

Access Disputes Committee – Timetable Panel

First Capital Connect Submission to Timetable Panel

Ref:- TTP444 and TTP450

Network Rail Proposals for Engineering Access 2012

Re:-London North Eastern Route Weeks 9 -16

(Sundays 27 May to 15 July 2012)

Pf10/2/12v5

1 DETAILS OF PARTIES

1.1 The names and addresses of the parties to the reference are as follows:-

- (a) Network Rail Infrastructure Limited whose Registered Office is at Kings Place, 90 York Way, London, N19 9AG ("NR") ("the Claimant"); and
- (b) First Capital Connect Limited whose Registered Office is at 3rd Floor, E Block, Macmillan House, Paddington Station, London W2 6LG ("FCC") ("the Respondent").

This is a single party submission on behalf of First Capital Connect and the contact is:-

FCC Paul French
Head of Planning
First Capital Connect
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2 THE PARTIES' RIGHT TO BRING THIS REFERENCE

With reference to Network Code Condition D 2.2.8, this matter is referred to Timetabling Panel ("the Panel") for determination in accordance with Condition D 5.1.2 (a) of the Network Code and Section 3.5.4. of the 2012 Timetable Planning Rules.

3 CONTENTS OF REFERENCE

First Capital Connect (FCC) has produced this sole reference and it includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A summary of the issues in dispute in Section 5;
- (c) A detailed explanation of the issues in dispute prepared by the Respondent in Section 6.

(d) The decisions of principle sought from the Panel in respect of legal entitlement and remedies in Section 7; and

(e) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

4.1 First Capital Connect is the Train Operating Company which operates a daily service on the Thameslink route between Bedford/Luton – Brighton/Wimbledon, and also on the Great Northern route between London Kings Cross – Peterborough/Cambridge and Kings Lynn.

4.2 This dispute focuses on First Capital Connect's requirement to run an adequate early Sunday morning service, and Network Rail's determination to impose disruptive Restrictions of Use (RoU's) on the London North East Route (LNER) to prevent this.

4.3 Consequently, the detail of the dispute is Network Rail's decision to implement a combination of Engineering Access opportunities on its LNER route between Weeks 9 – 16, which will deny First Capital Connect reasonable passage of 30 advertised services conveying approx 1500 passengers between 01.30 and 08.30 on Sundays 27 May to 15 July 2012.

4.4 Referral will be made to Network Rail's interpretation of Network Condition D 4.6.1, the Decision Criteria

5 SUMMARY OF DISPUTE

5.1 Network Rail progressed the consultation for its LNER Engineering Access Statement 2012 in accordance with Network Code Condition D 2.

5.2 Within Versions 1 and 2 of the Engineering Access Statement, a combination of disparate engineering possessions were proposed which adversely affected First Capital Connect's ability to operate a Sunday service on the Great Northern route between London Kings Cross and Peterborough/Letchworth via both Hertford North and Welwyn Garden City routes during 01.30 to 08.30 on Sundays 27 May to 15 July (Weeks 9 – 16). Appendix A indicates the formal proposals submitted by Network Rail within the Engineering Access Statements Versions 1 and 2.

Network Rail is anxious to fulfil Project requirements associated with:-

- a) Hitchin Switch and Crossover Renewals
- b) Hitchin Grade Separation
- c) Hertford North Integration Facility
- d) Alexandra Palace to Finsbury Park route upgrade

- 5.3 First Capital Connect has made appropriate responses in order to best protect its service. Appendix C displays the incremental loss of route access availability on the basis of proposed Version 1 and 2 engineering applications
- 5.4 Following the issue of Version 2 of the Engineering Access Statement, Network Rail next issued a Confirmed Period Possession Plan (CPPP) which contained further disruptive RoU's that worsened First Capital Connect's ability to offer its public timetable within the same period. Appendix B indicates the formal proposals forwarded by Network Rail within the CPPP, whilst Appendix C indicates the revised and reduced route access available resulting from the submitted CPPP
- 5.5 Again, First Capital Connect objected to the loss of access to the network and the inability to operate its train service. The proposal before First Capital Connect was that rail services could only operate on the core of the route between Welwyn Garden City and Potters Bar, but that alternative arrangements would generally be required for all other Great Northern journeys to and from London Kings Cross via both Hertford North and Welwyn Garden City.
- 5.6 First Capital Connect does not believe that it is reasonable to force approx. 1500 passengers to use road alternatives over long distances between London Kings Cross – Peterborough/Letchworth, and that Network Rail's possession strategy should be reviewed to enable the passage of a reduced, but credible Great Northern outer service between London Kings Cross and Cambridge from circa. 07.30 to 08.30 for each Sunday in question. Appendix D indicates the volume of passengers disadvantaged by Network Rail's overall proposals
- 5.7 Network Rail has received First Capital Connect's request for slight engineering access relaxations but has subsequently declined to modify its requests on the

basis that all RoU's have "constrained access footprints" (see Network Rail letter dated 17 January 2012 – Appendix F refers).

5.8 Network Rail has also indicated that First Capital Connect has separately accepted the principle of individual Project-based strategy. This is true, but was subject to the RoU's being agreed via the Engineering Access process in accordance with Network Code Access Condition D 2. Indeed, First Capital Connect would emphasise that Network Rail has failed to "achieve the optimal balance between access for maintenance, renewal and enhancement work" as per Section 1.0 Introduction to the Engineering Access Statement 2012 – Appendix E refers. .

5.9 First Capital Connect would contend that Network Rail has misinterpreted Network Condition D 4.6.1 (p), the Decision Criteria, in order to reflect the commercial interests of Network Rail alone.

6 EXPLANATION OF EACH ISSUE IN DISPUTE

6.1 First Capital Connect's dispute is very simple. It believes that reasonable route access for Great Northern services to/from London Kings Cross should be made available by either route via Welwyn Garden City or Hertford North between circa. 07.30 and 08.30 on Sundays 27 May to 15 July (Weeks 9 – 16), and that there are sufficient passenger numbers to demonstrate that this is a necessity.

6.2 First Capital Connect believes that Network Rail has failed to satisfactorily optimise several disruptive RoU's in order to reflect its own commercial interests. This fails to conform to Network Rail's obligation within Section 1.0 of the Introduction to the Engineering Access Statement 2012 which states that Network Rail must have the "aim of achieving the optimal balance between access to the network for train operations and access for maintenance, renewal and enhancement work" – Appendix E refers

6.3 First Capital Connect believes that Network Rail has chosen to be selective about the interpretation of the Decision Criteria within Condition 4.6.1. of the Network Code viz.

Decision Criterion (a)

"Sharing the capacity, and securing the development, of the Network for the carriage of passengers and goods in the most efficient and economical manner in the interests of all users of railway services, having regard, in particular, to safety, the effect on the environment of the provision of railway services and the proper maintenance, improvement and enlargement of the Network"

FCC view – Network Rail has disregarded First Capital Connect's interests in order to satisfy its own commercial interests, and has asserted that it "believes that services conveying a greater number of passengers on the ECML (East Coast Main Line) and Cambridge route are protected at the expense of Sunday morning services" – Network Rail e-mail dated 1st February as Appendix H refers.

Decision Criterion (b)

"Seeking consistency with any current Route Utilisation Strategy (RUS) which is either (A) published by the Strategic Rail Authority or the Department for transport before May 2006 or (B) established by Network Rail in accordance with its Network Licence

FCC View - Network Rail wrongly claims within its e-mail dated 1st February, as Appendix H, that "the access First Capital Connect has disputed is planned in consistency with the LNE RUS" This is not true; The RUS process only recommends infrastructure strategy. Details of RoU's shall be made in accordance with Network Code Condition D 2, so this criterion is not relevant.

Decision Criterion (c)

"Enabling a Timetable Participant to comply with any contract to which it is party (including any contract with its customers and, in the case of a Timetable Participant which is a Franchisee of Franchise operator, including the Franchise Agreement to which it is a party), in each case to the extent that Network Rail is aware or has been informed of such contracts"

FCC view - Network Rail has not considered this Criterion fully. First Capital Connect can compromise on many services affected by the Engineering Access

Proposals in question, but there is a volume of long-distance passengers conveyed on Service Level Commitment services (as indicated within the First Capital Connect's Franchise Agreement with the Department for Transport – See Appendix M) which cannot satisfactorily be carried

Decision Criteria (d) and (e)

(d) "Maintaining and improving the levels of service reliability"

(e) "Maintaining, renewing and carrying out other necessary work on or in relation to the Network"

FCC view – It is understood that Network Rail would always use these Criteria to support its engineering access proposals. First Capital Connect seeks only a modest adjustment to the Network Rail's project plan. This is simply to enable a reasonably reduced service to operate without wishing to compromise the overall completion of each component Project

Decision Criterion (f)

"Maintaining and improving connections between railway passenger services"

FCC view – The request to operate a reduced First Capital Connect service during the period in question will not affect or worsen current connectional capabilities. Moreover, Network Rail has not sought passenger number details to inform its contention that "connections are maintained when the demand for rail services is heaviest" – Network Rail e-mail dated 1st February as Appendix H refers. Consequently referral to this criterion is not relevant.

Decision Criterion (g)

"Avoiding material deterioration of the service patterns of operators of trains (namely the train departure and arrival frequencies, stopping patterns, intervals between departures and journey times) which those operators possess at the time of the application of these criteria"

FCC view – The advertised rail service will be degraded by Network Rail's proposal but First Capital Connect understands the need to compromise during

periods of engineering work. However, in this instance, Network Rail has made a value judgement about affecting a greater quantity of trains than usual without considering the passenger numbers that use those services.

Decision Criterion (h)

"Ensuring that, where the demand of passengers to travel between two points is evenly spread over a given period, the overall pattern of rail services should be spread over that period"

FCC view - To meet this criterion it is necessary for First Capital Connect to be able to access London Kings Cross from 07.30.

Decision Criterion (i)

"Enabling operators of trains to utilise their railway assets efficiently and avoiding having to increase the number of railway assets which the operators require to maintain their service patterns"

FCC view -

Network Rail's refusal to modify their RoU's to mitigate the effects on First Capital Connect's operations will result in a substantial demand for replacement buses whilst rolling stock will remain idle. First Capital Connect appreciates that "Network Rail recognises that additional ECS (Empty Coaching Stock) movements will be required to form services on Sunday mornings, and thus weight this criteria (sic) in favour of First Capital Connect" - Network Rail e-mail dated 1st February as Appendix H refers

Decision Criteria (j)

"Avoiding wherever practicable frequent timetable changes, in particular for railway passenger services"

FCC view - First Capital Connect seeks to limit the effect of Network Rail's proposals which would involve either long-distance rail replacement or a bus/train/bus arrangement in lieu of the advertised service

Decision Criteria (m)

"Encouraging the efficient use of capacity by considering a Timetable Participant's previous level of utilisation of Train Slots"

FCC view – First Capital Connect seeks to encourage the efficient use of capacity during the period in question by slightly limiting the effect of Network Rail's proposals in order to operate a reduced but necessary service.

Decision Criteria (p)

"Taking into account the commercial interests of Network Rail and existing and potential operators of the route in a manner compatible with the foregoing"

FCC view – First Capital Connect contends that Network Rail has favoured its own commercial interests by maximising a combination of long range possessional plans at the expense of the operator's interests.

6.4 For clarification, First Capital Connect does not seek to jeopardise the completion of the individual Projects concerned and, indeed, supports the benefits to the industry upon completion of each. Neither does it seek to advise Network Rail how to restructure proposed disruptive possessions in order to give back the route circa one hour earlier than proposed. It is known that Network Rail accepts that overnight alternatives are not permissible due the even larger number of passengers involved. First Capital Connect would seek that any extraneous work caused by access relaxation should be redated without endangering the benefit or delivery of any Project involved, and not affect industry "closed" periods.

7 DECISION SOUGHT FROM THE PANEL

7.1 The Panel is asked to determine that:

Network Rail be directed to adjust the combination of RoU's on its LNER route between Weeks 9 – 16, which will currently deny First Capital Connect reasonable passage of advertised services between 01.30 and 08.30 in and out of London Kings Cross on Sundays 27 May to 15 July 2012.

7.2 The Panel is requested to note that Network Rail has recently indicated easements to ROU's for Weeks 9, 11,12,13,14,15 and 16 to facilitate the request to operate a reasonable service to London Kings Cross within the period concerned - Network Rail e-mails dated 14th and 16th February as Appendices K and L refers.

8 SIGNATURE

For and on behalf of First Capital Connect Ltd

Signed 

Print Name PAUL FRENCH

Position: HEAD OF PLANNING

Date 17th FEBRUARY 2012

APPENDICES AND ANNEXES

- Appendix A Engineering Access Statement Versions 1 and 2. Weeks 9 - 16
- Appendix B CPPP. Weeks 9 - 16
- Appendix C Indicative incremental Route Maps. Weeks 9 - 16.
- Appendix D Indicative Great Northern Sunday Timetable until 09.00, with associated train loading details
- Appendix E Engineering Access Statement 2012. Section 3
- Appendix F Network Rail letter to First Capital Connect dated 17th January 2012.
- Appendix G E-mail from First Capital Connect to Network Rail dated 31st January 2012
- Appendix H E-mail from Network Rail to First Capital Connect dated 1st February 2012
- Appendix J E-mail from First Capital Connect to Network Rail dated 2nd February 2012
- Appendix K E-mail from Network Rail to First Capital Connect dated 14th February 2012
- Appendix L E-mail from Network Rail to First Capital Connect dated 16th February 2012
- Appendix M National Franchise Terms – First Capital Connect Service Level Commitment