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Ofcom  
Attn: Michael Richardson  
Riverside House  
2A Southwark Bridge Road  
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October 27, 2008

**Re: Applying Spectrum Pricing to the Maritime and Aeronautical Spectrum**

Dear Sir:

American Airlines, together with other US commercial carriers, provides an essential part of the infrastructure to communities in the UK, throughout Europe and beyond. The airline industry is an indispensable engine for worldwide economic growth.

In order to operate safely and efficiently, all airlines throughout the world depend upon radio frequencies which are free of interference and which are allocated by the WRC (United Nations World Radio Conference) through international treaties. The UK together with other nations is obligated to recognize and abide by these agreements.

The UK Government's spectrum taxation initiative, thinly veiled as the Administrative Incentive Pricing (AIP), will do nothing to maintain or improve aviation safety and will not improve spectrum efficiency. It is a tax designed to provide additional resources to the Treasury of the UK at a time when airlines and other industry are struggling to survive due to inflated price of fuel and the threat of severe economic recession.

On the contrary, airline users of the capacity constrained UK airspace need to invest in technology required to meet already agreed upon airspace capacity objectives, in order to press forward towards the goals of the Single European Sky.

We are concerned that, contrary to the requirements of UK Code of Practice on Consultation and Ofcom's own policy, it does not appear there has been any Impact Assessment made on this taxation initiative to determine the effect upon safety, airspace efficiency and other economic aspects.

We enclose our response to the questions in the Consultation paper and also request that American Airlines response not be 'rolled up' or otherwise combined with other responses on this issue.

Signed:

*Rich Farr*

## **American's Responses to Consultation Questions**

*Question 1: How should Ofcom manage the process of taking advice from users, Regulators and government on efficient apportionment of AIP fees in the maritime and aeronautical sectors? Are any new institutional arrangements needed?*

### **American's Response:**

**Ofcom has not followed the Code of Consultation and has not conducted an Impact Assessment. The UK Government should respect and recognize International Treaties regarding radio spectrum.**

*Question 2: If you consider that our proposals for pricing ground station users for any spectrum would be likely to have a detrimental impact on safety, please let us know.*

*In order for us to understand your assessment fully, it would be helpful if you could outline the mechanisms whereby this might happen.*

### **American's Response:**

**The number one priority of aviation is safety. This would be compromised if aeronautical spectrum is shared because aviation spectrum is used over much longer ranges due to the height at which aircraft fly, plus aircraft radios are of relatively old design and use Amplitude Modulation which is more prone to interference than more modern FM or digital radios. Due to the fact that digital radios for aviation are unavailable today, UK is unable to influence global aviation community to equip with more modern radios and spectrum must therefore be protected from interference. A comprehensive Impact Assessment study would confirm this.**

*Question 3: Do you have any evidence which indicates that AIP charged to ground stations could have a material detrimental impact on UK competitiveness?*

### **American's Response:**

**AIP charges to any Air Navigation Service Provider will be passed on to the airspace user, in this case, the airlines. It is also expected that other states would follow the UK's initiative on AIP, with resulting charges being passed on again to all airlines. In addition to inflated price of fuel, these charges would be borne by the airlines, which would be unable to pass on to customers. This would compound damage to an industry already dealing with staggering costs and charges levied by external forces over which airlines have no control.**

*Question 4: Taking into account the information available in this document, including that set out in Annex 5, our initial views on VHF radio-communications license fees and on the reference rates for bands in other uses, and any information you have about the organizations to whom we are proposing to*

*charge fees, please provide any evidence that you think is relevant to us in considering the financial impact of the fees we intend to propose for VHF radio-communications, or for other uses.*

**American's Response:**

**In Europe the VHF communications radio spectrum supports over 10,000 assignments, which is a valid demonstration of maximizing the value. Analysis performed by EUROCONTROL suggests that a further 1500 assignments for longer range Area Control and Approach frequencies will be required by 2027. Many of the core areas of Europe still do not currently have enough frequencies. These assignments also exceed the number planned when the spectrum was originally allocated.**

**International obligations currently prohibit non-aviation users in this spectrum so, by definition, no other users can be denied. In other words, the economic opportunity cost is zero. The issue is that aeronautical spectrum requirements are different compared to mobile phone community. Indeed the Cave Audit, referred to in the consultation paper, supports a zero opportunity cost.**

*Question 5: Do you agree that there is little to be gained, in terms of economic efficiency, from charging AIP to WT Act licenses for aircraft?*

**American's Response:**

**Yes. The gain is illusory because there is no evidence that the UK economy would benefit from charging AIP to the aviation sector; in fact, the reverse scenario is more likely. UK airlines, airlines flying through UK airspace, and airports would also suffer an economic disadvantage from AIP. Other countries (including the US) would be incited to respond in kind which would generate additional (and negative) financial impact on UK carriers.**

*Question 6: Do you consider that we should discount fees for any particular user or type of user? Specifically, do you consider that there should be a discount for charities whose object is the safety of human life in an emergency?*

**American's Response:**

**Both aviation and maritime uses radio spectrum for safety of life purposes at all times (not just in an emergency situation). They should therefore not be burdened with AIP.**

*Question 7: Do you agree that Ofcom should apply AIP to ground stations' use of Maritime and aeronautical VHF radio-communications channels, to help manage growing congestion in current use and to ensure that the cost of denying access to this spectrum by potential alternative applications is faced by current users?*

**American's Response:**

**The Ofcom AIP proposal assumes that the user has a choice. In fact, AIP does not present a choice to either aviation or maritime; it is a tax. Aviation functions through global interoperability, and is overseen by ICAO (International Civil Aviation Organization).**

*Question 8: Do you agree with our initial view that it would be appropriate to apply a pricing system similar to that already existing for Business Radio licenses to maritime and aeronautical VHF communications? If not, what are your reasons for proposing that we should develop a fee structure for maritime and aeronautical VHF channels which is distinct from that already established for Business Radio?*

**American's Response:**

**No. There should be no fee structure for aeronautical VHF channels, and certainly not before an impact assessment study is carried out. VHF at altitude over the UK can impact neighboring States. Any frequencies freed by greater 'efficiency' in the UK would be unavailable to Ofcom because they would be utilized by neighboring States. Finally, the business radio sector is structured much differently from the aeronautical sector and the comparison is entirely inappropriate.**

*Question 9: Are there any short term reasons specific to the sector(s) why it would be inappropriate to apply fees from April 2009?*

**American's Response:**

**The imposition of fees where users have no choice is in direct contradiction with the economic theory behind incentive pricing.**

*Question 10: Ofcom would welcome stakeholders' views on the factors which should be taken into account when apportioning fees between individual users of radars and racons.*

**American's Response:**

**The answer to this question requires information that would be obtained from an Impact Assessment study.**

*Question 11: Do you agree with our initial view that a reference rate of £126k per 1 MHz of national spectrum for L band and S band radar spectrum would achieve an appropriate balance between providing incentives to ensure efficient use of spectrum while guarding against the risks of regulatory failure in setting the reference rate too high? If you consider a different rate would be more appropriate, please provide any evidence that you think we should take into account.*

**American's Response:**

**No. For example, RADAR requires wide-bandwidths for protection against unwanted interference. The catch phrase 'more efficient use of spectrum' is a crafty tag line invented by mobile phone consortiums who are seeking to obtain additional bandwidth and it should not be used against aviation who uses spectrum allocations in an entirely different manner and for different reasons. Again, an Impact Assessment study is required.**

*Question 12: Do you agree with our initial view that a reference rate of £25k per single MHz of national spectrum would be appropriate for deriving fees for licenses to use X band radar?*

**American's Response:**

**No. X-band radar is sensitive to unlicensed UWB transmissions and it is impossible that a fee structure could guarantee protection from interference which would reduce performance of the radar and create a reduction in air traffic capacity.**

*Question 13: Do you agree that, generally, spectrum used by aeronautical radio navigation aids is currently uncongested? Do you believe that this may change during the next few years and, if so, approximately when?*

**American's Response:**

**No. The majority of spectrum used for aeronautical radio navigation is very congested. For example, DME and military use of L-band. This situation is not expected to change in the foreseeable future.**

*Question 14: Do you agree with the basis on which Ofcom has arrived at its initial view on reference rates for aeronautical radio navigation aids?*

**American's Response:**

**No. Ofcom is laboring under the misconception that no congestion means zero opportunity cost. This suggests that under-utilization of aeronautical spectrum should be rewarded by zero opportunity cost ratings which, as outlined in the Cave Audit, is justified by international constraints.**

**Cover Sheet for Response to Ofcom Consultation**

**BASIC DETAILS**

Consultation title: **APPLYING SPECTRUM PRICING TO THE MARITIME AND AERONAUTICAL SPECTRUM**

To (Ofcom contact): Michael Richardson

Name of respondent: Rich Farr

Representing (self or organisation/s): American Airlines, Inc.

Address (if not received by email):

**CONFIDENTIALITY**

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

Nothing	<input checked="" type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	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.

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☐

Name Rich Farr

Signed (if hard copy) *Rich Farr*

