RESPONSE TO OFCOM CONSULTATION ON APPLYING SPECTRUM PRICING TO THE AERONAUTICAL SECTOR.

This response is submitted by PPL/IR Europe. PPL/IR Europe represents the interests of General Aviation IFR pilots in Europe. Its membership is primarily of PPLs who hold Instrument Ratings and fly in the airways more usually in the lower flight levels to a professional standard. Its UK membership also embraces holders of UK IMC ratings, and its overall membership includes pilots who aspire to gain a full Instrument Rating. Many members are also professional pilots and instrument instructors.

[References to para(graph) numbers are to the relevant paragraph in the Ofcom Consultation Document.]

In summary, Ofcom seek to show that there is a shortage ("congestion" is a term which frequently appears in the consultation document) of frequencies in the aeronautical frequency band and that by the application of administered incentive pricing ("AIP"), this frequency shortage will be eliminated for the general public good. In particular, it would encourage operators to consider carefully whether their use of a particular frequency is essential for their operations given the impact of a necessarily increased price for the continued use of the frequency in question. The consultation is predicated on the basis that a number of operators would give up their (some) frequency(ies) presently allocated for their use allowing their allocation to other potential users who are presently denied allocation on account of congestion.

While there are many repetitious statements in the consultation paper to the effect that there is frequency congestion or spectrum shortage, OfCom produce no proof of this. It would appear that Ofcom in stating that "there is clear evidence of excess demand for aeronautical VHF frequencies" (para 5.25) are relying substantially on evidence originally considered by Professor Cave in 2002 which related to the accommodation of increased capacity with the implementation of 8.33 kHz channel spacing (para 5.6). Ofcom then refer (para 5.7) to a comment made by Indep in 2007 that the main evidence for congestion arises from the need to co-ordinate new assignments through twice yearly regional planning meetings and conclude by saying (para 5.28) that taken in the round, the above evidence (i.e. that referred to in paras 2.25 to 5.28 ibid) suggests that excess demand has been demonstrated for many aeronautical frequencies.

In our submission this so called evidence cannot be relied upon to demonstrate excess demand. Since Professor Cave's consideration of the then available evidence in 2002, much rationalization has taken place in European airspace enabling a more efficient use of available spectrum. Moreover in the more recent time period, there has a significant downturn in commercial air transport arising from the recession (see for example NATS press release of 15th October 2009 confirming a then year to date contraction in air traffic of 10% and a further press release of 15th March 2010 recording a 6.1% fall in traffic in the first two months of 2010 compared with the same months of 2009). If Ofcom is to establish a prima facie case for spectrum pricing, then it must first table cogent and contemporaneous evidence of excess demand, which this consultation paper wholly fails to do. Further the Light Aircraft Association recently asked the Spectrum Manager at the CAA whether they are aware of any unsatisfied demand for frequency allocation within the United Kingdom and we understand that the reply from the CAA states there was no unsatisfied demand.

We draw Ofcom's attention to the general background and conditions under which Professor Cave stated that AIP would be appropriate and to his conclusion that if there is not excess demand from other aviation users, then the opportunity cost is effectively zero. This discussion is set out at paras 5.1 to 5.24 and in particular at par 5.19. In the circumstances, having regard to the lack of any cogent evidence supporting excess demand and the statement of the Spectrum Manager of the CAA that there are no unsatisfied frequency assignments presently in the UK, we invite Ofcom to withdraw the consultation on the basis that its proposals are fundamentally flawed because of a lack of creditable evidence of excess demand for frequency allocation.

Without prejudice to our primary contention as set out above, we take this opportunity to make a number of observations on some of the detail of the proposals in the Ofcom consultation document.

By far the majority of frequency assignments in the UK and elsewhere are made for purpose of facilitating the safe conduct of commercial air transport ("CAT") in en route flight. For example, frequency allocation of 8.33 kHz channels within the UK and Europe is exclusively made to the upper airspace at FL195 and above. Apart from a very limited number of General Aviation ("GA") business jets and turboprops, the traffic in this airspace is CAT. Frequency allocation below FL195 in Europe is still confined to 25 kHz channels although there are proposals for 8.33 kHz channel allocation in the medium term future. Likewise the majority of 25 kHz channels are allocated for CAT en route use with limited participation by GA aircraft flying in controlled air space.

At the larger commercial airfields in the UK handling the majority of CAT, there will normally be an approach frequency, a tower frequency, a ground frequency and often a separate director or intermediate approach frequency. All these assignments are necessary for the safe and expeditious handling of CAT. Ofcom make the point that such airfields may reserve for themselves additional frequencies to allow for anticipated future demand. This scenario is to be contrasted with the position at the smaller commercial airfields and airfields handling only light GA traffic where there will usually be only one frequency assignment which may be a combined approach/tower frequency, information or air to ground radio possibly manned only on a part time basis. In aggregate, the number of frequencies assigned for use for airfields handling only light GA traffic is but a small proportion of those frequencies allocated for en route use by CAT and at the larger commercial airfields handling CAT.

Ofcom in its analysis of the consequences of implementing AIP opine that the effect on CAT's costs will be marginal at between 1p and 10 p per passenger (para 5.83) while the cost at smaller aerodromes serving mainly non commercial traffic is estimated at 50p, on the basis that each GA movement will carry an average of two persons (our assessment). This is a cost per person of between 10 and 50 times greater. In our organisation's opinion, the effect of this will be substantial and deleterious. Small airfields will give up their air ground or information service rather than pay a substantial fee for a license cost that they will be unlikely to pass on in full to their GA users. This will impose additional pressure on information frequencies (for example London Information) that are already busy but will not be augmented, and the "SafetyCom" frequency (135.475 Mz) already assigned for use near airfields without radio, leading to a reduction in safety both in the air and to third party general public on the ground contrary to what Ofcom suggest in para 5.84.

It is our view that AIP, if appropriate at all, should treat frequencies allocated to smaller GA airfields differently than frequencies allocated to the larger airfields used predominately for CAT and for en route use. It is informative that the CAA recently stated that in the absence of further argument or evidence, there are not a case for establishing a separate Air traffic Services charging scheme in respect of small aircraft and that for the next control period CP3 (2010 to 2015), all reasonable costs incurred by NERL (the enroute part of NATS' air traffic business) in providing services to small aircraft typically used for non-business/commercial purposes should be taken into account in setting the Eurocontrol price control, payable by CAT since it is the CAA's view that "the creation of controlled airspace is primarily a necessary measure to protect the safety of commercial aviation", (see In Focus – a briefing from the Civil Aviation Authority – 09 February 2010.) For similar reasons, by far the greater part of the aeronautical frequency spectrum is assigned for the control of commercial aviation and if AIP should apply, then its application should be limited to frequencies wholly or mainly assigned for CAT control since in the absence of the need for these allocated frequencies, GA needs could be accommodated within a small fraction of the available frequency band.

Further we note with dismay Ofcom's proposals that Volmet and ATIS service frequencies should be charged at a similar rate as for an approach frequency. Ofcom clearly fail to appreciate that the information provided by these facilities frees up much airspace time that would otherwise be necessary for controllers to manually provide terminal weather information to pilots with an inevitable degradation in safety that will follow. In our view, such facilities should always have a zero charge being analogous to the air-to-air and distress frequencies used on what Ofcom curiously describe as on a "private commons" basis (para 5.61).

We find Ofcom's approach to determining price using a Business Radio AIP benchmark (paras 6.19 et seq) lacking in logic and relevance to the basic premise that the aeronautical frequency band is set by international agreement and any analysis of the so called "value" of a particular frequency within the band can only be determined once there is international agreement on how "value" is to be assessed. Ofcom mention various comparable situations such as the broadcasting spectrum (para 6.33) and other "externalities", apparently defined as "social valuable broadcasting" (para 6.34) but in truth these analogies are wholly irrelevant to a spectrum defined and controlled by international treaty.

While since its first consultation Ofcom has apparently accepted that the aeronautical frequency band cannot be used for any other purpose as enshrined by international treaty, there are many statements in this consultation which appear to contradict this acceptance and not least the proposal discussed in the preceding paragraph suggesting that charges be set by reference to a Business Radio AIP benchmark. We remain of the view that Ofcom do not fully comprehend the essential differences between radio spectrum used for commercial purposes such as television, radio and mobile phone use, and radio spectrum provided as an essential element in the safe and expeditious control of air traffic and primarily CAT.