

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: **APPLYING SPECTRUM PRICING TO THE AERONAUTICAL SECTOR**

To (Ofcom contact): **MICHAEL RICHARDSON**

Name of respondent: RICHARD SEARLE

Representing : ROCHESTER AIRPORT CONSULTATIVE COMMITTEE AND SELF

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CONFIDENTIALITY

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

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Name RICHARD J. SEARLE

Signed (if hard copy)

OFCOM CONSULTATION :

APPLYING SPECTRUM PRICING TO THE AERONAUTICAL SECTOR

(2nd Consultation)

I am in total agreement with and fully support the following response made by AOPA which has fully covered the response I wish to make. I do so both as a private pilot and as Chairman of Rochester Airport Consultative Committee. The application of a tax on aeronautical frequencies can only diminish flight safety. A revenue raising activity that increases risk to life and limb is abhorrent and immoral!

This is the formal response of the Aircraft Owners and Pilots Association of the United Kingdom (AOPA UK).

We represent the views of General Aviation aircraft owners and pilots; as well as those of some small aerodromes and 165 flying clubs/schools. AOPA UK has been representing its members since 1965.

So that there is no misunderstanding as to our position and having read Ofcom's proposals it is clear that AIP in respect of VHF Spectrum used by the aeronautical sector is a tax and therefore we do not support the proposal.

Question 1: DO YOU CONSIDER THAT OUR PROPOSED FEE RATES FOR LICENCES IN AERONAUTICAL VHF FREQUENCIES ARE APPROPRIATE?

A: This question is misleading in a sense because it asks if the licence fees are appropriate. Appropriate to what? If the intention of the question was 'Appropriate in general' then our answer is 'No'. We can see that Ofcom has developed an increasing scale of fees to take account of the current economic climate and regional variation and we do not agree with this approach. If it is not right to introduce the full fee now, it cannot be right to do so in five years time. The proposed fees are linked to the overall purpose behind Ofcom's proposals that being Administrative Incentive Pricing (AIP). This is a market based 'tool' and it is our view that within VHF Aeronautical Spectrum there is no market. If Ofcom believes such a market exists it has not, in our view, proved the case.

Through international agreements aeronautical frequencies are protected and therefore they cannot be traded. It is also highly unlikely that frequencies would be traded within aviation – in any case Ofcom would need to set conditions to make this possible. However, another concern that we have relates to the lack of proof that there is congestion in this part of Spectrum – it may be fairly well used but surely that implies the Sector is using the Spectrum efficiently? That being the case it is difficult to see how AIP could deliver increased efficiency?

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?

A: 'Yes' – it looks as if you have – however, just because you have identified them does not change our view with regard to AIP being an additional tax burden to our Sector.

Question 3: DO YOU AGREE WITH OUR PROPOSALS NOT TO CHARGE ANY FEES FOR FIRE ASSIGNMENTS?

A: 'Yes' – this is obviously a safety related position Ofcom has taken with regard to the provisions of safety essential services. Volmet and ATIS Services should also be considered as essential to safety.

Question 4: DO YOU AGREE WITH OUR PROPOSAL TO SET A £75 FEE FOR LICENCES IN ANY OF THE SPORTING FREQUENCIES?

A: 'No' – as we do not agree with the proposal for AIP we cannot agree to the above no matter how reasonable Ofcom wants to appear – the principle of AIP in our Sector is unacceptable.

Question 5: DO YOU AGREE WITH OUR PROPOSALS TO SET AN ANNUAL FEE OF £19,800 PER ACARS OR VDL ASSIGNMENT WITH NO VARIATION RELATED TO THE NUMBER OF TRANSMITTERS?

A: 'No' – AOPA considers such fees as a tax on safety and opposes such proposals, as we regard the primary function of such stations as facilitating safety.

Question 6: DO YOU CONSIDER THAT OUR APPROACH TO PHASING IN FEES FOR USE OF THE AERONAUTICAL VHF COMMUNICATION 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?

A: As previously stated, AOPA does not believe that the principle of AIP can be properly applied to VHF communications. AIP is a 'blunt' Regulator's tool to deal with excessive demand over available capacity and as we have already stated Ofcom has not demonstrated in its proposals that there is a demand greater than capacity. The UK CAA who assign frequencies inform us that they have no outstanding requests for VHF frequencies. Due to aviation's well established use of frequencies in the UK requirements do not often change. This is true to say for aviation's use of VHF communications in other parts of the world. For reasons of safety the Spectrum in question is subject to WRC/ITU rules. They are internationally agreed which the UK is committed to honouring, to protect frequencies which are dedicated to the safe operation of aircraft.

The argument made by Ofcom in respect of congestion and that AIP will deliver increased efficiency is flawed. Individual channels are not congested and for safety reasons VHF communications have a protected range in respect of their geographical allocation.

If, due to the introduction of AIP, users of VHF channels reduced the number of frequencies they hold those frequencies would return to the international allocation 'pool' and possibly be lost to the UK. As the current arrangements do not give 'property ownership' to those users who have assigned frequencies there is no tradable market. Ofcom admits that efficiencies that will arise out of AIP cannot be predicted and Ofcom further states: 'The purpose of pricing is to promote efficiencies that cannot all be anticipated in advance. It is not therefore possible or meaningful to attempt to fully anticipate the efficiency response to pricing' - this statement confirms our belief that AIP is just a revenue raising exercise and therefore a tax.

Aeronautical communications are used to provide essential flight safety messages between the ground and the air. Depending on the aerodrome being used, and the traffic volumes, good communication in respect of aircraft height, speed and position is crucial in the maintenance of safety to both people in the air and third parties on the ground.

NATS UK has estimated the cost of AIP at between £1-£4 million annually without any positive cost benefit. A large proportion of this will fall to General Aviation. As a non commercial operator, General Aviation pilots will be paying for this from already taxed income in most cases. We will end up paying a tax for voice communications that provide for the safe and efficient use of airspace and aircraft.

Another of Ofcom's arguments is that AIP is based on the 'opportunity cost' of Spectrum which is denied to another user because it is reserved for aviation. This so-called 'loss of

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opportunity' is fundamentally flawed because until international rules are amended aviation's use of Spectrum will continue to be denied to other users even if aviation gives up using some frequencies. Therefore there is no opportunity cost which is being denied other than in a theoretical sense, with little real world applicability.

Without knowing what the external demand for aviation use of Spectrum is it is not possible to know what the value is and AOPA questions Ofcom's opportunity cost calculations.

When our industry speaks about safety it appears that Ofcom considers that this is an external matter and come what may the UK CAA will ensure safety. But safety is a partnership between the Regulator and the regulated where safety is our first priority. Safety cannot be at any price as it is not affordable. In AOPA's view AIP is just a tax on safety.

Ofcom believes that moving to 8.33 kHz from 25 kHz will deliver increased efficiency of Spectrum and the proposed pricing indicates that the fees for 8.33 kHz stations are approximately a third of the price quoted for 25 kHz. This is an obvious attempt by Ofcom to move aviation solely into 8.33 kHz channel spacing. However, this would require a change at international level through Eurocontrol. It is impossible for the UK to adopt by itself 8.33 kHz for its entire airspace. If it did, the UK would effectively close its airspace to foreign operators. Eurocontrol has announced plans, in line with the Single European Sky proposal, for all new aircraft to equip with 8.33 radios from 2012 and for the existing fleet a retrofit programme to commence in 2018.

Ofcom is only concerned with Spectrum cost but for General Aviation moving to 8.33 kHz means a huge investment in new radios. Post 2018 when 8.33 is in full operation how would AIP continue to deliver efficiency? If Ofcom believes today that 8.33 will be the best use of Spectrum and if AIP is aimed at getting the best from Spectrum use based on what Ofcom believes is congestion AIP will penalise aviation for being efficient. Therefore we conclude that AIP is a revenue raising exercise for the Treasury.

The gradual set of fees to be introduced over 5 years is just the 'thin end of the wedge' and AOPA does not support the proposed fees of £2,600 for Air Traffic Control, AFIS, A/G, £9,900 for ATIS; they are completely unacceptable – the only option for a number of small

aerodromes will be to give up their frequencies. This could then lead to a less safe environment for all aviation .

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Question 7: DO YOU HAVE ANY FURTHER QUANTIFIED INFORMATION 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 CONFIDENTIALITY OF ANY MATERIAL WHICH IS CLEARLY MARKED AS SUCH.

A: 'No' – the additional fee to Ofcom is likely for many small aerodromes reduce their already small profit margins further – possibly to the point where to remain economically viable the radio frequency would have to be given up. This would mean the aerodrome would have to establish non-radio rules for arrivals and departures reducing today's safety levels. This may run counter to European law as set out by Regulation EC1108/2009 which includes rules in respect of communication at aerodromes.

Question 8: DO YOU CONSIDER THAT OUR ASSESSMENT OF THE IMPACT 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.

A: See additional comments.

Additional comments:

AOPA believes that the whole of the aviation community is opposed to Ofcom's proposals and is sending a clear message to Ofcom. That message is: AIP will do little, if anything, to improve VHF Communications Spectrum efficiency – it will not lead to a market in which frequencies can be traded as a commodity – AIP will lead to higher operational costs that will benefit no-one except the Treasury and that today's safety margins could be eroded. It is our understanding that where Spectrum has been auctioned that the expected 'opportunity costs' have not been achieved. AOPA believes that opportunity costs in VHF Communication Spectrum are zero with the current international rules and, as previously stated, the frequencies used in aviation are allocated by the CAA and are therefore not the property of the end user.

AOPA believes that if AIP proceeds then it is purely a revenue raising exercise for the Treasury.