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October 29, 2008

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

Dear Sir:

SUBJECT: Applying Spectrum Pricing to the Maritime and Aeronautical Spectrum

Delta Air Lines is grateful for the opportunity to comment on Ofcom's proposal regarding charging for Aeronautical Spectrum. As one of the largest North American carriers with operations across the north Atlantic to 32 destinations, developments impacting operations and charges in UK airspace are of particular interest.

In order to operate safely and efficiently, all airlines worldwide depend upon radio frequencies which are free of interference and which are allocated by the WRC (World Radio Conference) through international treaties. This consultation by UK Ofcom appears to have failed in its consideration of obligations required under these treaties.

The UK Government's spectrum taxation initiative, which is 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, nothing more or less and is designed to provide additional resources to the UK Treasury at a time of high fuel prices, economic recession and falling consumer confidence.

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 or other economic aspects.

We enclose our response to the questions in the Consultation paper and also request that Delta Air Lines response be considered as a separate response to others received from the aviation industry.

Sincerely,

Richard Darby

Delta Air Line'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?

Delta Air Line's Response:

Ofcom has not followed the UK Code of Practice on Consultation and has not conducted an Impact Assessment. The UK Government should respect and recognize International Treaties regarding radio spectrum and obligations in a global transportation system.

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.

Delta Air Line's Response:

The number one priority of aviation is safety. Safety would be compromised if aeronautical spectrum is shared. A comprehensive Impact Assessment study involving airlines, communication equipment manufacturers and Air Navigation Service Providers 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?

Delta Air Line's Response:

AIP charges to any Air Navigation Service Provider will be a pass-through charge ultimately born by 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, and would not be passed on to passengers because of economic and competitive factors. Many airline flight planning systems take into account aeronautical fees in determining the most efficient route to fly. By significantly increasing the cost of operating in UK airspace, the net effect could be a reduction of overflight traffic and potential reduction in service to UK airports.

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.

Delta Air Line'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 which is indicative of extremely efficient use of spectrum.

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?

Delta Air Line's Response:

Yes. 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 incented to respond in kind which would generate additional (and negative) financial impact on UK carriers. Many airline flight planning systems take into account aeronautical fees in determining the most efficient route to fly. By significantly increasing the cost of operating in UK airspace, the net effect could be a reduction of overflight traffic and potential reduction in service to UK airports.

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?

Delta Air Line's Response:

Both aviation and maritime industries use radio spectrum for safety of life purposes, regardless of the situation (not just in an emergency). 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?

Delta Air Line'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 is a global industry and can only function efficiently through global interoperability. This global interoperability is ensured through international standards overseen by ICAO (International Civil Aviation Organization) and agreed upon by signatory states (including the UK). The Ofcom proposal could actually threaten this global interoperability.

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?

Delta Air Line's Response:

No. There should be no fee structure for aeronautical VHF channels, and certainly not before an Impact Assessment study is carried out as is required by the UK Code of Practice on Consultation. 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?

Delta Air Line'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.

Delta Air Line's Response:

The answer to this question requires information that would be obtained from an Impact Assessment study as required by the UK Code of Practice on Consultation.

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.

Delta Air Line's Response:

No. For example, RADAR requires wide-bandwidths for protection against unwanted interference. Interference could negatively impact safety. 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?

Delta Air Line'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 could negatively impact safety, 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?

Delta Air Line's Response:

No. The majority of spectrum used for aeronautical radio navigation is very congested. 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?

Delta Air Line'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. The aviation community also continues to make improvements in the efficient use of spectrum without the imposition of AIP.

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: Richard Darby

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

☒

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.

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Name Richard Darby

Signed (if hard copy) **Richard Darby**