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Ofcom
Attn: Mr. Michael Richardson
Riverside House
2A Southwark Bridge road
London SE1 9HA

SUBJECT: Delta Air Lines comments on Ofcom's Second consultation for Applying Spectrum Pricing to the Aeronautical sector

Dear Sir:

Delta Air Lines (Delta) is grateful for the opportunity to comment on Ofcom's newest consultation regarding the potential application of Administered Incentive Pricing (AIP) to aeronautical spectrum. As one of the largest North American airlines with operations across the North Atlantic to 32 destinations, developments impacting operations and charges in UK airspace are of significant concern to Delta. For 2010, we estimate that Delta will operate 35,000 flights over UK airspace and 2,600 roundtrip flights between the United States and the UK. In 2009, Delta carried four million passengers between the U.S. and UK, generating substantial direct and indirect benefits for the UK economy.

Ofcom's fundamental premise that the application of AIP to aeronautical spectrum will increase the efficiency of aviation's use of spectrum is flawed. For reasons further explained below, airlines cannot unilaterally change how they use spectrum. Therefore, AIP would not promote increased efficiency of airlines' spectrum use, but would instead function simply as a tax on an industry which already bears a heavy tax burden. Delta respectfully urges Ofcom to reconsider its proposal to charge for aviation spectrum.

Delta states the following points in support of its position:

- The AIP initiative is based on the premise that charging for a scarce resource will decrease its use and promote efficiencies. However, Ofcom has not shown how aeronautical spectrum is "congested." AIP pricing appears to be a solution seeking a problem, whereas the prudent approach would be to define the problem – and then propose various solutions as appropriate.
- Even if aviation spectrum was demonstrated to be "congested," the consultation document fails to recognize that airlines cannot unilaterally change how they use spectrum. Aviation spectrum is allocated internationally by the World Radio Communication Conference and agreements signed by States, which have treaty

status. The intent is to protect the spectrum for the various users, promote global harmonization and ultimately manage the frequency resource. From an aeronautical spectrum perspective, this process determines the aircraft equipage installed and ground infrastructure. The end result is that the proposal for AIP pricing results in fees (taxes) for complying with mandated communication equipment that is indispensable to safe and efficient aircraft operations.

- The Helios impact assessment states that “the purpose of pricing is to promote efficiencies that cannot all be anticipated in advance. It is not therefore possible or meaningful to attempt to fully anticipate the efficiency responses to pricing.” The study was not able to validate the position that AIP pricing will result in a more efficient use of spectrum. We are able to ascertain though, that regardless of perceived congestion or our continued efficient use of aeronautical spectrum – the AIP pricing initiative will still result in a cost to airlines with no discernible benefit. From an airline perspective, this proposed tax is levied on operators that have no choice in the communication medium, frequency used or number of contacts required by air traffic services. The airspace determines the communication requirements, not the airlines.
- The consultation mentions the transition from 25 kHz to 8.33 kHz as an example of increased efficiency. What is not mentioned is that the carriage and operation of 8.33 kHz radios has been mandatory above FL195 in the ICAO EUR Region since 15 March 2007. This was the solution for alleviating possible VHF congestion, and it was implemented by airlines at considerable cost. Eurocontrol/ ICAO requirements and the subsequent adoption of these requirements into State internal regulations is a proven and effective method for addressing aviation spectrum issues.
- The European ATN (Link 2000) which uses an efficient VDLM2 VHF ACARS system has already been implemented in Europe. By 2014, all aircraft entering European airspace will be required to be in compliance with Link 2000 standards or gain exemption based on previous FANS equipage. In both cases, these advances in communication efficiency and airspace utilization were developed in the absence of aeronautical spectrum pricing.
- Taxing airlines on company communication such as FMS wind uplinks and flight plan rerouting that serve to improve fuel efficiency and lower emissions, penalizes airlines for improving their operation. Taxing these programs (communications) which are only possible over RF spectrum, discourages airlines from these process improvements and ultimately is detrimental to both the global community and those directly affected by poor airspace management.

Questions and Answers

Below are our responses to those questions that relate to the aeronautical spectrum.

Question 1: Do you consider that our proposed fee rates for license in the aeronautical VHF frequencies are appropriate?

No. The proposed fees are simply a tax that in no way benefits the airlines, air traffic service providers, or the flying public.

Question 2: In devising our revised proposals, have we identified all of the aeronautical uses of VHF communications frequencies which require a distinct approach to fee setting, as set out in tables 5 and 6?

No. The aeronautical spectrum should not be subject to taxes or fees. The spectrum should be managed in accordance with international agreements for the purpose of safe and reliable aircraft operations – not used as an additional government revenue source.

Question 5: Do you agree with our proposal to set an annual fee of £ 19,800 per ACARS or VDL assignment, with no variation related to the number of transmitters?

No. ACARS (Data Link) exist to supplement voice communication in aircraft operations. Ofcom's suggestion of AIP pricing on ACARS, a technology that promotes spectrum efficiency by reducing voice communication, contradicts the Ofcom position of AIP application for spectrum efficiency. It should be noted that ACARS also aids communication in situations where either airline crews or ATC controllers do not have English as a first language, so AIP pricing on ACARS is a disincentive to a technology that increases safety. It is also relevant that both future and current European mandates require ACARS, resulting in yet another situation where Ofcom is applying fees on equipment we are mandated to carry.

Question 6: Do you consider that our proposed general approach to phasing in fees for use of the aeronautical VHF communications channels are appropriate? If there are particular reasons why you consider that any user or group of users would need longer phasing-in periods, please provide any supporting evidence for us to consider. Specifically, do you have any evidence for us to consider that would support either of Options 1 and 2 for the highest proposed fee in this sector?

No, we do not believe they are appropriate. Phasing-in should not be a consideration because the proposed fees should not be imposed.

Question 8: Do you consider that our assessment of the impacts of our proposals has taken full account of relevant factors? If you consider that there is additional evidence that would indicate particular impacts we should take into account, we would be grateful if you could provide this.

We believe that the proposals are not adequately justified and would adversely affect the airline industry and the flying public. We respectfully urge Ofcom to reconsider the application of fees to the aeronautical spectrum and continue to engage with industry stakeholders such as IATA, ATA and individual airlines.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Applying spectrum pricing to the Aeronautical sector

To (Ofcom contact): Michael Richardson

Name of respondent: Kevin M Heffernan

Representing (self or organisation/s): Delta Air Lines

Address (if not received by email): Dept. 021, P.O. Box 20706, Atlanta, Ga 30320-6001

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name Kevin M Heffernan

Signed (if hard copy)