

Michael Richardson
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BY POST AND E-MAIL: aeromar1stconsult@ofcom.org.uk

Dear Mr Richardson,

RESPONSE TO THE CONSULTATION ON APPLYING SPECTRUM PRICING TO THE MARITIME AND AERONAUTICAL SECTORS

I enclose comments from the Royal Yachting Association (RYA) in response to the above consultation. The RYA response is in 3 parts; the first concerns general comments about the process leading up to and the consultation itself, the second concerns particular comments that the RYA wishes to make on behalf of the sector it represents and the third provides detailed responses to the consultation questions where the RYA has competence to provide a reply.

The RYA is the national body for all forms of recreational and competitive boating. It represents dinghy and yacht racing, motor and sail cruising, RIBs and sports boats, powerboat racing, windsurfing, inland cruising and personal watercraft.

The RYA is recognised by all government offices as being the negotiating body for the activities it represents. The RYA currently has over 100,000 personal members, the majority of whom choose to go afloat for purely recreational pleasure on coastal and inland waters. There are an estimated further 500,000 boat owners nationally who are members of over 1500 RYA affiliated clubs and class associations.

The RYA also sets and maintains a recognised standard for recreational boat training through a network of over 2,200 RYA Recognised Training Centres in 20 countries. On average, approximately 150,000 people per year complete RYA training courses.

The RYA reserves the right to amend its comments or make further representations in light of any further information and once it has sight of the response to the consultation.

Please do not hesitate to contact me if you have any questions or queries arising from our response.

Yours sincerely

Stuart Carruthers
Eur Ing, CEng, CMarEng
RYA Cruising Manager

RYA RESPONSE

General Comments

1. The RYA understands that the Cave audit and the Indepen report which preceded and informed the current consultation did not directly consider the potential impact of applying AIP and proposed fee levels on end users. As Ofcom has a statutory duty to understand the impact of such proposals better, it is now seeking stakeholder input from spectrum users through this consultation. As part of this process, the RYA has been involved in a number of discussions between the MCA, Ofcom and maritime stakeholders aimed at assessing the direct impact of spectrum charging on the maritime sector and to help Ofcom to understand the international nature and constraints of maritime spectrum and the critical role that it plays in the safety of both the mariner and shipping and the environmental protection of our shores.

2. The RYA notes that in its document: *'Forward Look 2007 – a Strategy for Management of Major Public Spectrum Holdings'*, the Government seeks to ensure continued compliance with international treaty obligations, including international spectrum management. Importantly, Forward Look 2007 states that the Government accepts the Independent Audit's recommendations observing that maritime spectrum is allocated globally by the ITU and that the UK therefore, has limited scope for unilateral action in regard to changes to the management and use of these allocations.

3. Consequently, the RYA is concerned with Ofcom's apparent decision not to accept the Government position when considering the introduction of AIP for certain licence classes in the maritime sector. The Cave recommendations were based on a thorough understanding of the constraints applied through international agreements and the resultant lack of scope for incumbents to change their spectrum use. The reason why Ofcom has chosen not to take account of these constraints is far from clear and the rationale given at section 3 of the consultation, highly questionable.

4. The UK maritime sector operates in a global environment where shipping is controlled by the International Maritime Organization (IMO). IMO develops and evolves performance requirements for maritime communications and navigation equipment through internationally agreed resolutions. International standards are developed through the International Electro-technical Committee (IEC) and the International Standards Organisation (ISO) which require specific implementation of technology and removes national autonomy in, for example, frequency and bandwidths used. All developments in equipment technology require backward compatibility. International maritime spectrum transcends UK boundaries and is used by ships of all nations within radio range of UK waters. It is therefore difficult to understand how the application of AIP in itself can incentivise better use of spectrum allocated for international use within UK boundaries. Marine spectrum users are not able to make decisions about how much spectrum they require and are not free to choose between better technology and cheaper spectrum.

5. VHF communications are used for operational purposes relating to the safe operation of ships and their crew. In general, the channel used and the duration of the usage is constrained by the operational requirements at the time. No alternative usage are available. In some busy ports, weight of traffic may well preclude the use of a single international channel for safe vessel traffic control. The idea that spectrum efficiencies can be found here is flawed. Furthermore, if international channels were released, they would have little or no utility to shipping companies operating in the same port as these must be able to interface with the port authority control. The RYA would be grateful for a clear explanation why Ofcom has dismissed the Cave recommendation for "zero opportunity cost" for spectrum subject to

International Agreements and Maritime Safety on the sole grounds that opportunity costs exist.

6. The RYA challenges the use of the Business Radio licence assignment template as a method for calculating potential fee levels, particularly the 50km grid concept for identifying maritime VHF congestion because there is no stated linkage between VHF coverage and assignment density. For example it may be perfectly possible for an operator who has exclusive use of an international VHF channel in a high density area to move into an adjacent low density area, raise the height of the aerial and turn up the power to increase their coverage and reduce their annual fees by a factor approaching 1300%! Not only would this sterilize a far greater area but it is also probably not the outcome that is desired. In addition, the indicative pricing proposals create unacceptable anomalies whereby a small marina in a high channel density area could pay considerably more for the use of an uncoordinated shared UK channel than a large port in an area of medium density, on a per-channel basis

7. It is the RYA's contention that all VHF channels used for search and rescue, safe navigation, counter pollution and environmental protection should be zero-rated. All are vital to the UK economy and the MCA's international responsibilities in these areas extend well beyond UK territorial waters. The performance of these functions relies on many more channels than 16 and 70 and should also include AIS 1 and 2 which is spectrally efficient anyway.

(7 bis) Similarly, the RYA expects that charities such as the RNLI which use VHF channels for safety of human life should also be zero rated. Ofcom and the Government would do well to remember that the cost to the taxpayer in the absence of these charities would be well in excess of £125 million in the case of the RNLI. The public perception of a Government that was prepared to impose a levy on charitable donations that were saving it the costs of providing equivalent essential services would be damaging for both the Government and the donation revenue streams of individual charities.

8. Finally, the RYA would welcome the opportunity to discuss these points with Helios and Plum to provide input on the recreational sector for their impact assessment which will be included with the next and final consultation on AIP for VHF.

Specific comments relevant to the recreational sector

9. The RYA points out that virtually all sailing clubs are 'not for profit organisations' and an increasing number of them are charities having Community Amateur Sports Club (CASC) status. They exist to promote sport for all and create opportunity. Their activities fulfil public benefit criteria for the health and welfare of the nation in line with Government policy as implemented under the direction of Sport England policy. Any regulatory cost is a burden that is contrary to sporting aims, particularly as pricing of CSR (Marina) channels used to communicate with recreational boaters will not contribute to spectrum efficiency. Ofcom is considering what discounts should apply to maritime ground station users, such as charities whose object is the preservation of human life through operational safety of navigation. The RYA argues that clubs use Channel M and M2 precisely for that purpose and should therefore attract the same discount and considerations for zero rating as proposed in paragraph 6 above.

10. The RYA is content with Ofcom's proposal not to apply AIP to ship radio licences which is supported by both the Cave and Indepen reports, however, as we state above, the RYA is concerned that the proposals for Coastal Station Radio (Marina) now go well beyond the Cave audit recommendations. Section 7.3 of the Cave audit stated that:

..... although there could in theory be some scope for pricing Coastal Station Radio (Marina) (for example to encourage the use of one frequency at a time), in practice given the high usage of the very limited number of frequencies (M, M2 and 80) all around the UK coast, coupled with no requirement for assignment control and co-ordination or operator licences on the M channels, it is considered that there would not be a significant efficiency gain in applying spectrum pricing.

This particular recommendation and the activities of sailing clubs/marinas have not been examined or refuted in any of the reports referred to in the consultation. This needs to be done so that Ofcom understands this part of the maritime sector.

In gaining its understanding of the recreational sector, Ofcom should recognise that recreational boaters and the clubs and marinas that serve them have no influence over decisions as to the use of spectrum. In the same way as the UK Government and commercial shipping is bound to respect the frequencies allocated by international treaties, as summarised in paragraph four above, equally the recreational sector may use only those frequencies allocated to them, notably the ship to ship and ship to shore and 'marina' channels, as directed by the MCA from time to time.

11. The current consultation proposes that licensed operators of maritime ground stations should pay fees. This will affect sailing club and marina activities that use ground stations on Channels M, M2 and 80. The RYA notes that these currently pay a licence fee of £75 to cover the administrative costs of issuing licenses. However, it is not clear from the indicative pricing tables or Annex 6 what the future spectrum prices may be. Whilst it is understood that shared marina channels may be charged at 50% of the standard applicable rate, the final cost will dependant on grid density, transmission power and aerial height. The new fee structure would be more transparent and easily understood if 'lookup' tables and detailed worked examples could be provided as has been done for Ofcom's proposals for business radio reform. However, that said, there is an excellent case as Cave observed for zero- rating the marina channels as there will not be a '*significant efficiency gain in applying spectrum pricing*'.

THE RYA Response to the 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?

This process is managed through the Maritime Radio spectrum User Group (MRSUG) and includes all contributors noted at paragraph 2.8 of the consultation. Comments raised at MRSUG must be fully examined in the Ofcom response.

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.

The 'Cave' report noted that there was zero opportunity for spectrum set aside for Safety of Life communication and MRSUG has made it clear to Ofcom that there are more frequencies involved in this process than just Channels 16 and 70. Furthermore, there are a number of smaller charities in addition to the RNLI who rely on charitable donations to support their work. It seems unreasonable to apply AIP fees (in effect a tax) to any charity that is a declared asset to the MCA and which saves the Government considerable sums of money in discharging its statutory GMDSS responsibilities.

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

No RYA Comment.

Question 4: Taking into account the information available in this document, including that set out in Annex 5, our initial views on VHF radiocommunications licence fees and on the reference rates for bands in other uses, and any information you have about the organisations 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 radiocommunications, or for other uses.

The RYA has fully set out its position on charging fixed marina stations in its response at paragraph 9, 10 and 11 above.

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

The RYA offers no comment in respect to aeronautical spectrum..

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?

The RYA believes that charities that use marine frequencies to discharge their charitable duties for the safety and preservation of life should be exempted from AIP fees. The public expects this and would object to its donations being subject to the payment of AIP on the basis of denied opportunity.

Question 7: Do you agree that Ofcom should apply AIP to ground stations' use of maritime and aeronautical VHF radiocommunications 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?

The RYA can only respond in respect to maritime use, but does not agree with Ofcom on this point. Shore stations have to use internationally recognised maritime VHF frequencies to allow contact with vessels and are in no position to consider using less crowded spectrum. This is the case both for not-for-profit sailing clubs operating in the public interest and in the use of marina bands used to achieve safe operational navigation and which would necessarily be passed on in charges to boaters. The RYA insists again on the point that this use of the spectrum is one on which the Government has agreed to honour in its international obligations.

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 licences 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?

The RYA can only respond in respect to maritime use, but believes that the technically assigned business radio licensing template is not suitable for setting AIP fees for maritime spectrum our reasons for this are explained above at paragraph 6. Broadly this imposes larger fees in more spectrum-congested areas, but as we note in Question 7 above,

because shore stations have to use internationally recognised maritime VHF frequencies to allow contact with vessels they are in no position to consider using less crowded spectrum. The RYA believes that an entirely separate template for maritime use needs to be created to address the unique nature of maritime spectrum. Such a template should consider far greater granularity in such factors as frequency popularity, coverage, density, a greater range of aerial heights and power outputs. In particular we would question the number of assignments per 50km grid square is suitable for calculating congestion.

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

Yes, by the time Ofcom has considered the responses to this particular consultation and has then consulted on specific fee proposals, most of us will have set out budgets for the next financial year.

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.

The RYA offers no comment at the proposals raised in paragraph 4.55 of the consultation document, but wishes to be involved in future discussions of fee apportionment where relevant.

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.

These frequencies are not used in the recreational boating sector and the RYA offers no comment

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 licences to use X band radar?

The RYA offers no comment on this proposal at this time. However, the maritime authorities and the RYA have been encouraging the use of radar by boaters for several years and putting increasing effort into training in its use with the sole purpose of improving safe operational navigation by ensuring that all vessels, commercial or recreational, see and are seen. Recreational craft use X band radar, so the RYA is particularly concerned to be involved in further consultations on this part of spectrum use.

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?

The RYA offers no comment

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?

The RYA offers no comment