

OFFICE OF RAIL REGULATION'S PROPOSED DECISION ON THE KEY ASPECTS OF A SERIES OF APPLICATIONS FOR TRACK ACCESS RIGHTS FOR PASSENGER SERVICES ON THE EAST COAST MAIN LINE

Introduction

1. This document sets out the decision we are minded to take (the proposed decision) on the key aspects of applications made under the Railways Act 1993 (the Act) for track access rights for passenger services on the East Coast Main Line (ECML). We are seeking representations on this proposed decision which we will consider before reaching a final decision. We aim to be able to make a final decision towards the end of February 2009 to enable Network Rail to take it into account when preparing the timetables for December 2009 and for subsequent years. We have taken account of all relevant representations and information that we have received to date. We would therefore expect representations to focus on new information and/or factual inaccuracies.

The proposed decision

2. We are minded to conclude that we should:
 - (a) approve continuation of the current Hull Trains Company Limited (Hull Trains) access rights, but all as firm rights rather than a mix of firm and contingent rights, for seven weekday and five weekend Hull return services until December 2014 with a calling pattern of London, Stevenage¹, Grantham, Retford, Doncaster, Selby, Howden, Brough and Hull;
 - (b) refuse the Hull Trains Harrogate application;
 - (c) approve a fourth weekday and Saturday Sunderland return service for Grand Central Railway Company Limited (Grand Central), until May 2012 (when its current track access agreement expires) with a calling pattern of London, York, Thirsk, Northallerton, Eaglescliffe, Hartlepool and Sunderland;
 - (d) approve firm rights for three daily Bradford return services for Grand Northern Railway Company Limited (Grand Northern), until December 2014 with a calling pattern of London, Doncaster, Pontefract, Wakefield Kirkgate, Brighouse, Halifax and Bradford Interchange;
 - (e) refuse the Platinum Trains Limited (Platinum Trains) application; and
 - (f) approve the conversion of the six NXEC Trains Limited (NXEC) contingent rights for Leeds half hourly return services to firm rights until December 2011 (when its current track access agreement expires). We considered the economic benefits of these services as part of our wider assessment of competing applications in 2005/06, and we approved them on that basis. However, we did not approve firm rights at the time because of doubts regarding capacity. These services have now been

¹ Calls limited to two northbound pick up only, and three southbound set down only per day.

operating since May 2007 and it has been demonstrated that there is enough capacity for us now to approve firm rights.

3. We are not in a position to reach a proposed decision on NXEC's Service Level Commitment (SLC)2b² application at the present time. That is because of the provisions in sections 17(1)(b) and 22A(4)(b) of the Act which prevent us from issuing directions under those sections if performance of the resulting access contract would necessarily involve the facility owner (Network Rail, in this case) in being in breach of an access agreement. However, based on the information that we have received to date and our considerations which are set out below, we would be prepared to approve it, if the constraint of conflicting rights in other operators' access agreements could be removed. These conflicts are described below, and can only be removed by agreement with the relevant train operators. In addition, because the train operators concerned are franchised operators, we expect that such changes would require the agreement and involvement of the Department for Transport (DfT).
4. The rest of this document describes the proposed decision in more detail, our reasons for reaching it, and the factors that we took into account in reaching this proposed decision. Where, in this document, we refer to our conclusions or views, we mean the conclusions or views we are minded to take. When we have taken into account any representations which we receive on the proposed decision, we will produce a final decision document.

The applications

5. We have considered potentially competing track access applications for the rights necessary to operate the following services:
 - (a) Hull Trains, under section 22A of the Act, to extend its rights to the seventh weekday return service between Hull and London, which expire on the Subsidiary Change Date (SCD) 20093, and convert all existing contingent rights to firm, to the expiry of its current track access agreement (SCD 2010);
 - (b) Hull Trains, under section 22 of the Act, an interim application to extend those rights expiring on SCD 2009 to the Principal Change Date (PCD) 2009, for the seventh weekday and fifth Sunday London to Hull return services, and those rights expiring on SCD 2010 to PCD 2010, being the rights to the majority of its services;
 - (c) Hull Trains, under section 17 of the Act, to extend its existing track access rights between London and Hull (including the seventh weekday and fifth Sunday return services) as firm rights from SCD 2010 to PCD 2018;

² SLC2 is NXEC's franchise commitment, from December 2010, for a fifth hourly off-peak franchised service from/to King's Cross alternating between Lincoln and York; SLC2b is a variation of that commitment as set out in NXEC's track access application.

³ The original expiry date was December 2008, but this was then extended to May 2009. Hull Trains sought rights until SCD 2010, but we said that we were only prepared to approve them until SCD 2009 pending our decision on all the ECML applications.

- (d) Hull Trains, under section 17 of the Act, for four new daily return services between Harrogate and London, via York;
- (e) Grand Central, under section 22A of the Act, for an additional (fourth) weekday and Saturday return service between Sunderland and London – an interim application to grant contingent rights until PCD 2009 as well as an application for firm rights to the expiry of its current track access agreement (SCD 2012);
- (f) Grand Northern, under section 17 of the Act, for six new weekday and four weekend return services between Bradford Interchange and London via Halifax, Brighouse, Wakefield Kirkgate, Pontefract and Doncaster;
- (g) Platinum Trains, under section 17 of the Act, for two new return services between Aberdeen and London on weekdays, with one return service on Saturdays and Sundays;
- (h) NXEC, under section 22A of the Act, to convert to firm rights its existing contingent rights to six weekday return services between Leeds and London;
- (i) NXEC, under section 22A of the Act, for its proposed SLC2b from PCD 2009 to the expiry of its current track access agreement (PCD 2011); and
- (j) NXEC, under section 17 of the Act, to extend its existing rights to the current timetable (SLC1) as amended by the proposed rights under SLC2b, from PCD 2011 till PCD 2015.

NXEC's SLC2b track access application

6. We set out below an extract from NXEC's application explaining the proposed new weekday⁴ services in SLC2b:

- six return services between Harrogate and King's Cross, via Leeds;
- five return services between Lincoln and King's Cross, via Newark;
- one return service between Cleethorpes and King's Cross, via Lincoln and Newark;
- one return service between York and King's Cross; and
- the extension of 14 existing return services between Leeds and King's Cross to/from Bradford Forster Square.

As well as the additional services mentioned above, SLC2b includes:

- a recast of the existing franchised services with improvements to journey times and frequencies in conjunction with standardisation of stopping patterns;
- an extension of the operational day, resulting in an increase in quantum to Edinburgh and a significant increase in quantum on Saturdays and Sundays; and

⁴ The weekend quantum is, overall, a little less.

- seven additional diagrams which would be diesel powered, providing a greater diversionary resource at weekends to benefit the whole of the route.

Background

7. For the purpose of the December 2008 timetable Network Rail made formal offers to affected applicants on 11 July 2008 – essentially offering nothing over and above the then-current level of service; that is, including those operating under contingent or short term rights, but not any requiring new rights.
8. The current weekday pattern of long distance high speed services from King's Cross broadly comprises:
 - (a) NXEC – 2 trains per hour (tph) each way to Leeds, of which two trains per day (tpd) continue to either Bradford or Skipton – in addition 1tpd starts from Harrogate in the morning but there is no corresponding return evening service;
 - (b) NXEC – 2tph to Newcastle, the majority of which continue to Edinburgh with some going on to Glasgow (8tpd), Aberdeen (4tpd) or Inverness (1tpd);
 - (c) NXEC – 1tpd each way to Hull;
 - (d) Hull Trains – 7tpd each way to Hull; and
 - (e) Grand Central – 3tpd each way to Sunderland.
9. The current timetable does not follow a standard hourly repeating pattern, and therefore most trains have different calling patterns and journey times.

Process

10. In line with our criteria and procedures for the approval of track access contracts in place at the time of receipt of the relevant applications⁵ (criteria and procedures), we have consulted on applications as they have arrived, where Network Rail had not already done so. We have also written to the applicants and industry stakeholders at regular intervals to inform them of progress, and copies of these letters are available on our website⁶. To inform our consideration of the applications, we asked Network Rail to conduct an assessment of the capacity and performance implications. This resulted in a report which we received on 19 September 2008 and a further report received on 18 December 2008. We also commissioned MVA to carry out an economic assessment of the applications and we sent its draft final report (with some redactions for reasons of confidentiality) to the applicants on 9 January 2009.

⁵ *Criteria and procedures for the approval of passenger track access contracts: 4th Edition*, Office of Rail Regulation, London, May 2006, available at www.rail-reg.gov.uk/upload/pdf/288-pass_candp4ed.pdf and *Criteria and procedures for the approval of track access contracts*: Office of Rail Regulation, London, November 2008, available at www.rail-reg.gov.uk/upload/pdf/387_cm.pdf.

⁶ www.rail-reg.gov.uk/server/show/nav.1993.

11. We invited the applicants and other stakeholders to make representations to us on both of Network Rail's reports. In addition we invited the applicants to comment on MVA's draft economic assessment. We, and MVA, met each of the applicants individually, so that we could discuss confidential information with them and so inform their representations to us. MVA's final report (again with some redactions for reasons of confidentiality) will be available on our website⁷.
12. In line with our criteria and procedures, we considered whether to hold a hearing. We decided at that stage in our process that it was unlikely that 'anything would be gained from holding a rail industry hearing' and informed the applicants and stakeholders accordingly. One applicant has asked us to consider this further. If any respondent considers that we should hold a hearing it should include in its representations a description of the matters which it thinks a hearing should address.
13. In considering each application we have taken into account:
 - (a) **our statutory duties**, most of which are set out in section 4 of the Act. These duties are not in any order of priority, and, as for all applications, it is for us to decide how to balance them. We believe that the following section 4 duties are of particular relevance in this case:
 - (i) section 4(1)(a) - otherwise to protect the interests of users of railway services;
 - (ii) section 4(1)(b) - to promote the use of the railway network for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that [ORR] considers economically practicable;
 - (iii) section 4(1)(d) – to promote competition in the provision of railway services for the benefit of users of railway services;
 - (iv) section 4(1)(g) - to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance;
 - (v) section 4(1)(zb) - to promote improvements in railway service performance;
 - (vi) section 4(3)(a) – to take into account the need to protect all persons from dangers arising from the operation of railways;
 - (vii) section 4(5)(a) – to have regard to any general guidance given to it by the Secretary of State about railway services or other matters relating to railways;
 - (viii) section 4(5)(c) – to have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways and railways services; and
 - (ix) sections 4(5)(aa) and 4(5)(ab) – to have regard to any general guidance given to [ORR] by the Scottish Ministers about railway services wholly or partly in Scotland or about other matters in or

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www.rail-reg.gov.uk/server/show/nav.1993.

as regards Scotland that relate to railways, and to give appropriate weight in doing so to the extent to which that guidance relates to matters in respect of which expenditure is to be or has been incurred by the Scottish Ministers.

We have considered all our duties in arriving at our proposed decision. In some cases there are tensions between different duties, but we are content that this proposed decision represents the appropriate balance between all our statutory duties;

- (b) **relevant legislation**, in particular, the Railways Infrastructure (Access and Management) Regulations 2005 (the Regulations), which provide that various conditions need to be satisfied to justify framework agreements (track access contracts) of longer than five years. The Regulations provide that agreements of between five and ten years must be justified by the existence of commercial contracts, specialised investments or risks. We explain our proposed decision in respect of the duration of the Grand Northern and Hull Trains access rights below;
- (c) **our published policies** - in this case, our moderation of competition policy, which was published on 18 May 2004, and our criteria and procedures for the approval of track access contracts in place at the time of receipt of the relevant applications; and
- (d) **established route utilisation strategies (RUSs)**, especially the Freight and ECML RUSs, and concluded that our proposed decision is not inconsistent with them. The ECML RUS focused on meeting demand at the end of CP4, recommending that the ECML move to a standard pattern timetable, but said little about the efficient use of any unused capacity in the current timetable. Our proposed decision is consistent with this strategy. We consider the issue of freight capacity below.

Key issues

14. We considered all comments and representations made by applicants and stakeholders. What follows is a summary of the key issues that were raised by, or in response to, the capacity and performance assessments and the economic assessment, and the conclusions we reached on them.

Network Rail's capacity and performance reports

15. As soon as it became apparent that there was unlikely to be enough capacity for Network Rail to accommodate all the services for which we had received applications, we asked Network Rail to assess which of the proposed services could be accommodated, and what the potential effects and difficulties might be. We suggested to Network Rail that it should consider whether services could be better accommodated following the introduction of a standard pattern timetable.
16. We also asked Network Rail to analyse the various aspirations against the background of the anticipated Control Period 4 (CP4) determination and the established Freight and ECML RUSs.

17. Network Rail responded to the increased quantum of trains required by the applications by suggesting that moving to a standard pattern timetable repeating two-hourly would make the most efficient use of capacity. However, it is important to stress that the timetabling developed by Network Rail, and which forms the basis of its assessment, is just one iteration of how a standard pattern timetable might look. It is not the only option that could have been developed and it is not comprehensive. A different timetable, or the refinement of this timetable, could produce different conclusions. We should make it clear that, in this proposed decision, we are not approving any particular timetable. It is Network Rail's responsibility to produce a timetable, following the process in part D of the network code. We note also that we would expect the more detailed iteration which accompanies the production of a full working timetable to produce a more balanced and efficient use of the available capacity, probably providing shorter journey times. Nevertheless, we are satisfied that Network Rail's assessment provides a sound basis for a better understanding of the capacity issues and conflicts that are involved with the ECML and the likely performance effects of the applications, and it has informed our proposed decision.
18. The second stage of Network Rail's work confirmed its original conclusions that it would be possible to produce a standard pattern timetable repeating two hourly, which could accommodate 6 x long distance high speed passenger services and 1 x long distance freight service per hour (6 + 1) between Doncaster and King's Cross in the off-peak based on the existing infrastructure. This would be necessary for Network Rail to accommodate NXEC's SLC2b application. Even so, it also suggested that a standard pattern timetable would compromise some journey times (certainly very few would improve) and make for some unusual calling patterns. For example, most stakeholders preferred a symmetrical calling pattern (that is, down and up trains would make the same calls), whereas Network Rail's further work indicated that a non-symmetrical calling pattern might produce a better operational solution. Further work would be required in all of these areas, particularly in relation to the impact it would have on other connecting operators, e.g., First Capital Connect Limited, East Midlands Trains Limited (EMT), Northern Rail Limited (Northern), First/Keolis Transpennine Limited (TPE) and First ScotRail Limited (ScotRail). It is, nevertheless, clear that some adjustments to other train operators' services could not be achieved, and the standard pattern timetable could not be introduced, without breaching the existing access rights of some of those operators. Examples include conflicts with the track access rights of EMT and Northern, but may also include others.

Performance

Standard pattern timetable

19. The overall conclusion from the Network Rail performance team is that the indicative standard hour timetable would have a negative impact on the performance of the route. Analysis estimates that the off-peak PPM for long distance high speed operators on the southern part of the ECML would fall by 1.4%. However, only 0.6% would result from an increase in passenger trains from the current average of less than five to six per hour, whilst the remaining 0.8% would result from an assumed increase in freight trains from the current

level to one per hour every hour, every day. That modelled increase in freight traffic is not relevant to our understanding of the effect of an increase in passenger services which are the subject of this proposed decision. Although the benefit of a standard pattern timetable might reduce this performance effect, further mitigations would be required, with improved performance on the route dependent upon the continued drive of all the operators and Network Rail to mitigate the risks. As we have stated above, we would expect the normal iterative timetable production process to be capable of producing a more efficient timetable with fewer adverse effects on performance.

20. In addition, we consider that the benefits arising from an ability to operate an increased number of passenger and freight services (see below) outweigh any likely negative impact on PPM and, in the event that a standard hour timetable was introduced, we would expect all stakeholders to work closely with Network Rail to improve performance, both during the timetable development process and on a daily operational basis.

Four additional services

21. Network Rail's September and December 2008 reports did not consider the effect on performance of adding trains to the current timetable. However, in response to bids received on the February 2008 Priority Date, Network Rail did say that, while it had found paths for four Grand Northern services to Bradford, it declined to offer these as the effect on performance of existing services would be unsustainable.
22. Network Rail's second report states that the addition of 17 off-peak passenger trains in the indicative SLC2 timetable would depress PPM by 0.6%. We note that the three new Bradford services would follow a largely novel routeing and hence the performance effects both for the services themselves and for those with which they would interact cannot be assessed with certainty. Nevertheless, Network Rail has found four Grand Northern paths which appear to be robust, and furthermore there is no evidence that the introduction of the three additional Sunderland services in December 2007 has made the timetable materially more difficult to operate. We are therefore content that the effect of our proposed decision to grant an additional four paths each way in the current timetable should not have a material effect, and we expect all stakeholders to work together to ensure that they deliver the required levels of performance.

Freight

23. The capacity available for freight services has been a key issue that we have taken into account throughout this process. English Welsh & Scottish Railway Limited (EWS) (now DB Schenker Limited) made representations pressing for 2 paths per hour off-peak and Freightliner Group Limited (Freightliner) for an average of 1.5 paths. Following Network Rail's September report, we concluded in a letter to stakeholders on 23 October 2008 that we had not seen any clear evidence that freight traffic in the relevant period would require more capacity than that indicated would be available in Network Rail's report. This was particularly true given that most of the predicted growth in container traffic was not expected until after 2012. Nevertheless, we asked Network Rail to clarify in more detail what capacity would be available for freight traffic in the

period up to 2012. Both EWS and Freightliner were given a further opportunity to comment.

24. Network Rail's further report confirmed that the 6+1 scenario offered a clear improvement on the current freight provision, by providing a two hourly Class 4 path and a two hourly Class 6 path in both directions. In addition, in the up direction only there would be a further two hourly Class 4 path.

Scotland

25. Transport Scotland expressed concerns about the potential impact on Scottish services. Network Rail's original report indicated that the main difficulties were north of Edinburgh, where the timetable as developed at that time included a number of problems. These included: the possible loss of stops/whole services; an extension of journey times to London by around 30 minutes; and the extension of journey times of some ScotRail services, too, with potential impacts on the number of units required to provide the current level of services. There were also some knock-on effects for internal Scottish services resulting from the re-timing of NXEC's Edinburgh and Glasgow services.
26. In its second report Network Rail confirmed that the vast majority of these issues had been resolved, or had been shown to be capable of resolution. Nevertheless, Transport Scotland still has concerns, particularly in relation to the need for improved journey times and the possible impacts on performance. It also questioned whether it would be realistic to commence any such timetable from December 2009.

Safety issues

27. Our proposed decision on access does not affect Network Rail's responsibility to operate its network in a safe manner. As part of its work on capacity and performance, Network Rail conducted a detailed in-house safety assessment of the service changes it was examining, in accordance with the relevant company standard (risk assessment of timetable change). It concluded from this that it is content to accept the risks identified. We have reviewed Network Rail's position and our view is that Network Rail is capable of managing the consequences of increasing traffic. For example, if additional services were thought likely to interfere with existing patrolling access, Network Rail would nevertheless be able to secure patrolling access in other ways, as it has shown on the West Coast Main Line. Equally, with regard to level crossings, solutions include upgrading crossings where full assessment shows this to be necessary.

Our view on capacity and performance

28. Our conclusion is that there is capacity available within the current irregular timetable to accommodate a limited number of additional services without unduly affecting other operators' interests. However, SLC2b can only be accommodated by the introduction of a standard hourly pattern timetable and, even then, only if some passenger operators are prepared to accept changes to their access rights. We anticipate that such a major timetable recast from 2009 or 2010 onwards for passenger operators could be a compromise between more seats, and sub-optimal calling patterns and journey times, until

additional capacity is delivered through the proposed CP4 enhancement schemes. It is also clear that all stakeholders would have to work hard on the performance effects. However, we consider that the benefits of introducing such a timetable, which include the availability of significantly more capacity both for passenger and freight services in the interim period, outweigh the potential disbenefits.

Economic assessment

29. If we have potential capacity choices when considering track access applications for new competing services, we follow a two stage approach to identify what, if any, access rights we could approve:
- stage one: we review new competing services against our “not primarily abstractive” test; and
 - stage two: we assess the relative benefits and costs of alternative uses of capacity.
30. Our assessment was informed by work undertaken by our consultants MVA. Their report examined the relative levels of generation and abstraction and the economic benefits of the various service proposals. This built upon the work undertaken by each of the applicants and their respective consultants. We and MVA met with each of the applicants separately (Platinum Trains, Hull Trains, Grand Northern/Grand Central and NXEC) to describe MVA’s approach and the draft results.

Our assessment of revenue generation and abstraction - the “not primarily abstractive” test

31. We have a long-standing policy of not approving rights for new competing services that are primarily abstractive of the revenue of existing operators.
32. Our policy on competing services is set out in our Moderation of Competition: final conclusions document published on 18 May 2004 (MoC document)⁸. In considering the additional rights sought on the ECML, we have applied a methodology consistent with that policy. The “not primarily abstractive” test is not intended to be a rigid benchmark. Such a test would be unrealistic given the uncertainty about forecasting and this test alone would not allow all relevant factors to be taken into account. Instead, we have considered whether the overall effect of approving the additional rights requested is likely to attract sufficient new patronage/revenue to rail such that abstraction from other operators could not be considered the primary impact of the proposals. The test not only considers the ratio of generated to abstracted revenue but also considers the impact of the services against our section 4 duties, in particular the overall economic impact of services (section 4(1)(b)), the interests of users (section 4(1)(a)) to promote competition in the provision of railway services for the benefit of users of railway services (section 4(1)(d)), to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance (section 4(1)(g) and the funds available to the Secretary of State (section 4(5)(c)). While additional open access services would abstract revenue from franchised services, we do

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www.rail-reg.gov.uk/upload/pdf/195.pdf

not have evidence that the level of revenue abstraction envisaged would impact materially on the funds available to the Secretary of State. In this respect we note that our policy on the approval of new competing services has been in existence and unchanged for some years now. We consider, therefore, that franchised operators should have already factored in the potential cost of open access when making bids for franchises.

33. While our assessment of revenue generation and abstraction and the economic benefits of services has been informed by the work undertaken by MVA it has also taken into account the information provided by consultees. MVA's approach has been to use MOIRA to provide an initial estimate of revenue generation and abstraction and then to amend the outputs to reflect dedicated fares, railheading and crowding. MOIRA was designed to forecast the impact of relatively small changes in service. MVA have developed an additional allowance for traffic generation for large changes in services based on evidence from the introduction of Hull Trains services. The modelling results have been further validated against the impact of Grand Central services to Sunderland. We consider that this approach removes many of the concerns that we have previously had with forecasting traffic generation and abstraction based on MOIRA.
34. When undertaking our assessment we have been mindful that the impact of the services is to some extent dependent on the timing of services and which other services are operating on the network. We consider that each of the applications should be assessed on a stand-alone basis assuming current services and track access rights and should not prejudice the other services that may or may not be approved to operate in the future.
35. We set out the key conclusions of our "not primarily abstractive" test for each of the applications below:
 - (a) Hull Trains seventh path – we assessed this service against our "not primarily abstractive" test when we originally gave short-term contingent rights for this service in December 2006. We would not generally expect to repeat the "not primarily abstractive" test for the extension of existing rights. That is because they would not be new competing services and repeating the test may prevent businesses from planning with a reasonable degree of assurance. However, when we originally approved this service we stated we were not yet satisfied that the service would be the best use of capacity in the long term and Hull Trains must have no expectation that these rights would necessarily be extended. We therefore considered whether we should review our earlier calculations to determine whether the services continued to pass our test, and concluded that it was appropriate to do so. Based on the analysis undertaken by MVA, the information provided by Hull Trains which has argued that generation would be higher at Hull and Brough than forecast by MVA and evidence from the introduction of Hull Trains services, our view is that the service continues to pass our "not primarily abstractive" test since it produces a generation to abstraction ratio which we have previously concluded would pass the test;
 - (b) Platinum Trains' service – it is our view that this service does not pass our "not primarily abstractive" test. Even if it were possible to operate

the service with the journey times envisaged by Platinum Trains, the service would produce relatively low levels of revenue generation compared to abstraction, with MVA forecasting a generation to abstraction ratio below that which we have previously approved. The generation to abstraction ratio of the service would fall further if Platinum Trains were not able to achieve the desired journey times, as appears likely. Further, the proposals would essentially duplicate existing services between London and Aberdeen and are forecast to create net economic disbenefits;

- (c) Hull Trains Harrogate service – it is our view that this service does not pass our “not primarily abstractive” test. The service produces relatively low levels of revenue generation compared to abstraction. The service would have relatively high abstraction at York and would not serve any new large urban areas, with Harrogate much smaller than, say, Sunderland or Hull. While revenue abstraction may be slightly lower than forecast by MVA due to the impact of non-inter available first class walk up fares we do not consider that this would significantly impact on the ratio of revenue generation to abstraction. Hull Trains has suggested that revenue generation would be higher than forecast by MVA principally due to the impact of the Harrogate conference market. We have not, as yet, had evidence to suggest that this would be the case. We also consider that revenue abstraction could be higher than initially forecast by MVA if trains stop at all the stations for which Hull Trains has applied for rights. The proposals would also largely duplicate existing NXC services and are forecast to create net economic disbenefits;
- (d) Grand Central fourth Sunderland service – it is our view that this service passes our “not primarily abstractive” test. Based on the analysis undertaken by MVA the service has a generation to abstraction ratio within the range of that which we have previously approved. This analysis appears robust even once the impact of the NXC Friday only service and potentially different service timings are taken into account. The service provides an additional direct service to London from areas that are currently poorly served, in particular Sunderland, Hartlepool and Eaglescliffe (improving access to Stockton on Tees and Middlesbrough). The service is also forecast to generate net economic benefits; and
- (e) Grand Northern Bradford service – it is our view that this service passes our “not primarily abstractive” test. Based on the analysis undertaken by MVA and the evidence provided by Grand Northern the service has a generation to abstraction ratio within the range of that which we have previously approved. This ratio could fall if it was not possible to achieve the envisaged journey times, although it could increase if congestion in West Yorkshire was higher than assumed by MVA. Nevertheless we still consider it would be within the range of that which we have previously approved. The service also provides a new direct service to London from areas that are currently poorly or not served, namely Bradford, Halifax, Brighouse and Pontefract. The service is also forecast to generate net economic benefits, although we acknowledge

that these are relatively small and are dependent on the precise timing of services. We do acknowledge that the impact of the service could be significantly affected by the introduction of SLC2b. However, as stated in paragraph 34, to ensure consistency we consider that each service should be assessed on a stand-alone basis against the not primarily abstractive test.

36. We do not consider that the additional NXEC service proposals would need to be assessed against our “not primarily abstractive” test, as they would not primarily compete with existing open access services or the franchised services of another funder.

Costs and benefits of alternative uses of capacity

37. Where there are capacity choices, we consider the benefits and costs of proposals for new access rights compared with alternative uses of the capacity. In accordance with our criteria and procedures we also consider whether it may be appropriate to give additional weighting to certain factors such as:

- (a) the benefits of providing completely new services as against an increase in the frequency of existing services. This is likely to be particularly important where certain passenger markets have particularly poor services;
- (b) specific requirements in competitive markets, such as availability of paths at short notice for freight;
- (c) the existence of direct funding support for a service or an associated network enhancement provided by a PTE or other public body; and
- (d) the efficient use of scarce or expensive resources.

38. When undertaking our assessment we take into account cost-benefit analysis of the proposals and alternatives. Based on the work undertaken by MVA and the information provided by applicants, we have examined the relative benefits and costs of the service proposals. The key results of this analysis for the applications that passed our “not primarily abstractive” test were:

- (a) NXEC services, if operated in accordance with the indicative Network Rail timetable, would generate the largest net economic benefits, although these are relatively small compared to the incremental financial cost. However, if journey times could be improved, based on the analysis undertaken by MVA and the evidence provided by NXEC we consider that there may be significant economic benefits from a move to a standard pattern timetable;
- (b) Hull Trains’ existing seven return services would generate relatively large economic benefits. Taken in isolation, the economic benefits of the seventh Hull Trains service are smaller than the other Hull Trains services;
- (c) Grand Central’s fourth Sunderland service would generate relatively large net economic benefits, although these would be reduced if journey times were longer than envisaged; and

- (d) Grand Northern Bradford services would generate relatively small economic benefits. While Grand Northern have argued that the benefits for its service would be significantly higher than forecast by MVA we consider that MVA's analysis provides a reasonable assessment of the relative worth of each of the applications.

Conclusions on capacity and economic analysis

39. We have concluded from the economic analysis that there are potentially substantial benefits from the additional NXEC services and the introduction of a standard pattern timetable. We would therefore, be prepared to approve them. However, as previously stated, we are of the view that we cannot approve these rights as this would necessarily result in Network Rail breaching access agreements. Given the strong economic benefits for the six existing Hull Trains services we consider that we should approve a continuation of these rights. Our capacity analysis indicates that there is sufficient capacity in the current and the potential standard pattern timetable for a further five weekday return services. We are therefore minded to approve rights for the following:
- (a) the fourth Grand Central Sunderland service, as this generates economic benefits, provides an additional direct service to/from poorly served areas and provides passenger benefits through increased competition;
 - (b) a continuation of the existing seventh Hull Trains service. When we initially approved short term rights for this service in December 2006, we indicated that we were not yet satisfied that this service would be the best use of scarce remaining capacity on the ECML in the longer term. We therefore stated that we would consider any request to extend these rights in the context of the ECML RUS and alongside any requests from other operators for additional rights. We have concluded from our capacity analysis and the work undertaken by MVA that there is sufficient capacity for these rights in the long term and they do represent a good use of capacity compared to alternative applications. In particular, we consider that they are a better use of capacity than additional Grand Northern services to Bradford, as economic benefits are higher on a per path basis, and there is no time lag before those benefits can be accrued; and
 - (c) three Grand Northern services to Bradford. We consider that these services would produce economic benefits, provide new direct services to/from Bradford, a large urban area, as well as Halifax, Brighouse and Pontefract, all of which currently have poor direct rail services, and would increase competition on key flows. Consistent with our decision on Grand Central Sunderland services, we consider that Grand Northern needs a minimum of rights for three services if it is to have the certainty it needs to commence operations.

Duration of access rights

40. Both Hull Trains and Grand Northern have applied for access rights for a duration longer than five years. Our policy on long term access rights⁹ states that we will consider a track access contract with a term longer than five and up to ten years if:
- it is justified by the length and nature of any relevant commercial contracts that are proposed;
 - there is an underlying investment in railway assets which is primarily sunk (i.e. investment that cannot reasonably be recovered by selling those assets or using them elsewhere). In doing so, we will have regard to any evidence that specific investment could not be made (because of its size or payback period) without a longer-term track access contract; and
 - the beneficiary requires the access rights for the period of the application in order to secure the benefits of investment or other public interest benefits; and the rights do not provide the opportunity to eliminate competition from other operators in respect of a substantial part of the services in question; or
 - the operator faces a specialised risk profile, which could include, for example, risks arising from demand and costs, as well as competition from other transport modes. We will consider past investment made in the context of current risks providing the applicant can justify that it is relevant.
41. Hull Trains has applied to extend the expiry of its existing rights for services to Hull from SCD 2010 to PCD 2018. In support of this extension, Hull Trains has stated that it requires the proposed duration to support the following investments:
- refresh to a higher standard its Class 180 rolling stock, incorporating upgraded furnishing, new catering facilities, power sockets and the installation of Wifi on all trains;
 - provision of improved train maintenance facilities;
 - provision of increased car parking facilities at Howden and Selby stations; and
 - provision of an information system at Howden station.
42. We have considered the scale of the potential investments proposed by Hull Trains, the degree to which those investments are sunk, the additional costs and benefits that would accrue and the current financial position of Hull Trains. While some investments are clearly sunk and would be of no benefit to Hull Trains if it were not awarded continuing access rights (for example, provision of a passenger information system at Howden) this is less clear for other investments. For example, given the current demand for Class 180 rolling stock we do not consider that any investment that Hull Trains makes would necessarily be sunk and could, at least to some extent, be recouped if the

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www.rail-reg.gov.uk/upload/pdf/240.pdf.

stock was sublet to another operator. Further, the investments made by Hull Trains, while imposing additional costs, are likely to produce additional revenue benefits and would not be undertaken unless they were profitable. Our conclusion is that access rights for Hull Trains services should expire on PCD 2014.

43. Grand Northern has stated that it is seeking a contract of ten years' duration to PCD 2018 to underpin the development of the service in the early years and the investment in rolling stock. Given the analysis undertaken by MVA and Grand Northern, we do not consider that Grand Northern necessarily requires a contract duration of ten years to allow services to be profitably introduced. Further, we also consider that given the demand for Class 180 rolling stock, any investment in this should necessarily be regarded as sunk. We therefore conclude that Grand Northern access rights should expire on PCD 2014.

Next Steps

44. We aim to be able to make a final decision before the end of February 2009. Accordingly, we are seeking representations by midday on 13 February 2009. These should be sent in electronic format to Brian Hopkinson at these offices (brian.hopkinson@orr.gsi.gov.uk).
45. We will publish responses on our website and may quote from them. You should indicate clearly if you wish all, or part, of your response to remain confidential to ORR. If you make a response in confidence, you should also send a statement, excluding the confidential information, which we can publish. We may also publish the names of respondents in future documents or on our website, unless you tell us that you want your name to be withheld.
46. We expect to approve the new track access rights as soon as possible after the publication of our final decision. The precise timing of this will vary according to the circumstances of individual operators.

Office of Rail Regulation
29 January 2009