1. **DETAILS OF PARTIES**
   1. The names and addresses of the parties to the reference are as follows:-
      1. XC Trains Limited, Company No. 04402048 whose Registered Office is at 1 Admiral Way, Doxford International Business Park, Sunderland ("XC") ("the Claimant"); and
      2. Network Rail Infrastructure Limited, Company No. 2904587, whose Registered Office is at Kings Place, 90 York Way, London N1 9AG ("NR" ("the Respondent")).

This is a single party submission on behalf of CrossCountry Trains and the contact is:

Matt Pocock

Cannon House

Birmingham, B4 6BS

[redacted]

1. **THE CLAIMANT’S’ RIGHT TO BRING THIS REFERENCE**
   1. With reference to Network Code Condition D2.2.8, this matter is referred to Timetabling Panel ("the Panel") for determination in accordance with Condition D5.1.2 of the Network Code and Section 3.5.4 of the 2013 Timetable Planning Rules.
2. **CONTENTS OF REFERENCE**

This Sole Reference includes:-

* + 1. The subject matter of the dispute in Section 4;
    2. A summary of the issues in dispute in Section 5;
    3. A detailed explanation of the issues in dispute prepared by the claimant in Section 6;
    4. In Section 7, the decisions of principle sought from the Panel in respect of
       1. legal entitlement and
       2. remedies;
    5. Appendices and other supporting material.

1. **SUBJECT MATTER OF DISPUTE**
   1. This dispute concerns the decisions published by Network Rail in the Engineering Access Statement 2013 v4.0.
   2. XC is the train operating company providing long distance passenger train services, including the route between Manchester and Bournemouth. 24 WTT train services are planned to operate over this route on the Sundays in question (engineering period J of the May 2013 WTT). See Appendix 1 for the Period J WTT.
   3. Significant volumes of passenger journeys are made with XC at weekends. XC passenger count data for equivalent Sundays in November 2011 shows between 2,000-3,000 passengers travelling each Sunday on the trains affected by these Restrictions of Use (RoU’s) between Bournemouth and Reading.
   4. The operation of Sunday WTT services on this route is affected by the RoU’s in timetable weeks 32, 33, 35 and 36. Network Rail’s proposed RoU’s included within the EAS prevent XC from operating a reasonable service all day on Sundays between Manchester and Southampton.
   5. The combination of possessions on Wessex and Western routes prevent XC from operating 12 passenger services in each direction (24 in total) included within the May 2013 Sunday WTT for Period J for a significant part of their journey (see Appendix 2 for an annotated WTT showing the impact).
   6. In addition, the combination of RoU’s means that there is no route available to bring the Voyager units stabled at Eastleigh depot off the depot to form services from Reading. This means that in addition to the impact described in Appendix 2, it will not be possible for XC to provide a service from Reading to Birmingham because rolling stock resources will be trapped on the depot.
   7. This dispute arises over the application of the decision criteria as set out in D4.6 to the engineering access proposals as published in the 2013 EAS v4.0 for timetable weeks 32, 33, 35 and 36, in particular that the combination of disruptive access proposed on Wessex and Western routes has an unduly disruptive impact on XC services.
2. **SUMMARY OF DISPUTE**
   1. Network Rail progressed the consultation for its Engineering Access Statement 2013 in accordance with Network Code Condition D2.
   2. In Version 3 of the Engineering Access Statement, NR confirmed a series of RoU’s on the Wessex Route in weeks 32, 33, 35 and 36, which NR had previously discussed with XC and XC had indicated to be acceptable in terms of their impact to Manchester – Bournemouth services.
   3. In Version 3 NR also proposed a series of additional RoU’s affecting access via the West Curve at Reading and preventing through services to Southampton and Bournemouth running via Basingstoke.
   4. The combination of possessions on the Wessex and Western Routes has an unduly disruptive impact on XC services and as such XC advised NR that a solution would be required to remove the proposed Wessex access in order to facilitate the works at Reading.
   5. NR declined to remove either the Western or Wessex RoU’s and published the Wessex and Western access in Version 4.0 of the EAS as their decision.
   6. XC has confirmed support for the proposed Oxford Road Junction remodelling element of the Reading Area Station Remodelling (RASR) project, however the impact of the access required to deliver these works is unacceptable when combined with the proposed RoU’s on Wessex Route.
   7. XC discussed the objection to this combination of possessions with NR, and advised them of the specific RoU’s that would need to be altered/removed in order to facilitate the operation of a reasonable level of XC Sunday service between Manchester – Southampton, consistent with the level of demand historically observed for these services on equivalent Sundays in November 2011. Appendix 4 shows the XC response to EAS v4 and Appendix 7 shows further email correspondence between XC and NR proposing a solution. Passenger count data for an equivalent period of Sundays in 2011 is included in Appendix 3.
3. **EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT’S ARGUMENTS TO SUPPORT ITS CASE**
   1. XC’s objection to the proposed combination of RoU’s is made on the basis that XC believes reasonable access should be provided to allow a service to operate on the route from Manchester – Southampton that is consistent with the level of Sunday demand for these services.
   2. XC believes that NR has made their decisions on the proposed combination of access without properly considering the impact of the combination of access on the operation of XC train services (i.e. they have failed to de-conflict the access plan across route boundaries).
   3. Further, in failing to identify the combined impact of the proposed RoU’s, NR has failed to fulfil their obligation set out within Section 1.0 of the Introduction to the Engineering Access Statement 2013, to have the “aim of achieving the optimal balance between access to the network for train operations and access for maintenance, renewal and enhancement work”.
   4. The proposed Western Route RoU prevents XC running via Basingstoke and means we are unable to serve Basingstoke, Winchester and Southampton Airport Parkway stations by rail, due to the requirement to divert via Guildford and Havant and Netley.
   5. However, the proposed Wessex Route RoU prevents XC from operating the amended timetable that it needs to operate over the diversionary route via Guildford. The RoU also prevents XC from moving units from Eastleigh depot on Sunday morning to Reading, meaning that the Voyager units needed to resource the service north of Reading are not available.
   6. A total of 12 services in each direction would be unable to operate to Basingstoke, Winchester and Southampton Airport Parkway. In addition, 5 services in each direction would be removed from Brockenhurst and Bournemouth.
   7. The impact of the combination of RoU’s is therefore that no route is available to operate services between Oxford (and stations north thereof) and Southampton for either all or part of the time on Sundays in weeks 32, 33, 35 & 36. In addition, rolling stock resources are not available to operate up to 14 trains in each direction from Reading to Birmingham on these Sundays.
   8. NR has not provided any evidence to demonstrate to XC that they have applied the Decision Criteria in the process of scheduling these RoU’s.
   9. XC believes that the following interpretation would apply to the application of the Decision Criteria to this case:
      1. ***maintaining, developing and improving the capability of the Network;***

It is the decision by NR to schedule these works concurrently that is the subject of XC’s dispute. We have not been provided with any evidence to demonstrate that the proposed Wessex RoU’s could not be re-dated to alternative weeks. This would not appear to compromise NR’s ability to maintain the capability of the Network.

XC has confirmed support for the Oxford Road Junction remodelling element of the RASR project, recognising the need for NR to undertake these works in order to achieve the aims of the RASR project to improve the capability of the network.

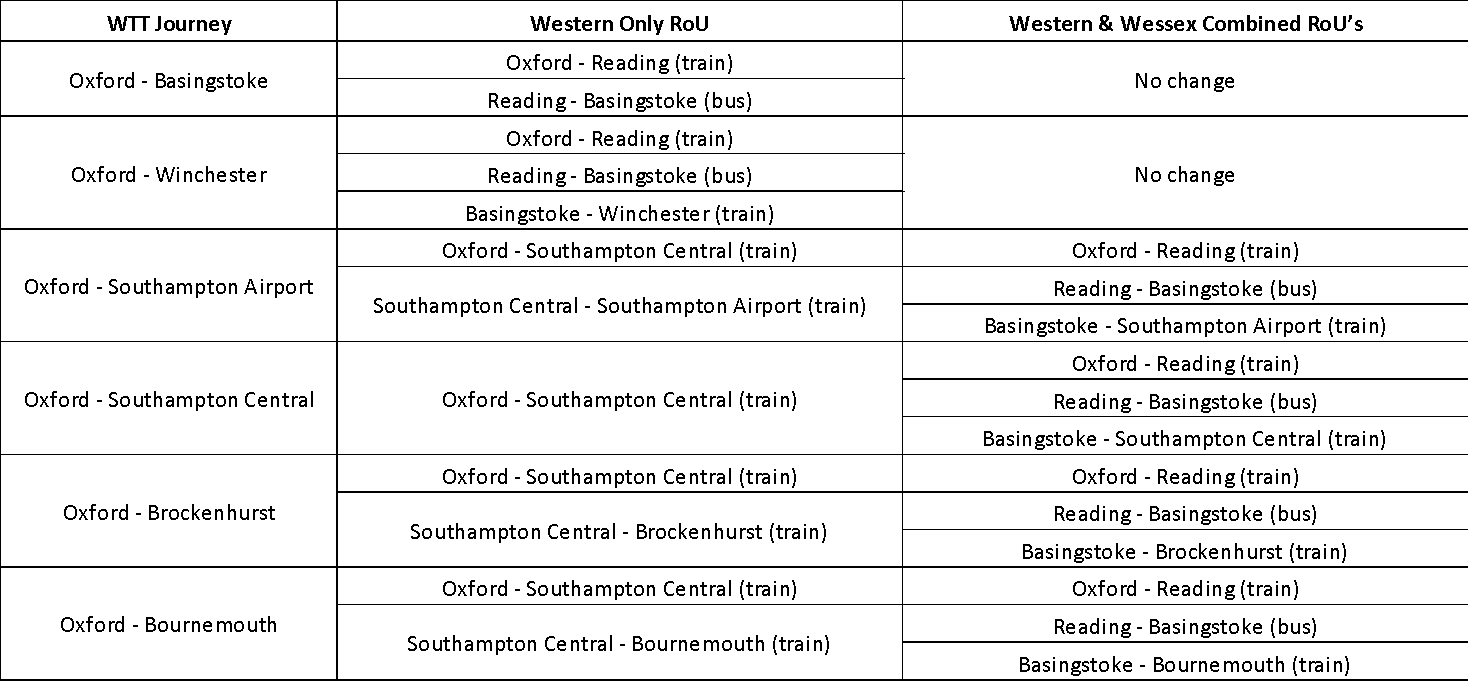
We also support the need for NR to undertake the standard maintenance works that are the subject of the proposed Wessex RoU’s to maintain the capability of the Network.

* + 1. ***that the spread of services reflects demand;***

The proposed concurrent scheduling of the Wessex and Western RoU’s prevents XC from operating a reasonable spread of services between Oxford and Southampton to match Sunday demand for these services on that is evident from historic passenger count data as shown in Appendix 3.

In particular there is a requirement for train-bus-train interchanges to occur for passengers travelling to/from Southampton Airport, Southampton Central, Brockenhurst and Bournemouth, where there is demand for direct train services to serve these destinations.

The following table summarises the impact on passenger journeys:



*Table 1 – Impact on passenger journeys*

* + 1. ***maintaining and improving train service performance;***

XC does not believe that this criterion is directly relevant to considerations in this case. Whilst we recognise that there is a performance benefit from the enhancement scheme at Reading, this case concerns the scheduling of RoU’s and does not challenge the requirement to undertake the works themselves.

* + 1. ***that journey times are as short as reasonably possible;***

The proposed concurrent scheduling of the Wessex and Western RoU’s prevents XC from operating a timetable that minimises interchange penalties for passengers travelling from the North West to the South Coast. In particular there is a requirement for train-bus-train interchanges to occur for passengers travelling to/from Southampton Airport, Southampton Central, Brockenhurst and Bournemouth. Whilst the overall impact on journey times is variable, there is a negative impact on Generalised Journey Times and attractiveness of journey opportunities as a consequence these train-bus-train interchanges. This is illustrated in Table 1 (above).

* + 1. ***maintaining and improving an integrated system of transport for passengers and goods;***

XC believes that this aim is compromised by the proposal to schedule these works concurrently, as passengers will suffer changes to the timetable that compromise the provision of through journeys, and journeys by rail are replaced by the need to make bus-train-bus interchanges. The impact is summarised in table 1 (above).

* + 1. ***the commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware;***

The proposed concurrent scheduling of the Wessex and Western RoU’s prevents XC from operating a direct service by rail for which there is considerable demand. As such there is a disproportionate impact on XC passenger revenue and a potential future franchise effect on passenger demand from us needing to offer a severely degraded timetable during this period. Evidence suggests that due to the often infrequent nature of journeys made with XC, passengers deterred from travelling at times of severe engineering disruption may be deterred from travelling with us in the future life of the franchise.

NR has provided no evidence to demonstrate that they have taken due consideration of this impact in proposing the concurrent scheduling of these RoU’s.

We have not been provided with any evidence from NR to explain whether there is a commercial imperative for these works to be scheduled concurrently.

* + 1. ***seeking consistency with any relevant Route Utilisation Strategy;***

XC does not believe that this criterion is relevant to considerations in this case. We recognise that the enhancement scheme at Reading is an established part of the Western RUS and NR’s Strategic Business Plan, however, we are only challenging the decision to schedule Wessex RoU’s concurrent to the works at Reading. We are not challenging the requirement to undertake these RASR works or the timing of the Western RoU’s.

* + 1. ***that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed;***

XC does not believe that this criterion is relevant to considerations in this case.

* + 1. ***mitigating the effect on the environment;***

XC does not believe that this criterion is relevant to considerations in this case.

* + 1. ***enabling operators of trains to utilise their assets efficiently; and***

The proposed concurrent scheduling of the Wessex and Western RoU’s prevents XC from making efficient use of rolling stock and traincrew on the Sundays affected.

The combination of RoU’s means that there is no access to bring the 7 Voyager units stabled at Eastleigh from the depot to resources services from Reading.

Three of these Voyager units would be used to resource the Reading – Bournemouth WTT service. These units would effectively become idle as the result of there being no route available to serve stations beyond Reading. With the Western RoU in isolation, it is possible to use these resources to operate services between Reading West and Southampton Central, with the impact of improving passenger journeys by minimising the need for train-bus-train interchange on key journeys as shown in Table 1 (above).

The remaining four Voyager units would be used to resource the service north of Reading. This means that it will not be possible for XC to provide a service from Reading to Birmingham because rolling stock resources will be trapped on the depot.

The re-dating of the Wessex works as proposed by XC will therefore allow us to make more efficient use of resources.

* + 1. ***avoiding changes, as far as possible, to a Strategic Train Slot other than changes which are consistent with the intended purpose of the Strategic Path to which the Strategic Train Slot relates.***

XC does not believe that this criterion is relevant to considerations in this case.

1. **DECISION SOUGHT FROM THE PANEL**
   1. The Panel is asked to determine that:

Network Rail be directed to adjust the combination of Restrictions of use on its Western and Wessex Routes between weeks 32, 33, 35 and 36, which will currently prevent XC operating a reasonable level of service between Birmingham and Southampton from on Sundays 3, 10 and 24 November and Sunday 1 December 2013.

This can be achieved by Network Rail curtailing the RoU’s on Wessex Route as proposed by XC and/or re-dating these RoU’s.

1. **SIGNATURE**

| The Claimant |
| --- |
| For and on behalf of  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signed  -----------------------------------------------------------  Print Name  **Matt Pocock**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Position  **Head of Train Planning & Strategic Timetable Development**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |

1. **APPENDICES AND ANNEXES**

**Appendix 1: Bournemouth – Manchester Master Public Timetable Period J**

**Appendix 2: Bournemouth – Manchester Public Timetable Period J showing impact of RoU’s**

**Appendix 3: November 2011 Sunday passenger count data for Bournemouth – Reading / Birmingham flows \***

**Appendix 4: Engineering Access Statement v4 CrossCountry Response to Western and Wessex Rou’s**

**Appendix 5: 2013 Engineering Access Statement v4.0 Wales & Western**

**Appendix 6: 2013 Engineering Access Statement v4.0 Wessex**

**Appendix 7: Email from John Cherrington to Mark Sleet on 1 Nov with proposed resolution to the conflicting Wessex and Western RoU’s**

***\* Count data to follow***