingent rights are held until December 2024, the services are currently operating, and the services have also been offered as part of the December 2024 timetable alongside being included in the ESG timetable once implemented.

On the basis of the above we believe there is sufficient evidence for the access rights to be converted to firm and remain operational until the end of GC's existing track access agreement without importing any risk into the current ESG timetable and wider ORR track access process.

Yours sincerely,

A black rectangular box redacting the signature of Chris Brandon.

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