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January 24, 2006

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Dear Mr. Rowe

Submission on WestNet Rail's Part 5 Instruments

Great Southern Railway is grateful for the opportunity to participate in the review of WestNet Rail's Part 5 Instruments. Our submission is provided in response to the Notice from the Economic Regulation Authority, Western Australia of 15 December 2005.

In addressing the Part 5 Instruments we have attempted to provide comments and suggestions from a passenger rail operator's perspective that we trust you will find useful. We have also taken the opportunity to address some broader policy issues that relate to access pricing and its application to passenger rail operators.

There are good reasons to consider developing pricing principles that apply specifically to passenger rail operators and we have briefly discussed these in Great Southern Railway's attached submission.

We thank you for your consideration of this submission and trust you will find merit in it.

Yours faithfully,



Tony Braxton-Smith
Chief Executive Officer



Great Southern Railway

**Submission to the Economic Regulation Authority
Western Australia.**

WestNet Rail's Part 5 Instruments

January 2005

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Introduction

This submission is a response to the Economic Regulation Authority's, (the Authority's) invitation of 15 December 2005 to provide submissions on WestNet Rail's (WestNet's) 4 Instruments under Part 5 of the Railways (Access) Code 2000, (Code). Great Southern Railway (GSR) is grateful for the opportunity to make this submission.

The Instruments, the Train Management Guidelines, Train Path Policy, Costing Principles and Over-payment Rules of December 2005 appear to have altered little since they were approved by the Independent Rail Access Regulator between December 2002 and May 2003. This submission is not restricted to amendments to the documents since approval by the Independent Rail Access Regulator but approaches the review as an opportunity to suggest improvements that appear appropriate with the benefit of 3 years experience working with the Part 5 Instruments.

This submission addresses each Instrument individually and provides comments on each Instrument in the same sequence as the content of the Instrument. The comments have been structured to provide an assessment of a particular aspect of the Instrument and where possible to also provide recommendations for improvement.

A. Train Management Guidelines

A1). Train Management Guidelines, Page 6

The Train Management Guidelines provide WestNet with extensive rights to Instruct the Operator to, for instance, “a) to cease use of the Train Path... b) to continue use by the Service of the Network subject to such variation of the applicable Train Path or the Service or the composition or quality of the Trains as WestNet nominates;”

This section is the same as the equivalent section in the Train Management Guidelines of February 2003. However the section creates unnecessary risk and uncertainty for Operators as they stand. These rights create the potential for WestNet to impose significant additional cost on the Operator by disrupting and delaying trains and requiring variation of the composition of Trains. Such potentially damaging rights should not be granted without good reason.

To date these rights have not been used by WestNet to the extent permitted in the Train Management Guidelines suggesting that such broad application is not necessary. It is not appropriate or desirable to rely solely on the goodwill of WestNet to refrain from using this power in a way that might be prejudicial to an operator. Rather, there should be some constraint in the wording of this clause.

It is recommended that the Train Management Guidelines include criteria that must be satisfied before such rights can be exercised by WestNet. The criteria should require that the rights are only exercised to the extent that it is necessary to avoid;

- A present safety risk; or
- A breach of the Access Agreement by the Operator.

The definition of Instruction is also relevant because it is Instructions that WestNet issue. The definition of Instruction should also be amended to restrict the use of Instructions that impact on Train Paths. Instructions are defined to mean,

“all instructions and directions which are issued by WestNet from time to time which;

- a) ensure, facilitate or encourage the proper, efficient, safe and lawful
 - 1) use of and access to the Network by all Network users, and
 - 2) management of the Network by WestNet”.

Given the potentially damaging impact on Operators of such rights it is appropriate to limit the application of such rights to situations where there is a real need. The current definition includes “facilitating or encouraging the proper and efficient” use of the Network, which allows the issue of Instructions in almost any situation.

A more appropriate definition may be;

“a) ensure the safe and lawful...1)...2)...”

Or

“a) ensure compliance with the Access Agreement and the safe...1)...2)...”

In this latter alternative, the Access Agreement will include an obligation to “comply with all relevant laws” and to operate in a safe manner.

These two alternatives will ensure the rights are only used where appropriate and Operators’ Services are not unnecessarily disrupted. WestNet will retain the right to issue instructions where they are needed. This approach is consistent with the manner in which WestNet has operated the Network to date. To provide rights which may be less cautiously applied in the future at the expense of the Operator for no suitable reason is unnecessary and potentially damaging to Operators.

A2). Point b), Page 6

The second point b) on page 6 provides WestNet with the right to issue an Instruction varying an Operator’s Train Path. Such a variation can only become permanent after following appropriate procedures, such as a timetabling procedure (usually contained in the Access Agreement). However, until such procedures have been followed the Instruction “will have a temporary effect”. The construction of this wording in effect provides WestNet with the right to make a “permanent” variation to a Train Path by issuing an Instruction for an indeterminate period. Train Paths are the fundamental right which Operator’s secure in their Access Agreement and security of Train Paths is essential for the planning and investment required to successfully operate a train service.

There is no circumstance or reason that would justify the permanent variation of a Train Path without following the usual timetabling procedure. To provide a right, such as that provided by point b), allowing WestNet to avoid fulfilling its fundamental obligation under the Access Agreement (to provide Train Paths) undermines the essence of the Access Agreement and places Operators at extreme risk of having their services significantly disrupted by being varied for an indefinite period or otherwise in a manner that renders them unviable.

It is recommended that WestNet's right to issue an Instruction to amend a Train Path be limited to temporary variations made for the reasons of avoiding a present safety risk or avoiding a breach of the Access Agreement by the Operator. All permanent variations should be made in accordance with the procedure to vary the timetable.

A3). Passenger Priority

Passenger priority is a well established principle that responds to the fact that passengers are more sensitive to timeliness than freight. Passengers will not tolerate being late whereas freight is rarely collected from the rail terminal immediately upon arrival. Various regimes through out Australia have incorporated this principle, for instance;

1. The NSW Rail Access Undertaking (Regime) and the Transport Administration Act 1988 (NSW) include reasonable passenger priority. Section 7.1 c) of the Regime requires the Rail Infrastructure Owner to "maintain reasonable priority and certainty of access for railway passenger services in accordance with its obligations under the Transport Administration Act";
2. Part 38H of the Rail Corporation Act 1996 (Vic) provides for the priority of passenger services, "the principle of passenger priority is the giving of priority to the provision of declared rail transport services to passenger service users..."

The WestNet General Principles for Train Management have attempted to address passenger priority but the language used is unclear. The document includes the following, "iv) aside from the rules in the matrix no one train has priority over another except for; a) Trains operating on a Scheduled Train Path (Passenger) where the Train Controller must take account of the fixed intervals for passenger stops en-route between exit and entry..." It is not clear what is expected of the Train Controller who must "take account of the fixed intervals for passenger stops".

It is recommended that passenger priority be addressed by WestNet in a similar manner to that of other regimes, for instance the NSW regime used by ARTC, RailCorp and RIC which provides a clear statement of passenger priority as a key principle.

Alternatively WestNet could adopt similar wording to that used by the Public Transport Authority of Western Australia which includes the following statement after the train decision making matrix, "When making judgements with respect to the rules, a Train Controller... will give priority to minimising disruptions to the urban passenger Train timetables..."

A4). Train Decision Matrix

Rule 3 states "Train A may be given preference on condition Train B will still meet OT objectives". Train B is on time and Train A is the late running train. The rule may be true but represents an exception to the general rule which should be expressed as "Train B is given preference. Train A may be given preference on the condition that Train B will still meet OT objectives."

A5). 3.5 Repairs, Maintenance and Upgrading of the Network, Page 11

At the bottom of page 11, section 3.5 refers to WestNet not being required to consult with Operators regarding a possession in the case of an emergency or Force Majeure event. The time pressure of such a circumstance is recognised but it is not clear why, if WestNet is able to organise a possession and to make repairs, it could not also consult operators via a prompt communication method such as a telephone call to a nominated representative of the Operator. The lack of consultation is also somewhat inconsistent with the requirement in section ii) on page 12 to advise affected Operators of emergency possessions.

It is recommended that WestNet be required to consult with Operators in relation to all Possessions.

A5) 1). Notice Periods, Page 12

The time periods for notification of a Possession expressed in sections iii), iv) and v), page 12, are very short. Possessions can be extremely disruptive to Train Services often necessitating cancellation of some services, and it is important that Operators receive as much notice as possible to allow time to make alternate arrangements and notify customers. It is recommended that the time periods remain but are expressed as minimum requirements with an obligation to provide as much notice as practicable. This would be more consistent with other jurisdictions, in NSW the ARTC, RailCorp and RIC must authorise Possessions in accordance with the Network Possessions Manual. The Network Possessions Manual makes provision for emergency Possessions but planned Possessions must be included on a rolling annual Possessions plan, providing Operators with 12 months notice.

A6). 6.1.6 Operator's Obligations, Section h)

The Train Management Guidelines provide that if WestNet decides to upgrade communications equipment the Operator is obliged to also upgrade to maintain compatible communication equipment. The practical benefits of this are clear, however this obligation on the Operator has the potential to impose significant additional cost on the Operator. There should be a procedure which prevents WestNet from making such a decision without a sound basis.

It is therefore recommended that WestNet's decision to upgrade should be subject to WestNet having a documented business case to upgrade the communications equipment, including the costs imposed on the Operators and showing a positive Net Present Value and other quantifiable benefits.

B. Train Path Policy

B1). 2.2.1 Guidelines for Assessing Whether a Request is Warranted for a Train Path

The Train Path Policy uses the phrase “first in first served”, however the effect of this policy requires further definition. It is not clear if “first in” refers to the date of the request, the date of the planned commencement of services or the date that the request is secured in an Access Agreement. It is also not stated what time period prior to the intention to commence services a request can be made. For example, which of the following two requests would prevail: a request made on 10 January 2006 for a Train Path to commence on 10 December 2006 or a request received on 11 January 2006 for a Train Path to commence on 11 February 2006.

It is recommended that the Train Path Policy be clarified and further developed.

In relation to Scheduled Train Paths or Flexible Scheduled Train Paths the Train Path Policy, from page 3, contains a set of criteria that an Operator must satisfy before WestNet will negotiate to provide Train Paths. “WestNet will negotiate to provide Train Paths or additional Train Paths where the Operator meets the following criteria”. It is not clear why such a provision is required and the most likely effect of such a provision is simply to delay the negotiation of Train Paths. Furthermore, the criteria require contractual commitments to operate services or indicia of future growth. In some instances these criteria will be irrelevant. For instance a passenger Operator is unlikely to have contractual commitments from passengers to travel on Trains that do not have a timetable or secure Train Paths. Likewise, where the Operator is simply seeking Train Paths that are different rather than additional Train Paths there will be no indicia of growth.

It is recommended that these criteria be deleted. If WestNet’s intention in including such a provision is to deter recidivist negotiators or frivolous enquiries perhaps new Operators without an existing Access Agreement could pay a small sum (a few hundred dollars) prior to negotiations commencing, the sum to be refunded through a deduction of access fees once an Access Agreement is in place.

B2). 2.2.2 Process for negotiating new Train paths prior to an Access Agreement

Section iv) states that “if the Operator is seeking Train Paths currently used for the same purpose under another agreement and the new agreement is likely to supersede the existing one then WestNet will commit to transfer the existing Train Paths”. This provision appears to suggest that WestNet will commit to the Operator (a new access seeker) seeking Train Paths that it will breach its contractual commitments to another Operator currently holding the same Train Paths.

The only criteria that the access seeker must satisfy to force WestNet to make this commitment are that the Train Path is;

- used for the “same purpose”; and
- “likely to supersede the existing one”.

The “same purpose” criteria may be satisfied if the access seeker also intended to operate passenger Trains, and the “likely to supersede” criteria could be satisfied if there is a greater than 50% probability that the access seeker can capture the existing Operator’s market. In the event that the access seeker is given the existing Operator’s Train Paths this would appear very likely. This effect would be disastrous for WestNet and the Operator and it is unlikely that this is the intended effect of this provision. It is recommended that section iv) be deleted.

B3). 2.5 Repairs, Maintenance and Upgrading of the Network

This section is a duplicate of the section appearing in the Train Management Guidelines and the same comments apply as provided in section 3.5 of the submission on the Train Management Guidelines.

B4). 2.6 Removal of a Train Path

The last paragraph of this section provides for the removal of a Train Path from an Operator who “loses the contract to undertake the passenger or freight task”. The purpose of this provision is to prevent Operators from hoarding Train Paths which is a positive purpose and may increase the utilization of the Network. However, it may be appropriate to limit this provision by requiring the Operator to surrender the Train Path only where it cannot demonstrate a continuing or an alternative use for the Train Path. There may be good business reasons why an Operator would lose a contract with the intention of replacing it with another contract for the same Train Service. Furthermore it should be noted that it is the Operator that has secured the right to the Train Path through the Access Agreement not the end customer.

B5). 2.8 Cancellation of Services using Train Paths

The circumstances listed under which a Train Path may be cancelled are appropriate but appear to operate individually rather than collectively, therefore it is appropriate to amend the “and” to an “or” in 2.8 (vi).

B6). 2.9 Variations to existing Train Paths or Additional Paths

GSR supports the principle that “once an Operator is given a Train Path and is meeting its obligations and requirements under the Code and Access Agreement, that Train Path would not be permanently varied without the consent of both parties.”

B7). 5. Competition for the same Train Path

The policy does not appear to comprehensively provide for all contingencies very effectively. There is a number of issues that have not been considered;

- a) The extent to which each Train Path forms part of a much bigger operating plan;
- b) The extent to which each Train Path may be varied to accommodate the other Train Path;
- c) The permissible time period a request may be made prior to the operation of the Train Path;
- d) The commencement date of the Train Path;
- e) The communication process between the access seeker and WestNet; and
- f) The use of the Network of the total access request.

It is recommended that section 5 be given further consideration. The "Capacity Use Rules" developed by the Essential Services Commission in Victoria provide a comprehensive alternate approach.

C. Costing Principles

C1). Passenger Pricing Principles

This section of the submission focuses on the general topic of the principles of access pricing for passenger services. Some of these issues may be beyond the scope of the current review being undertaken by the Authority, however they have been raised because they are important issues that require urgent action from regulators and government.

There are a number of factors that are unique to passenger services that have a direct bearing on access prices such as:

The end market's capacity to pay;

The interests of the public; and

The costs imposed on access providers.

These issues are discussed below.

Capacity to Pay

Pricing based on the end market's capacity to pay is not inconsistent with section 44ZZAA of the Trade Practices Act 1974 and is currently applied in relation to various freight traffics but does not appear to have been applied in relation to passenger trains. It can be argued that passenger trains have a lower potential to earn revenue and thus pay access charges and this should be reflected in the level of access charges.

The tables below demonstrate that passenger trains have a lower capacity to pay than freight trains. Due to the nature of the end market passenger trains earn less revenue per train km and per GTK than freight trains. However, in most jurisdictions passenger trains pay a higher total access charge when calculated per 1000GTK than freight trains. The higher total access charge, when calculated as a GTK charge, is due to both passenger and freight trains incurring the same usage charge per GTK and passenger trains incurring the same or higher flagfall charges. The affect of a passenger train paying the same or a higher flagfall than a freight train is that the flagfall will be spread over less GTK's and therefore the total access charge expressed as a GTK rate will be higher for passenger trains. Thus, passenger trains earn less revenue per GTK but pay a higher access charge per GTK.

The tables below are based on a small sample of trains and for the intermodal freight trains the access charge has been extrapolated from the ARTC access charges as an approximation of what WestNet charges freight trains on the WestNet Network.

Table 1

Revenue per KM

	Perth, Sydney	Adelaide, Melbourne
Freight	\$54	\$51
Passenger	\$15	\$8

Table 1 demonstrates that freight trains earn significantly more revenue per train km.

Table 2

Revenue per 1000GTK

	Perth, Sydney	Adelaide, Melbourne
Freight	\$16	\$15
Passenger	\$12	\$14

Table 2 demonstrates that despite the much greater mass of a freight train, freight trains still earn slightly more revenue per GTK than passenger trains. Conversely, passenger trains incur far greater above-rail operational costs (e.g. staffing, food, guest amenities, carriage furnishing and maintenance)

Table 3

Total Access per 1000 GTK

	Perth, Sydney	Adelaide, Melbourne
Freight	\$2.26	\$3.14
Passenger	\$4.56	\$6.42

Table 3 demonstrates that the total access charge expressed as per 1000GTK is significantly higher for passenger trains.

Table 4

Revenue per Access Charge

	Perth, Sydney	Adelaide, Melbourne
Freight	\$6.99	\$4.80
Passenger	\$5.45	\$2.20

Table 4 demonstrates that revenue per access charge, an indication of capacity to pay, is considerably lower for passenger trains.

The above tables demonstrate that the end market has not been sufficiently considered when access charges for passenger trains were set. Significant reductions in all jurisdictions would be required to bring passenger access charges into line with freight access charges, particularly where a flagfall applies.

In summary the preceding tables demonstrate that passenger trains pay higher access charges than other trains yet their capacity to earn revenue is less than other trains. The structure of the access charge creates a higher fixed portion of the access charge for passenger trains resulting in passenger operators bearing more demand risk than other rail operators. This situation must be rectified by the reduction, over time, of the access prices that apply to passenger trains.

Public Interest

Passenger train services compete in the market for passenger transport services and have a very small proportion of the market. Passenger trains compete with the motor vehicle and other forms of long distance public transport that generally do not make direct payments toward the infrastructure on which they travel. This weakens rail's competitive position in the passenger transport market.

Rail provides many benefits to the public at large. Even non-users benefit from the relocation in vehicles using the roads, thus reducing the external costs associated with road use such as environmental damage, accident costs and congestion costs. Significant direct public benefits are provided by the rail service which is often the only affordable means of transport for many rail passengers including youth, budget tourists and pensioners.

Passenger train services also benefit the tourism economy and support the rural and regional communities of Australia. Tourists are attracted to the rural and regional destinations by the virtue of appeal and affordability of the train journey. This generates "export earnings", stimulates the economies of rural and regional communities.

The potential benefits that passenger rail can deliver to the public have been inhibited and even retarded by the inequity of passenger rail's comparatively excessive contribution to access charges.

Costs Imposed on Access Providers

Access charges generally reflect the costs imposed on the access provider by the rail operator. As previously demonstrated passenger trains pay a greater charge per GTK but impose less cost on the access provider. This is because passenger trains are lighter, with lower axle loads that cause less track damage. They also perform more reliably and flexibly meaning they occupy less capacity per train path.

In relation to track damage the usage component of the access fee broadly reflects cost imposed on access providers. However, because passenger trains are generally charged a high flagfall component the total charge per GTK is greater than for a freight train which will cause much more damage. This inequity can best be addressed by a significant reduction of the flagfall.

In relation to the capacity consumed, passenger trains are more reliable and thus consume less real capacity. Every time a train is late and operates off its train path it is effectively consuming two train paths. In the case of freight trains, it is understood that network-wide performance is around 50% on-time running. In the case of Great Southern Railway, on time performance regularly exceeds 80%. This greater reliability should be recognized in pricing principles. Passenger trains are also more flexible in their operation, their superior maximum speed and acceleration provide more options for train controllers to manage passenger trains through a congested network.

Access prices in all jurisdictions do not take account of such factors.

It is important that regulators and access providers understand the need for passenger trains to be charged a lower access rate than many other trains, as is currently done for freight trains carrying particular commodities, such as grain. GSR hopes that by including this information in this submission and other forums the debate on these important matters will commence.

It is recommended that the Authority and regulators in general consider developing access pricing principles specifically for passenger trains.

C2). General Comments

The Costing Principles of December 2005 appear to be the same as the Costing Principles of December 2002. The Costing Principles of December 2002 have created floor and ceiling prices that are largely irrelevant to the actual access prices. The ceiling price is well in excess of what the market could bear. A ceiling price so far above the prices that the market can bear creates a risk to Operators in any price renegotiation. It may be appropriate to consider the use of a market reference point within the range of the floor and ceiling, as employed in the Australasia (Third Party) Access Code on the Alice Springs to Darwin railway or to consider a different approach to the valuation of assets discussed below in C2). GSR acknowledges that the Code does not presently provide for the use of such methods. Accordingly we recommend the Authority seek a mechanism to establish a future review process that takes such issues into its scope.

Due to the disparity between actual access prices and the floor and ceiling prices the approach taken in this submission on the Costing Principles is high level. This submission focuses on some overarching issues rather than dealing with detail where the detail is unlikely to bring the ceiling price within the realms of effectiveness.

The high ceiling also means that as volumes grow on the network access prices will not necessarily fall, despite the fact that each additional unit of volume will be provided by WestNet at a lower unit cost than the previous unit of volume, thus providing WestNet with potential for windfall gains.

The growth that is generated on the Network is generated by the marketing and efforts of the rail operators and they should share in the benefit of any volume growth. A sharing of the benefits of volume growth between the access provider and the rail operator can be achieved by using an escalation formula which is adjusted by $\frac{1}{2}$ GTK growth %, as follows;

$$A P_1 = A P_0 \times [(The\ greater\ of\ 2/3\ CPI\ or\ CPI - 2) - \frac{1}{2}\ GTK\ growth\%].$$

AP means access price.

This formula will obviously reduce the rate of increase in prices while the volume on the Network is growing and may even result in a decrease in prices where growth is more than double the CPI indexation. However access revenue for WestNet will never decline as a result of this formula for as long as CPI is zero or a positive number.

C3). DORC vs GRV

Other jurisdictions in Australia value assets using Depreciated Optimised Replacement Cost (DORC) instead of other approaches such as Gross Replacement Value (GRV). It is recognised that GRV is specified under the Code and the use of GRV is not debated. However it should be noted that the use of GRV can inflate the value of assets where the assets are not new, which is the case in this instance. The WestNet track is valued, using GRV, at approximately \$1mil per track km.¹ This is commonly accepted as the cost of new track. Even in comparison with actual new track the GRV approach provides WestNet with a high asset value. For example the DORC value of the Tarcoola to Darwin railway is \$1,696.9 mil² for 2239 route kms (1,415.5 of which is new) or an average of \$757,883 per km. WestNet's asset value on a per km basis is higher than the new track used in this example. Clearly the inflation of WestNet's asset value will increase the ceiling prices, giving WestNet greater ambit for pursuing higher charges than are technically justifiable.

Also in relation to the asset valuation the purchase price or lease price of the assets should be considered. It is not appropriate for WestNet to be able to value assets and earn a return on that valuation where the valuation exceeds the price paid for the assets on their acquisition. This creates a situation where WestNet could earn a regulated rate of return on an inflated asset value well above the actual price paid for the assets.

Other jurisdictions have developed arrangements to treat assets in existence at the time of acquisition in a different manner to assets procured by the access provider. This ensures that the regulated ceiling price does not result in a windfall return on the actual investment in the assets. For example the Victorian Rail Access Regime does not allow the access provider to earn any return on assets that existed at the time of acquisition. A similar approach in Western Australia may bring the ceiling price closer to a level at which it would play an effective role in price negotiation.

¹ Office of the WA Rail Access Regulator, Floor and Ceiling Costs to Apply to WestNet Rail, Septemebr 2003, Appendix 2

² Essential Services Commission SA, web site.

C4). Operations and Maintenance Costs

In relation to operations and maintenance, the use of GRV and Modern Equivalent Assets (MEA) results in the need to estimate the operation and maintenance task. WestNet's ability to perform this task accurately will have a significant impact on the floor and ceiling prices. It is recommended that the outcome of this task be closely monitored by the Authority during the annual audit or a special purpose audit.

D. Over-payment Rules

D1). 2.3 What constitutes revenue under the Ceiling Price Test under Clause 8, Schedule 4 of the Code

The last sentence in this section states, "However, since the Code does not provide non-Regime Operators a legal entitlement to any refund for any over-payment, such over-payments will be returned to WNR (WestNet Rail)." This approach clearly provides WestNet with a method to retain payments over the ceiling which it is not entitled to. Clause 8 of Schedule 4 of the Code states that, "An operator...must pay for the access not more than the total costs attributable to that route and that infrastructure." Section 47 2) of the Code states, "The Rules referred to in subsection 1 must give effect to the following basic requirements; ... b)...there must be no such excess in respect of that operator or group of operators".

It is moot whether a non-Regime operator is entitled to a refund, however WestNet must comply with the Code. It would appear from the above that WestNet must return any over-payment referred to in section 47 2) for WestNet to be able to comply with the Code, whether it is received from a non-Regime Operator or a Regime Operator.

D2). 2.5 Over-payments and Under Recoveries

Where WestNet is entitled to offset over and under recoveries there is a risk that the Operators receiving the benefit arising when WestNet under recovers will not be the same Operators that are disadvantaged by any offsetting against over recoveries. Given the range between the floor and ceiling prices³ this scenario appears unlikely. However offsetting should only occur where the same Operators are involved and no one Operator is disadvantaged.

³ Office of the WA Rail Access Regulator, Floor and Ceiling Costs to Apply to WestNet Rail, Septemebr 2003, Appendix 2

D3). 2.8 Allocation of an Over-payment

The process adopted by WestNet is to identify the Operator that triggers the over-payment. However, the trigger is the result of the total use on that route section rather than a single Operator. It would be more appropriate to identify the route section on which the over-payment is made (as in point 3 of WestNet's allocation of an over-payment) and apportion the repayment on the basis of each Operator's access revenue paid to use that route section.

E. Summary of Recommendations

Train Management Guidelines

Recommendation 1

Train Management Guidelines

It is recommended that the Train Management Guidelines include criteria that must be satisfied before such rights can be exercised by WestNet. The criteria should require that the rights are only exercised to the extent that it is necessary to avoid;

- A present safety risk; or
- A breach of the Access Agreement by the Operator.

Recommendation 2

Instructions are defined to mean,

“all instructions and directions which are issued by WestNet from time to time which;

- a) ensure, facilitate or encourage the proper, efficient, safe and lawful
- 1) use of and access to the Network by all Network users, and
 - 2) management of the Network by WestNet”.

A more appropriate definition may be;

“a) ensure the safe and lawful...1)...2)...”

Or

“a) ensure compliance with the Access Agreement and the safe...1)...2)...”

The Access Agreement will include an obligation to “comply with all relevant laws” and to operate in a safe manner.

Recommendation 3

It is recommended that WestNet's right to issue an Instruction to amend a Train Path be limited to temporary variations made for the reasons of avoiding a present safety risk or avoiding a breach of the Access Agreement by the Operator. All permanent variations should be made in accordance with the procedure to vary the timetable.

Recommendation 4

It is recommended that passenger priority be addressed by WestNet in a similar manner to that of other regimes, for instance the NSW regime used by ARTC, RailCorp and RIC which provides a clear statement of passenger priority as a key principle.

Alternatively WestNet could adopt similar wording to that used by the Public Transport Authority of Western Australia which includes the following statement after the train decision making matrix, "When making judgements with respect to the rules, a Train Controller... will give priority to minimising disruptions to the urban passenger Train timetables..."

Recommendation 5

Rule 3 of the Train Decision Matrix states "Train A may be given preference on condition Train B will still meet OT objectives". It is recommended that this rule be amended to read; "Train B is given preference. Train A may be given preference on the condition that Train B will still meet OT objectives."

Recommendation 6

It is recommended that WestNet be required to consult with Operators in relation to all Possessions.

Recommendation 7

In relation to notice periods for possessions it is recommended that the time periods remain but are expressed as minimum requirements with an obligation to provide as much notice as practicable.

Recommendation 8

It is recommended that WestNet's decision to upgrade the communications equipment should be subject to WestNet having a documented business case to upgrade the communications equipment, including the costs imposed on the Operators and showing a positive Net Present Value or some other quantifiable benefit.

Train Path Policy

Recommendation 9

It is recommended that the Train Path Policy be clarified and further developed.

Recommendation 10

It is recommended that the criteria that an Operator demonstrate contractual commitments to operate services or indicia of future growth, before WestNet will negotiate Train Paths, be deleted.

Recommendation 11

The deletion of the following section is recommended; Section iv) states that "if the Operator is seeking Train Paths currently used for the same purpose under another agreement and the new agreement is likely to supersede the existing one then WestNet will commit to transfer the existing Train Paths".

Recommendation 12

The last paragraph of section 2.6 provides for the removal of a Train Path from an Operator who "loses the contract to undertake the passenger or freight task". It is recommended that this provision be limited by requiring the Operator to surrender the Train Path only where it cannot demonstrate a continuing or an alternative use for the Train Path.

Recommendation 13

It is recommended that section 5 be given further consideration. The "Capacity Use Rules" developed by the Essential Services Commission in Victoria provide a comprehensive alternate approach.

Costing Principles

Recommendation 14

It is recommended that the Authority and regulators in general begin to develop access pricing principles specifically for passenger trains.

Recommendation 15

It is recommended that consideration be given to the use of a market reference point within the range of the floor and ceiling, as employed in the Australasia (Third Party) Access Code on the Alice Springs to Darwin railway or to consider a different approach to the valuation of assets.

Recommendation 16

It is recommended that consideration be given to a sharing of the benefits of volume growth between the access provider and the rail operator. One method of achieving this is the use of an escalation formula which is adjusted by ½ GTK growth %, as follows;

$$A P1 = A P0 \times [(The\ greater\ of\ 2/3\ CPI\ or\ CPI - 2) - \frac{1}{2}\ GTK\ growth\%].$$

AP means access price.

Recommendation 17

Other jurisdictions have developed arrangements to treat assets in existence at the time of acquisition in a different manner to assets procured by the access provider. This ensures that the regulated ceiling price does not result in a windfall return on the actual investment in the assets. For example the Victorian Rail Access Regime does not allow the access provider to earn any return on assets that existed at the time of acquisition. It is recommended that a similar approach be considered in Western Australia to bring the ceiling price closer to a level at which it would be effective.

Recommendation 18

It is recommended that WestNet's estimate of the operation and maintenance task be closely monitored by the Authority during the annual audit or a special purpose audit.

Over-payment Rules

Recommendation 19

It is recommended that WestNet be required to return any over-payment referred to in section 47 2) of the Code, whether it is received from a non-Regime Operator or a Regime Operator.

Recommendation 20

It is recommended that offsetting only occur where the same Operators are involved and no one Operator is disadvantaged.

Recommendation 21

It is recommended that WestNet be required to identify the route section on which the over-payment is made and apportion the repayment on the basis of each Operator's access revenue paid to use that route section.