

David Reed
Senior Executive, Access & Licensing,
Office of Rail and Road,
One Kemble Street,
London,
WC2B 4AN.

27th January 2017

Dear David,

Proposed Track Access Contract between Network Rail and Grand Southern Railway Company Ltd. Under Section 17 of the Railways Act 1993.

With regard to the above application Network Rail set out its representations to the ORR in a document dated 16th January 2017. This letter constitutes Alliance's response to Network Rail representations.

NR Paragraph	Comments
4	Introduction We note Network Rail's comments that it was <i>"disappointed it was not invited to negotiate a jointly agreed contract under Section 18 of the Railways Act 1993 with Grand Southern regarding its proposals"</i> The reason for not inviting Network Rail to negotiate as a Section 18 application was because Alliance Rail was concerned about the confidentiality arrangements particularly noting that the Wessex route has previously been part of a "deep alliance". We made our

	<p>concerns known to Network Rail (and the ORR) and the reason why we felt we could not negotiate in the normal manner. We are keen to progress this contract with Network Rail as a Section 18 application. With this in mind we have arranged meetings with Network Rail to discuss capacity and the contract.</p>
<p>4</p>	<p>Network Rail states: <i>“Network Rail is however keen to work constructively with Grand Southern regarding its proposals and would strongly suggest that some joint dialogue with DfT and ORR takes place regarding the complex process of providing a response to the application and would strongly suggest that some joint dialogue with DfT and ORR takes place regarding the complex process of providing a response to the Application, concurrent with the timeline for DfT’s analysis of franchise bids”</i></p> <p>The application has been through the normal industry consultation process which has raised the industry awareness of the proposal. Since the application has been made Alliance Rail has been engaged in briefing key stakeholders on the route including MPs and passenger user groups. Alliance Rail notes Network Rail’s suggestion of “joint dialogue” with the DfT and the ORR. We are unsure what Network Rail is suggesting here – We will seek clarification from Network Rail on this point.</p>
<p>7</p>	<p>The Application Form</p> <p>It is disappointing that Network Rail has suggested that our application is <i>“somewhat misleading”</i>, and incorrectly refers to the</p>

content of Section 3.2 from the formal application to the ORR of 16 December 2016 following consultation which stated:

“This application has been discussed with Network Rail and timetabling work is on-going. However Network Rail has not yet reached a view on the available capacity on the route.”

and not the content of Section 3.2 that was issued for consultation which stated:

“This application has been discussed with Network Rail; however Alliance has not developed this further with Network Rail at this stage because of concerns regarding the confidentiality arrangements in place between Network Rail and others. Once the application has been submitted for consultation we will engage more fully with Network Rail”.

It was made clear at the outset the reasoning behind our approach, and as was stated, once consultation was under way, more formal engagement with Network Rail began, with the first timetable meeting taking place on 6 December 2016, and the application form to the ORR was changed to reflect this.

The preference of course would always be a Section 18 application, but as is very clear, Network Rail’s processes are not designed for rapid and positive decision making, and the ORR has advised us in the past (particularly during Grand Central’s development) to make early Section 17 applications if time is critical. These can be ‘converted’ to Section 18 applications at a later date should circumstances permit.

	<p>The proposed contract</p> <p>A contract meeting between Alliance and Network Rail has been arranged for 30th January 2017 where we hope to resolve and clarify the issues raised by Network Rail. However, in respect of the comments made by Network Rail, Alliance has set out its concerns and position below:</p> <p>10 Network Rail has suggested that the expiry date should be expressed as “<i>Principal Change Date in a specified year</i>” rather than the Principal Change Date in a specified month of a specified year. Alliance Rail will need certainty for 7 years firm rights to underpin the business case that has been developed. The proposal put forward by Network Rail could see the potential loss of up to 6 months of firm rights and so Alliance could not agree to this. However, we would be happy to agree to a fixed date rather than being linked to the PCD.</p> <p>11 and 12 Network Rail has identified the need for Alliance to justify the requirement for and a contract longer than five years. This requirement is part of The Railways Infrastructure (Access and Management) Regulations 2005 (as amended). Alliance is fully aware of this and will be setting out its position to the ORR in a letter as we have done so previously with other of our applications.</p> <p>In addition we also note Network Rail’s correction to Schedule 1 contract particulars for the service of Notices - Alliance is happy to amend this if this indeed represents the operational requirement of Network Rail. Normally this section would contain the details of the operational route – in this case the Wessex Route.</p>
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<p>16</p>	<p>Schedule 5 – The services and the Specified Equipment</p> <p>Passenger Train Slots</p> <p>In respect of capacity, Alliance is pleased that Network Rail has identified that additional services are possible, but is disappointed that once again Network Rail has suggested that “...<i>timetables proposed by bidders could not be accommodated alongside the proposed Grand Southern timetable</i>”. Not for the first time Network Rail create another significant competitive barrier to entry by assessing others <u>aspirations</u> alongside known <u>applications</u> despite stating: “...<i>that it is normal practice to sell rights on a ‘first come first served basis’</i>”.</p> <p>This position was noted by the ORR in its ECML decision of May 2016 where the ORR stated (at paragraph 27):</p> <p><i>“There are proposals being developed by other operators that would use ECML capacity. For example, the Scottish Ministers have an aspiration to increase local services to Berwick and (potentially) two new local stations in Scotland, and we have received representations from local stakeholders about these. The DfT’s new TPE franchise also includes a requirement to extend an existing hourly Liverpool - Newcastle train through to Edinburgh (which could help meet the Scottish aspirations) and to extend a York train to Newcastle. However, we did not consider it appropriate to incorporate either proposal in this process because we had not received applications for any of these services. We will of course consider any applications we receive in future.”</i></p>
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<p>18</p>	<p>Network Rail has a number of valuable tools at its disposal in relation to timetabling, notably its obligation to use its right to flex. Network Rail has stated that there is capacity for further service provision and with rolling stock currently available and stored, there is a clear opportunity to start services within a reasonable time, and Alliance asks the ORR to instruct Network Rail to enter into a contract for Track Access rights in time for services to commence as planned.</p> <p>Alliance Rail is currently preparing its bid, which is due in March for the PCD December 2017. This bid will be for actual paths which we know are possible on this route. The work developing the bid is different to the high level capacity analysis that has been carried out by Alliance to date. The further work developing the bid does not in any way invalidate the high level capacity analysis and it is on this basis that our application has been made to the ORR.</p> <p>Network Rail has indicated that “<i>it will be able to conclude this [capacity] work by the end of July 2017</i>”. Alliance Rail will be bidding at the Priority Date in March 2017.</p>
<p>21</p>	<p>Calling Patterns</p> <p>Network Rail suggest that use of the mainline platforms at Wimbledon is restricted. This is not the case. There are no restrictions in the Timetable Planning Rules nor have the mainline platforms been taken out of use. The mainline platforms appear in the Sectional Appendix. Network Rail also state that “whilst these platforms do receive some bespoke calls in the current hour, it would need the opportunity to assess the performance and safety impact of any proposed calls at Wimbledon ...” Alliance objects to this as</p>

	<p>Network Rail is clearly happy to accept “bespoke” calls from the franchised operator yet appear to be reluctant to accept our application for bespoke calls.</p>
<p>23</p>	<p>Specified Equipment</p> <p>Network Rail have stated that the <i>“re-traction of the unit will require Electrification and Signalling compatibility assessment. Therefore, a new Statement of Compatibility certificate and new vehicle change will be required”</i>. For clarity Network Rail’s Sectional Appendix denotes that class 442 units are route cleared into Waterloo. We also note that charter train operators have the right to operate class 442 units into Waterloo.</p> <p>With regard to the EBi400 Track Circuits which are the reason for Network Rail’s concerns, we note that Bombardier Transportation states in its publicity material for the product:</p> <p><i>“The EBI Track 400 Circuit uses multi-bit coded telegrams to guarantee immunity from traction interference and false feed hazards”</i>.</p> <p>We have asked Angel Trains for their view on the compatibility of the rolling stock and we will provide this at the earliest opportunity.</p>

Yours Sincerely



Ian Yeowart