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What do you want Ofcom to keep confidential?:

Keep nothing confidential

If you want part of your response kept confidential, which parts?:

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Ofcom should only publish this response after the consultation has ended:

You may publish my response on receipt

Additional comments:

COMMENTS OF THE
AIR TRANSPORT ASSOCIATION OF AMERICA
BEFORE THE
U.K. OFFICE OF COMMUNICATIONS

APPLYING SPECTRUM PRICING TO THE AERONAUTICAL SECTOR ? A SECOND CONSULTATION

April 22, 2010

We appreciate the opportunity to comment about Ofcom's second consultation concerning the application of Administered Incentive Pricing (?AIP?) to the aeronautical communications spectrum. The Air Transport Association is the trade association that represents the largest U.S. scheduled airlines. Our members include both passenger and cargo airlines. Many of them fly to and from the United Kingdom, as well as flying through its airspace. The proposals in the second consultation would directly and significantly affect them.

Overview

This is an important and sensitive initiative. Its implications are broad and serious. The second consultation raises issues that are fundamental to air commerce: such as the use of spectrum to support the safe operation of aircraft; the relationship of this new initiative to the ongoing efforts to modernize air traffic management systems; the justification of proposed new costs and their economic effect on civil air transportation; and the appropriate relationship of an individual state's regulatory jurisdiction to the longstanding international systems of civil aviation and communications regulation that air navigation systems and their users rely upon to assure the harmonized provision of those services throughout the world.

Airlines are acutely aware of the importance of the efficient employment of the civil aviation spectrum. Our flight activities are wholly dependent on access to and use of radio communications; there is no alternative to them. Because of that dependence, no stakeholder is more interested in spectrum issues than the airline industry.

That powerful interest is coupled with day-to-day awareness of operational realities. Given the volume of flights and the aircraft communications associated with them, we would be aware immediately if systemic shortcomings existed or were emerging and we would urge aeronautical authorities to correct such a situation. We, however, do not see a problem that warrants the unilateral and extraordinary solutions proposed in the consultation.

Essential premises underlying the second consultation are unclear. Spectrum allocation and use are indispensable to safe and efficient flying. The current allocation-and-use arrangements reflect extensive collaborative efforts by numerous stakeholders throughout the world that have been undertaken for decades. Unilateral initiatives in this milieu are understandably regarded with great skepticism. Unfortunately, the consultation does not illuminate the need for the fees that it calls for. For example, we do not understand:

? The public interest justification for increasing the cost of air service. One point should be clearly understood: irrespective of how the proposed costs are structured, airlines will predictably ultimately bear them because service providers will pass them

on to airlines and, in turn, they will be reflected in the expense of air transportation for passengers and shippers. The consultation's proposals, therefore, would affect not only aircraft operators but all of those that depend upon air service. The consultation does not satisfactorily evaluate this public interest consideration.

? The nature and extent of the aeronautical spectrum congestion that Ofcom seeks to relieve. The consultation does not clearly or convincingly delineate the problem ? excessive demand? ? to which it is responding. The result is unacceptably asymmetrical: the consultation proposes substantial new costs for aeronautical users but the justification for that imposition is absent.

? How congestion is defined or measured. Without these basic metrics established and explained, the proposals in the consultation cannot be satisfactorily evaluated ? or justified.

? How spectrum pricing, as a practical matter, can be effectively introduced into a system based on international agreements for the assignment and use of spectrum. Civil aviation is a worldwide enterprise. Harmonization of the various elements of its activities is indispensable to the safety of flight and to efficient aircraft, air traffic control and airport operations. Like so many other aspects of aviation, therefore, spectrum application and use are dependent on comprehensive international arrangements. In this instance, the Worldwide Radiocommunications Conference and the International Civil Aviation Organization create that structure. This, first and foremost, is a treaty regime. The consultation does not demonstrate how the AIP proposal can be accommodated within that overarching system, which dictates aircraft and ground-based equipment purchase and use decisions and operational procedures. Equally important, it does not demonstrate how in such a pervasive international system it realistically could influence users' spectrum decisions.

? How spectrum pricing will enhance ongoing efforts to modernize air traffic management on both sides of the Atlantic. Civil aviation authorities in Europe and in the United States are embarked on complex, expensive efforts to modernize their respective air traffic control systems to improve safety and efficiency, and to generate system capacity for anticipated increases in traffic. The consultation proposes an unnecessary complication to the ongoing, well-coordinated efforts to introduce SESAR and NextGen.

? Assuming a problem is eventually described and validated, why more focused management of the identified portion of the spectrum will not solve the problem. Air traffic management systems and the stakeholders that they serve have considerable experience with spectrum issues. There is no indication that they lack the wherewithal to solve whatever spectrum issues may eventually be identified. Collaborative efforts at improving whatever problems may emerge are more targeted, and therefore more likely to be efficacious, than categorical imposition of fees.

Questions and Answers

Below are our responses to those questions that relate to the aeronautical spectrum. (Questions 1, 2, 5, 6 and 8)

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

No. The proposed fees would simply be a tax that will ultimately unnecessarily burden providers and users of a range of aviation services. They would not solve a use or allocation problem because the consultation does not demonstrate that one exists. The proposed AIP would not generate incentives for more efficient spectrum use. Aviation spectrum use and allocation are properly determined at the international level, which they have been for decades.

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 part of the aeronautical spectrum should be subject to the proposed AIP. That spectrum is essential for the safe operation of aircraft and is the subject of comprehensive international oversight. The consultation does not convincingly describe shortcomings in spectrum use and, consequently, does not justify the application of a pricing scheme to an element of the aeronautical spectrum.

Question 3: Do you agree with our proposal not to charge any fees for Fire assignments?:

Question 4: Do you agree with our proposal to set a £75 fee for licences in any of the sporting frequencies?:

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. These are technologies that increase the safety and efficiency of aircraft operations. They illustrate aviation's continuing drive to improve efficiency, including its use of spectrum. That impetus should not be discouraged by new fees. Moreover, the willingness to impose fees on ACARS and VDL use ominously suggests the willingness to impose fees on next generation satellite-based navigation and communications technologies. Government and industry in Europe, the United States and elsewhere will invest billions of pounds to introduce those technologies in the next decade and beyond. That enormous cost should not be further increased for technologies whose raison d'être is to improve safety and airways and airport system capacity.

Question 6: Do you consider that our proposed 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 7: Do you have any further quantified information to contribute to the analysis of financial impacts of the proposed fees on particular spectrum users, as set out in Annex 5? We would like to publish all responses, but will respect the confidentiality of any material which is clearly marked as such.:

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. In view of that and the number of stakeholders that would be adversely affected were they implemented, we urge that rather than proceeding with implementation of the proposals that governmental authorities meet with stakeholders to discuss the need for further action and, if further action is called for, the most economic way, consistent with safety, to achieve it.