| **Access Disputes Committee – Timetable Panel** |
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| **First Capital Connect Submission to Timetable Panel**  **Ref:- TTP356.**  **Network Rail Offer for the 2011 Principal Timetable**  **Re:-Brighton Main Line**  Pf3/8 |

**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 AG (“NR”) ("the Claimant"); and

(b)        First Capital Connect Limited whose Registered Office is at 3rd Floor, E Block, Macmillan House, Paddington Station, London W2 1FG (“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

Hertford House

1, Cranwood Street

London

EC1V 9QS

Tel:- [redacted]

e-mail:- [redacted]

**2                    THE PARTIES’ RIGHT TO BRING THIS REFERENCE**

2.1             This matter is referred to Timetabling Panel ("the Panel") for determination in accordance with Condition D 3.2.8 and D 5 of the Network Code*.*

**3                    CONTENTS OF REFERENCE**

First Capital Connect (FCC) has produced this joint 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 claimant

(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             The subject of this dispute is the Offer of the First Working Timetable in respect of the Principal Change Date 2010.

4.2             It is the view of FCC that the Decision Criteria set out in the Network Code has not been correctly applied by Network Rail in the acceptance of train slots bid by Southern.

4.3             The Part or Condition that the dispute relates to, or is associated with, is D 3.2.2., D 3.2.7., D 3.2.8., D 5 and D 6 of the Network Code.

4.4              FCC hold a Track Access Agreement with Network Rail dated 9 February 2006, and an a copy of this, together with Schedule 5 (The Services and Equipment), is annexed to this reference.

**5                    SUMMARY OF DISPUTE**

5.1        The First Working Timetable Offer in respect of the Principle Change Date 2010 was issued in three stages, between 25th June and 16th July 2010.

(a) The first stage was issued on 25th June and referred to weekday trains only.

(b) The second stage was issued on 9th July and referred to weekday trains, and weekend trains within timetable Periods A and B.

(c) The third stage was issued on 16th July and referred to weekday trains, and weekend trains within timetable Periods A, B, C and D.

5.2 FCC received the First Working Timetable which incorporates Southern’s aspiration to operate 1A69 08.13 Brighton to London Victoria. On detailed analysis, FCC became aware that the train slot failed to adhere with Rules of the Plan between Burgess Hill and Balcombe Tunnel Junction. Furthermore FCC believes that the Decision Criteria has not been correctly applied in this instance.

5.3 Re Southern’s aspiration to operate additional and adjusted train slots between London Victoria and Brighton within the standard weekday off-peak and Saturday repeating pattern. In respect of weekdays, Network Rail decided not to include these train slots in the First Working Timetable as a result of the failure to adhere to Rules of the Plan. However, the same non-compliant services were offered on Saturdays. FCC understands that the inclusion of the Saturday train slots was an administrative error which, once made, Network Rail felt unable to amend or withdraw (Appendix H refers).

5.4. The SLC is not specific about the additional hourly train slots referred to in Para. 5.3.

**6            EXPLANATION OF EACH ISSUE IN DISPUTE WITH RESPONSE**

6.1. On weekdays, Southern have bid for the 08.50 Gatwick Airport – London Victoria to start back from Brighton at 08.13. The headway between Burgess Hill and Balcombe Tunnel Junction is not compliant with that specified in Rules of the Plan. Therefore FCC does not consider that Network Rail has met its contractual obligations in regard to its duties to offer train slots that comply with Rules of the Plan, as set out in Condition 3.2.2. Furthermore, FCC is extremely concerned about the adverse performance impact of an additional peak path between Brighton and Gatwick Airport and the fact that Network Rail has had to flex other services in an attempt to accommodate a sub-optimal train slot with excessive pathing time. FCC believes this demonstrates that is not robust and contravenes Decision Criteria D 6 (d).

6.2. Southern have bid to operate additional and adjusted train slots between London Victoria and Brighton within the standard weekday off-peak and Saturday repeating pattern which do not comply with Rules of the Plan. To enable FCC and other operators the opportunity to discuss this, supporting information has been requested. However, Network Rail has failed to notify FCC regarding the details of the non-compliance.

6.3 FCC has been able to review Southern's timetable proposals against their SLC for December 2010 as detailed in SLC 2A – Part 2 which currently forms part of the Franchise Agreement between Southern and the Department and Transport. The SLC is not specific about the additional hourly off-peak train slots between London Victoria and Brighton (Appendix M refers).

6.4. FCC believes that Southern has insufficient Firm Rights to support the full extent of the train slots bid and offered (as described per D 3.2.1).

6.5. The additional train slots being sought contravene Decision Criteria D 6 (a), (c), (d),and (o).

**7                    DECISION SOUGHT FROM THE PANEL**

7.1               The Panel is asked to determine that :

(a)              Network Rail be directed to withdraw the Offer to Southern for a train slot to start the 08.50 Brighton – Victoria service from Brighton at 08.13.

(b) Network Rail be directed to withdraw the offer to Southern of Saturday train slots between Brighton and London Victoria to a level that is consistent with the weekday Offer.

**8            SIGNATURE**

For and on behalf of First Capital Connect Ltd

Signed

Print Name

Position: Date

1. **APPENDICES AND ANNEXES**

A. Minutes of NR/FCC December 2010 Timetable meeting held 18 December 2009

B. Minutes of NR/FCC/Southern December 2010 Timetable meeting held 21January 2010

C. Minutes of NR/FCC/Southern/DfT December 2010 Timetable meeting held 3 February 2010

D. Letter from FCC to NR re December 2010 Timetable, dated 11 February 2010

E. Minutes of NR/FCC/Southern December 2010 Timetable meeting held 23 February 2010

F. Minutes (with FCC amendments) of NR/FCC/Southern December 2010 Timetable Offer meeting held 2 July 2010

G Internal FCC log of conversation with NR re December 10 Timetable (Saturday) dated 13 July 2010

H. E-mail between FCC/NR re December 10 Timetable (Saturday) dated 15 July 2010

J E-mail between FCC/NR re December 10 Timetable (Saturday) dated 20 July 2010

K. Letter from FCC to NR re December 10 Timetable Offer, dated 15 July 2010

L. Letter from FCC to NR re December 10 Timetable Offer, dated 23 July 2010

M Assessment of Southern SLC

N. Extract of NR South (Southern) Rules of the Plan re Headways, dated 31 July 2009.

O. Extract of FCC/NR Track Access Contract dated 9 February 2006, with Schedule 5 (Services and Scheduled Equipment)

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