PROPOSAL WHICH MAY EFFECT CAPACITY ON THE KALGOORLIE – ESPERANCE RAILWAY LINE
ARTC SUBMISSION

The Acting Rail Access Regulator in Western Australia has requested submissions from interested parties with regard to a request to approve negotiations with regard to an access application which, in WestNet's opinion, will involve the provision of access to the Kalgoorlie to Esperance railway line to an extent that it may preclude other entities from access to that infrastructure. The Acting Rail Access Regulator's requirement to approve such negotiations arises under s10 of the Railways (Access) Code 2000 (the Code).

The access proposal at question has been made by Portman Iron Ore Ltd (PIOL) and involves train operations to carry 5.5mnt of iron ore until 31 Dec 2003 from Koolyanobbing on the main interstate network in WA to the port of Esperance. Beyond 2003, train operations will increase in order to carry 8mnt.

s10 of the Code requires that where a proposal for access has been made and the owner of the railway (WestNet) considers that access may preclude other entities from access to that infrastructure, then negotiations on that proposal must not be entered into by the railway owner without the approval of the regulator. For the purposes of making a decision the regulator must have regard to any submission made which is relevant to the decision, what the regulator determines to be in the public interest, and any other matter that the regulator considers is relevant.

ARTC is the access provider with respect to that part of the interstate rail network between Kalgoorlie and Broken Hill and Albury. In order to facilitate a 'one stop shop' approach to the provision of access for interstate rail operations on the interstate rail network, ARTC has entered into a wholesale agreement with the owner of the rail network between Kalgoorlie and Kwinana in Western Australia. Under the wholesale agreement, ARTC has exclusive rights to negotiate and enter into access agreements for access to interstate rail movements on that part of the WA network. WestNet has made available to ARTC a block of available capacity on this network for this purpose. WestNet would maintain and operate (network control) that network on behalf of ARTC.

As such, access to the Kalgoorlie to Esperance segment for the proposed services, which is the subject of this decision has little direct bearing on ARTC, although these services will continue to operate to Koolyanobbing, some 193 kilometres on the interstate mainline between Kalgoorlie and Kwinana. As a result, the

proposed services will impact on available capacity on this network, and will share the network with both other intrastate services and interstate services. As the proposal relates to operations conducted entirely within WA, the proposal does not fall within the scope of the wholesale agreement. Further, a funding agreement exists whereby, in return for funding from the Australian Rail Infrastructure Foundation on behalf of the Commonwealth for major projects on the segment between Kalgoorlie and Kwinana (predominantly between Kalgoorlie and Avon), Westnet is obliged to achieve and maintain certain standards for this part of the interstate network relating to transit time and path availability for interstate operations.

ARTC considers that s10 of the Code relates to the impact of the proposal on both existing entities using the network as well as new entities seeking access to the network in the future. ARTC will consider each type of entity separately.

Existing Network Users

With regard to users currently using the network, there is little doubt that the proposed operation will interact with the operations of existing users. A rail network is often considered to have both 'theoretical' and 'practical' capacity. Theoretical capacity relates to ability of the network to accommodate usage in an 'ideal' situation. The determination of the theoretical capacity is largely a desktop mathematical exercise. An assessment of practical capacity requires consideration of a range of constraints that effectively bring about the 'real world' use of the network. Such constraints can be market related, engineering related or operations related. The constraint can arise from real world infrastructure limitations such as axle load and speed limits, speed restrictions, maintenance and investment activities and signaling and communications configuration. Constraints can also arise from real world above rail limitations such as the quality and power of rollingstock, crewing arrangements etc. Where these latter constraints are not brought about by infrastructure limitations, they can be considered to be manageable by the users of the network.

The operations of users of the network will interact and the impact of that interaction on the users will often depend on the relative ability of the users to manage respective controllable aspects of the operation. In an environment where users are competing for day-to-day access to parts of the network in order to meet respective end-user requirements (where several parties are involved), it is generally regarded by the industry that the impact of poor above rail management should be quarantined as much as possible to the poor performer. That is, good performers should not have their operation impacted by the actions of other poor performers. Where there is a small spread of network users (or

only one users, as is the case for most of the WestNet network), this differentiation becomes a little fuzzier, where the single network user may make has own assessment as to how respective train operations are treated.

For this reason, it is considered appropriate by the industry that the network owner manages these interactions under a set of transparent and equitable guidelines. Transparency and equity are particularly important when third party interactions occur. WestNet has proposed to the Acting Rail Access Regulator in a separate consultation, a set of Train Management Guidelines. These guidelines are similar to those that ARTC uses on it's own network and have the following broad objectives (subject to safety constraints):

- A train that enters the network on time (with agreed tolerance usually 15") and suffering no significant enroute delay brought about by above rail causes will exit the network on time (15" tolerance). Train considered to be healthy.
- A train which enters the network late or suffers a significant enroute delay brought about by above rail causes will exit the network no later than the total of the late entry delay and enroute delay (notwithstanding any delays incurred in managing healthy trains). (That is, the network manager will not add to the above rail delay).
- The Network Manager will use best endeavours to exit a train on-time where the train has entered late or suffers an enroute delay brought about by above rail causes (notwithstanding any delays incurred in managing healthy trains).

I order to achieve these objectives, a service that has been appropriately managed from an above rail perspective should not be significantly impacted as a result of poor above rail management of the service of another user. These principles, in effect, provide an incentive to users to maintain the high quality the above rail aspects they control.

In summary, whilst there is no doubt that other existing users will be affected by the proposed service, purely brought about by the increased number of interactions, the impact should be minimized (assuming the other users maintain above rail integrity) by the implementation of the Train Management Guidelines. Having said this, the existence of a single rail operator on most of the WA network, means that above principles are often over-ridden by commercial assessments made by that operator.

Future Network Users

One of the intentions of access regulation to infrastructure is to enable access seekers to gain access to infrastructure (on fair and reasonable terms) where there is sufficient available capacity to accommodate that usage. Access can also be gained outside of the regulatory framework on a commercial basis. Where there is insufficient capacity available, regulation also provides for additional capacity to be developed on a commercial basis to accommodate the usage. Where an access seeker is unable to bring about that development on a commercial basis (through access charges or contribution) then the development does not take place and access is precluded. These circumstances are all consistent with what might occur in a competitive, unregulated environment.

As such, it is not clear to ARTC how a proposal could preclude other entities (seeking access in the future) from access to the infrastructure. Where sufficient opportunities are available, the achievement of practical capacity is inevitable, so at some point those circumstances contemplated by the above provisions in the regulation will come into play in order to address issues of access and capacity.

With respect to the provision of access to future seekers, it is not clear to ARTC as to why the circumstances contemplated by s10 of the Code should attract regulatory intervention.

Impact of s10 on ARTC's arrangements in Western Australia.

Although not directly related to Portman's application for access, ARTC has some concerns with the application of s10 to ARTC's access arrangements in Western Australia. As mentioned earlier, a wholesale agreement exists between WestNet and ARTC that makes available to ARTC existing available capacity between Kalgoorlie and Kwinana, and ARTC has exclusive rights to sell access to interstate services using this capacity. A funding agreement also exists whereby, in return for funding from the Australian Rail Infrastructure Foundation on behalf of the Commonwealth for major projects on the segment between Kalgoorlie and Kwinana (predominantly between Kalgoorlie and Avon), Westnet is obliged to achieve and maintain certain standards for this part of the interstate network relating to transit time and path availability for interstate operations.

ARTC, having no affiliation with any above rail operator, would have no commercial incentive to deny access to the capacity made available for interstate operations. It considers that the network management principles as described in

the WA access regime, and the wholesale arrangement, together with provision for providing additional capacity as described in the regime as addressing many of the concerns a track owner may have with regard to s10, as described earlier. Nevertheless, ARTC is concerned that the track owner, WestNet, may seek the application of s10 with respect to applications for access made to ARTC under the wholesale arrangement. Such actions may be taken for genuine reasons (notwithstanding mitigating arrangements described earlier in this paragraph) or as a means to hinder access to the third parties who might be seeking that access.