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***NETWORK AND VEHICLE CHANGE COMMITTEE***

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**Note of guidance issued to the parties to NV7**  
(following a hearing held at Kings Cross on Tuesday 25<sup>th</sup> July)

- 1 The Committee was asked, in separate references by Railtrack, and by North Western Trains (First North Western: FNW) to rule variously, in respect of works being undertaken by Railtrack in Manchester South, in relation to the continued delivery of FNW's Access Rights, and the heads and quantum of compensation that might be payable as a consequence of the implementation of the Network Change.
- 2 The Committee was unhappy with the disparate views represented by the parties as to the issues of difference between them. It noted that attempts to produce a joint submission, for the purposes of seeking the Committee's determination, had proved unsuccessful. The Committee was satisfied that, in relation to the issues at stake, and the provisions of Track Access Condition G2.4 and G6, there was a need to bring the dispute formally to the Committee, but declined, on the basis of the arguments presented, to formulate a determination, until the parties had undertaken further discussions.
- 3 The Committee considered it appropriate that it should plan to re-convene on September 4th to address the issues still in dispute, which will be considered on the basis of a joint submission, prepared and submitted by the parties on or before August 25th 2000.
- 4 The Committee acknowledged that it had considered some of the points of principle raised in the various documents from the parties, and therefore advised that, in respect of a re-opened hearing, it would expect to issue a determination that incorporated the following points:
  - 4.1 in the case of a Network Change that is subject to material modification, there is no objection in principle to a Train Operator who has previously given notice to Railtrack, in accordance with Track Access Condition G2.1 (b), subsequently, and in the light of changed circumstances, giving notice also under Track Access Condition G2.1 (a)
  - 4.2 where a Network Change proposal might potentially affect the capabilities of the Network, and so impact upon the ability of Railtrack to provide compliant paths for all trains the subject of Firm Contractual Rights, it is reasonable for any Train Operator to assume that Railtrack proposes to honour all contracted rights, unless or until Railtrack initiates commercial negotiations, with a view to achieving an amendment to the affected Track Access Agreement, regulated in accordance with Section 22 of the Railways Act 1993.
  - 4.3 there is no defined obligation on Railtrack, where the future capability of a changed Network is called into question, to present proof beyond its assurance

that it will honour all established rights, or seek appropriate negotiated terms. It is, however good practice, which, in the event of a later dispute, is likely to weigh in the minds of a Committee, that Railtrack carry out any reasonable tests or simulations of the capabilities of the changed Network, in order to satisfy itself that any such assurance can reasonably be honoured.

- 5 The parties are encouraged to resume negotiations and discussions, informed by the points made at 4 above, with a view to reaching either
  - 5.1 a full understanding and agreement of all the matters of the current dispute;  
OR
  - 5.2 a statement, jointly prepared and submitted, defining, in detail the areas of difference upon which the determination of the Committee is sought.
  
- 6 For the avoidance of doubt, the parties are to understand that:
  - 6.1 this guidance note is not a Determination, and that no determination will be issued, unless or until any outstanding matters have been jointly re-submitted for the consideration of this Committee.
  - 6.2 any consideration of matters of compensation should incorporate consideration of issues of implementation as well as the premise given in 4.2 above.
  - 6.3 the Committee is satisfied that, as between the parties, there is available the full range of information needed either to resolve all outstanding points, or to support a joint submission on the remaining points.
  - 6.4 a mechanism is to be found and initiated by which Railtrack shall make appropriate interim compensation payments, such payments to be without prejudice to the scale of any final settlement of compensation.

Bryan Driver  
Chairman