

Part B.

CONFIDENTIAL
(Circulate under cover
notify REGISTRY)

Begins : 8/12/87.
Ends : 27/7/88.

APPOINTMENTS - IN - CONFIDENCE

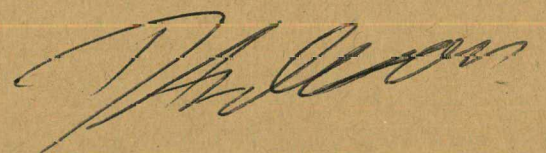

PO -CH /NL/0217

PART B

Chancellor's (Lawson) Papers:

THE TELEVISION
BROADCASTING INDUSTRY

Disposal Decisions: 25 Year



13/9/95.

PO -CH /NL/0217
PART B

CIVIL SERVICE	
EXCHEQUER	
DATE	09 DEC 1987 9/12
ACTION	MR. BURR
COPIES TO	CST FST
	SIR P. MIDDLETON
	MR AND MRS MURPHY
	MR GILMORE
	MRTYRIE.
From the Private Secretary	



10 DOWNING STREET
LONDON SW1A 2AA

8 December 1987

Dear Philip,

INDEPENDENT TELEVISION PRODUCERS

I attach a copy of a letter the Prime Minister has received from Mr. Michael Darlow.

I should be grateful if you could provide a draft reply for the Prime Minister's signature, to reach me by 22 December.

I am copying this letter to the Private Secretaries to members of MISC 128 and Trevor Woolley (Cabinet Office).

*Yours,
David*

DAVID NORGROVE

Philip Mawer, Esq.,
Home Office

✓

INDEPENDENT ACCESS STEERING COMMITTEE

74 NEWMAN STREET
LONDON W1P 3LA
TELEPHONE 01 323 3220
TELEX 266075 PRODCO-G

The Rt. Hon. Margaret Thatcher FRS MP
10 Downing Street
London SW1A 2AA

8 December 1987

Dear Prime Minister,

INDEPENDENT TELEVISION PRODUCERS

During the seminar you held on broadcasting on 21st September you asked whether we independents were having difficulties in our negotiations with the broadcasters. I regret to have to inform you that our negotiations with ITV have continued to go so badly that we have today decided that we have no alternative but to break-off talks with the ITV companies.

I feel sure that when your Government announced its intention to secure that 25% of programmes on ITV and the BBC came from independents your aim went beyond providing a limited stick with which to help them beat their unions. In letters to the Home Secretary and Lord Young in July I said that neither the BBC nor ITV had been willing to offer guidelines as to the principles for the business terms between broadcasters and independents which held out any hope of the independent sector developing into a genuine "third competitive force" in programme supply. The ITV companies, despite our best conciliatory endeavours, have persisted in their refusal to talk seriously and many have used the interval to take advantage of their right to transmit programmes, to force independents into contracts which deny them proper control over their intellectual capital or operating margins that correspond even to those customary in dealings with Channel Four. They have also denied them an equitable right to the benefits arising from exploitation of their programmes in foreign markets. Some ITV companies continue to make it a condition of contract that independents use ITV facilities and crews.

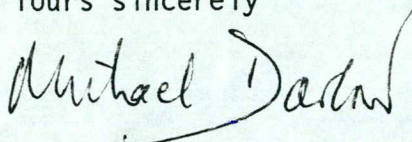


THE BRITISH FILM
& TELEVISION PRODUCERS
ASSOCIATION LIMITED



ITV's actions and unwillingness over a period of almost nine months to negotiate in any meaningful way lead us to conclude that they never intended to reach an equitable agreement. If the present conditions persist the 25% access policy could lead not to the emergence of the independent sector as a competitive third force, but to its progressive undermining. We see no alternative therefore but to seek outside intervention to ensure that, in words of the Director General of the IBA, there is a 'level playing field'.

Yours sincerely

A handwritten signature in cursive script that reads "Michael Darlow". The signature is written in dark ink and is positioned above the typed name.

MICHAEL DARLOW
Head of Negotiations

2529/9/8

~~bf 10/12~~ bf 14/12

FROM: R D KERLEY

DATE: 9 December 1987

1. MR BURR *agreed in draft*
2. CHANCELLOR

- cc Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Sir P Middleton
Mr Anson
Mr Burgner
Mr Gilmore
Mr Spackman
Mr Cave
Mr Kaufmann
Mrs Pugh
Mr Cropper
Mr Tyrie

MISC 128 ON 10 DECEMBER: INDEPENDENT PRODUCERS: TERMS OF TRADE

The Secretary of State for Trade and Industry has tabled a paper to be discussed at tomorrow's meeting of MISC 128 on how to even up the balance between independent producers and the broadcasters over intellectual property rights. The paper recommends that whilst legislation would be feasible a better course would be for the independent producers to be advised to approach the OFT with a view to a possible monopoly reference to the MMC.

Line to take

2. Agree with the proposals that the most appropriate action would be for the independents to approach the MMC. Not only would it help those concerned (ie the broadcasters) to take the issue more seriously, but also a full study of the market would provide a sound basis for any further measures. In particular it would take account of the Government's underlying policy interest, which lies in the development of a healthy market rather than in any particular issue in dispute at any particular time between the artificially few players so far involved.

KERLEY
CH EX
9/12

Background

3. As you are aware the independent producers and the broadcasters are currently in discussion over arrangements for meeting the 25 per cent target. A difficult issue has been the ownership of the rights to further exploitation of the programmes and the revenues derived. The rights are important because they determine control over further exploitation in other media, although the independents are more concerned with the revenues which they see as providing the base from which they can expand, eventually becoming an effective competitive force and ultimately making the 25 per cent quota and other protection unnecessary. This expansion could be frustrated if the broadcasters are able to use their market power to obtain terms which disadvantages the independents.

4. At MISC 128(87)1st meeting in July it was decided there was a case for legislation to prohibit unfair restrictions on the exploitation rights of the independents as well as a case for a reference to the MMC. Since then officials have undertaken further work on both these courses. As far as legislation is concerned it would certainly be possible to legislate to prevent the broadcasters acquiring all of the exploitation rights, however, this would do nothing to ensure a fair distribution of revenues which is a matter for contractual negotiation. Moreover since what is fair will vary from case to case any legislation, even if variable, may not be sufficiently flexible. For example given the difference in size and access to capital markets between the broadcasters and independents there may be cases where, on risk sharing grounds, it may be more efficient for the lion's share of the revenues, and hence risk, to be held by the broadcasters. Thus legislation may result in the market becoming further distorted rather than being corrected. This is backed up by experience in the USA in the early 1970s when the Federal Communications Commission regulated contract terms in an attempt to benefit independent producers. The effects were small or even counter productive, and the attempt was later abandoned.

5. As the paper says this suggests the only feasible legislative solution may be some kind of arbitration arrangements, covering terms of trade in general. These could be added to the existing role of the IBA and the BBC governors (although it is extremely difficult to see how they could perform this role) but this would involve not only assessing performance against a quantified target but also making qualitative economic judgements, which might be difficult to reconcile with their broadcasting role. The alternative of an independent tribunal raises other problems, such as funding and its constitution. Thus the paper appears to be right in its conclusion that the legislative route may involve intervening in commercial matters to an unacceptable degree.

6. The other action considered was a reference to the MMC. Whilst this could be done by Ministers (via an approach to the OFT) it would seem sensible to follow the normal route and advise the independents that if they continue to face difficulties, they should approach the OFT. It seems likely that the BBC, and the ITV companies if taken as a whole, would have a monopoly together or separately in the purchase of programmes.

7. It could be argued that this route would only delay matters, since if the OFT did refer the case to the MMC, which in turn found the broadcasters behaviour against the public interest then legislation may still be required. However a report could be prepared in time for legislation in 1989-90 (for inclusion in the second Broadcasting Bill). In the meantime a reference, or threat of a reference, may well focus the minds of the broadcasters to reaching a satisfactory settlement with the independents, and if a report were carried out then a full study of the market would provide very useful information for any further measures considered necessary.

R D Kerley

R D KERLEY

*OK is subject of 25.11.87
conclusion of
government*

FROM: B T GILMORE

DATE: 9 December 1987

CHANCELLOR

cc Chief Secretary
Financial Secretary
Mr Anson
Mr Kemp
Mr Burgner
Mr Burr
Mr Waller
Mr Kaufmann
Mrs Pugh
Mr Picard
Mr Cave
Mr Call

*Ch/ content to
write as
drafted?*

WPN 14/12

BROADCASTING SPECTRUM

In his letter of 30 November to the Home Secretary, Lord Young proposes to extend the existing technical studies of a possible Fifth Channel on UHF and the feasibility of MMDS so as to cover also the possibility of using VHF spectrum for additional television services.

2. This is a welcome development. Some of the more desirable parts of the spectrum in question are now occupied by mobile radio services. The immediate question is whether and how new television services could be licensed as well. There is a deeper question how the spectrum should in the long term be managed, and in the Working Group currently looking into that question the Treasury is arguing for maximum use of the price mechanism to allocate spectrum to those who can make the best use of it. There would have to be transitional arrangements for existing mobile radio users of the broadcasting parts of the VHF spectrum. But there is commercial interest in VHF; not all of the spectrum is committed; and when Ministers come to consider possibilities for new television services early in the new year it would be helpful for VHF to be covered also.

3. You may like to send a brief letter acknowledging this useful move. I attach a draft. I have also added the point that there should be no new commitments until Ministers have been able to consider the results of the study. I have no reason to suppose that DTI are in practice likely

to do any such thing. But it is noticeable how (for instance) the
duo have started to use the night hours as soon as the question
of allocating them to others arose; so the point is probably worth
covering.

PP E. Impey

B T GILMORE

pl type final for
CATEX sig

**DRAFT LETTER FROM THE CHANCELLOR TO THE SECRETARY OF STATE FOR TRADE
AND INDUSTRY**

BROADCASTING SPECTRUM

I welcome your proposal (letter of 30 November to Douglas Hurd) to extend the current study of possible additional television services on UHF and MVDS frequencies so as to cover VHF frequencies also. It is fundamental to a healthy broadcasting industry that we minimise unnecessary restrictions on the possibility of new services being developed. So I very much agree with you that we need to look at the technical possibilities in all parts of the spectrum, as well as alternative ways ^{of} ~~to~~ allocating spectrum ^{so as to} ~~in a way which~~ maximises ~~the~~ economic return ~~for~~ ^{from} this scarce resource. I take it that no further commitments will be given about the use of these bands until we have been able to do so.

2. I am copying this letter to the Prime Minister, to other members of MISC 128, and to Sir Robert Armstrong.



11/12
 HOME OFFICE
 QUEEN ANNE'S GATE
 LONDON SW1H 9AT
 17 DEC 1987
 MR GILMORE
 COT FST ANG
 SIR P MIDDLETON
 MR ANSON MR LEWIS
 MR BURGESS MR SCHLAFER
 MR SPACKMAN MR CANN
 MRS PUGH MR KILGREN
 MR FLANNAGAN MR CROSS
 MR TYRIE

Ch/We are seeking advice. Deadline is Monday.

MPW

Dear David,

MPW:

INDEPENDENT TELEVISION PRODUCERS

behind.

X Mr Michael Darlow, head of negotiations for the Independent Access Steering Committee, has written to the Prime Minister, the Home Secretary and the Secretary of State for Trade and Industry in similar terms, reporting that his Committee had discontinued discussions with representatives of the ITV companies and inviting the Government to intervene. The Home Secretary suggests that he might reply on behalf of all those approached, and I enclose a draft accordingly.

In the Home Secretary's view we must watch the position carefully but there is no case at this stage for the Government to intervene in the way sought by Mr Darlow. Both the IBA and the ITV companies are committed to the achievement of the 25% target within their present contracts, as extended until 1992. The ITV companies have already voluntarily committed £42m to commissioning programmes from independent producers, more than the amount spent in this way by Channel 4 in 1986. The market has therefore more than doubled within a year.

The disagreement between Mr Darlow's Committee and the ITV companies is rather about the business arrangements under which programmes are being commissioned.

There are essentially two areas of disagreement: how much independent producers should be paid for their work and how the proceeds of the exploitation of that work after broadcast - eg its sale overseas - should be divided. The independent producers have tried to get the ITV companies to agree on these two matters to terms significantly more favourable to them than those governing commissions by Channel 4. The independent producers say that for 3 to 4 years, until a fully competitive market can develop, they need additional protection. There does not appear to be an issue of principle concerning ownership of the copyright in commissioned programmes. Mr Darlow and his colleagues explained to the Minister of State last month that they took a pragmatic view on this, and were essentially concerned about how large a share of the proceeds of the exploitation of programmes producers should receive.

/The ITV

David Norgrove, Esq

PS/OTI
 NCG/OTI
 11/12

The ITV companies have said that they remain willing to negotiate within the guidelines published earlier in this year by the IBA, which are intended to secure fair terms for all concerned (they establish, for example, that neither party should automatically own all the exploitation rights). But the ITV companies want to be free to negotiate on a case-by-case basis, arguing that the circumstances of each company and commission - eg its export potential - are different.

It is obviously desirable that a competitive market should develop as quickly as possible: from this point of view it is not self-evident that the 15 ITV companies should necessarily work to a single set of collectively negotiated terms. On the other hand the terms on which commissions are offered must be fair and must not frustrate the development of an open market. In this context it is of note that none of the producers in receipt of ITV commissions has so far complained to the IBA, although the IBA has asked for any complaints to be brought to notice so that it may form a view on whether its guidelines have been followed.

Behind We must keep in reserve the possibility of legislation to entrench the 25% policy. In practice this could not be effective for the three year extension of existing franchises, but only for the next round under whatever new arrangements we eventually decide. But the IBA have agreed that the 25% for independents should be part of the three year renewed franchises. Pending discussion of the options for legislation or other Government action outlined in MISC 128(87)14, the Home Secretary believes that it would be desirable to encourage the independent producers to look in the first place to the IBA rather than the Government, and, if possible, to the resumption of negotiations. Lord Young's paper makes it clear how difficult it would be for the Government to attempt to impose business terms on the parties.

The Director General of the IBA brought both sides together in a meeting this morning which all parties agreed was constructive and useful. The IBA has taken on the task of exploring with both sides an agenda to provide the basis for resuming the negotiations as originally intended at a meeting planned later this month. We are keeping closely in touch with the situation. If this initiative does not succeed we may have to take a hand ourselves.

I should be grateful to know by close of play on Monday whether the Prime Minister and other members of MISC 128 are content for the Home Secretary to reply to Mr Darlow as proposed.

/I am copying

I am copying this letter to the Private Secretaries to the other members of MISC 128 and to Trevor Woolley.

David Sweeney,

P J C Mawer

P J C MAWER

Draft letter for signature by the Home Secretary to:

Michael Darlow, Esq
Independent Access Steering Committee
74 Newman Street
LONDON
W1P 3LA

Thank you for your letter of 8 December. I am grateful to you for keeping me and my Ministerial colleagues in touch with developments, and I am replying for us all.

We were naturally disappointed at the news which you conveyed on behalf of your Committee.

As I understand it, the ITV Association is committed, with the IBA, to achieving the Government's 25% target by 1993. The issue concerns the business arrangements under which these programmes are being and are to be commissioned. The Government is not of course a party to these arrangements. We nevertheless have a close interest in them: as you rightly indicate, our aim in setting the 25% target was to encourage the development of a fair and competitive market for the supply of television programmes.

Your letter invites the Government to intervene in the determination of the business arrangements. I have made it clear on many occasions that we are ready to consider legislation to ensure that our 25% target is satisfactorily achieved, if this should prove necessary. But even if it were feasible to introduce legislation next Session this could not come into force for some time. In the meantime we are concerned that the progress already made should be maintained.

/cont.

As you will know, the law already provides, in the form of the Office of Fair Trading, machinery for the resolution of complaints of the abuse of market power. It is open to any independent producers or the Association on their behalf to approach the Office.

You are best placed to decide how to secure the commercial interests of your members. So far as the development of a competitive market is concerned it is clearly important that the terms on which commissions are offered are fair, having regard to the nature of the product and market conditions. The guidelines for the commissioning of programmes published by the IBA earlier this year were intended to make it easier to achieve this. The guidelines were broadly welcomed by all concerned. The IBA remains committed to them, and to reviewing ITV commissions against them.

I know that the IBA believes that it should be possible, with the co-operation of all concerned, to achieve our target within those guidelines, and is anxious to assist the parties to make progress on this basis. While, as I have said, I would not wish to rule out legislation at a later stage, I believe that the IBA's efforts to advance matters constitute a positive step, to which I hope your Committee will respond. We shall keep in close touch with developments.

I am sending a copy of this letter to David McCall on behalf of the ITV Association and to Lord Thomson.

982/19

FROM: T J BURR
15 December 1987

BURR
→
CH EX
15/12

- 1. [MR GILMORE] *Not available*
- 2. CHANCELLOR

- cc Chief Secretary
- Financial Secretary
- Paymaster General
- Economic Secretary
- Sir P Middleton
- Mr Anson
- Mr Burgner
- Mr Scholar
- Mr Spackman
- Mr Cave
- Mrs Pugh
- Mr Kaufmann o.r
- Mr Kerley
- Mr Cropper
- Mr Tyrie

INDEPENDENT TELEVISION PRODUCERS

In the light of the Government's commitment to a 25 per cent share of programming for independent TV producers, the independent producers and the ITV companies have for some months been negotiating about the terms of business on which independent programming should be supplied. On 8 December Mr Michael Darlow, who leads the independent producers' side in the negotiations, wrote to the Prime Minister and other Ministers to say that the intransigence of the ITV companies had obliged him to break off negotiations, and asking the Government to intervene.

2. The letter of 11 December from the Home Secretary's Private Secretary suggests that the Home Secretary should reply to Mr Darlow, and attaches a draft. I apologise that I did not immediately notice, when the letter reached me yesterday, that comments were requested by last night, though I understand that this deadline has now been extended until lunchtime today. The urgency is in fact artificial, and the original deadline set by No 10 was early next week. DTI believe, rightly or wrongly, that the Home Office are trying to rush the matter through before MISC 128 on Thursday. The No 10 letter of 14 December indicates that the Prime Minister is content with the Home Office draft but is prepared to discuss it in MISC 128 if other Ministers have difficulty with it.

3. The Home Office view, reflected in the letter of 11 December

DTI now want to discuss at MISC 128 so we kept this for your Home Office were told

is that:

(a) The ITV companies have already made substantial progress towards the 25 per cent target, and their commitment to it is not in doubt;

(b) The dispute is not about the target but simply about terms of business;

(c) Mr Darlow has conducted the negotiations in a high key way, with frequent threats to break them off;

(d) The independent producers are demanding better terms than they get from Channel 4;

(e) The ITV companies have not unreasonably become exasperated with Mr Darlow's antics;

(f) The IBA can be left to sort matters out and, if possible, to get negotiations restarted;

(g) The independent producers can also have recourse to the Office of Fair Trading if they have a legitimate complaint that the ITV companies are abusing their market powers;

(h) There is no immediate need for the Government to intervene.

4. The view of DTI, with which we have some sympathy, is that there is a clear imbalance of market power between the ITV companies and the independent producers, in favour of the former. There is a risk that the 25 per cent target could be met on terms which did not really enable the independent sector to flourish, with the result that the objective of a vigorous and internationally competitive independent sector was not achieved. While the Home Office letter says that the independents are holding out for terms which are in some respects better than they get from Channel 4, DTI say that equally the ITV companies are in some respects offering them a worse deal than they get from Channel 4. DTI therefore see a case for reacting to the breakdown of negotiations by calling in the ITV companies for a meeting with Home Office Ministers at

which they would be asked to report on progress, and would be told of the Government's anxiety that the spirit and aims of the 25 per cent policy should be respected as well as the letter.

5. It would hardly be appropriate to mention any such proposed action vis-a-vis the ITV companies in the reply to Mr Darlow. That would be to take sides too overtly with the independent producers and, by encouraging them to harden their position, would probably make eventual agreement less likely. DTI accept this. Indeed the draft which the Home Office have circulated looks broadly satisfactory. It underlines the Government's commitment to the 25 per cent target; points out that legislation would not be of much immediate help; points to the potential remedy provided by the Office of Fair Trading; and says that the Government will keep in close touch with the IBA's efforts to advance matters.

6. We therefore recommend that the letter should be allowed to issue as drafted; but that a Private Secretary letter should be sent suggesting that MISC 128 on Thursday should consider whether any ^{separate} action is called for in respect of the ITV companies, in order to assist in securing satisfactory progress towards the Government's objectives. I attach a draft.

T. J. Burr

T J BURR

DRAFT LETTER

FROM: THE PRIVATE SECRETARY TO THE CHANCELLOR

TO : THE PRIVATE SECRETARY TO THE HOME SECRETARY

cc : as indicated

INDEPENDENT TELEVISION PRODUCERS

You copied to me your letter of 11 December on this subject and the enclosed draft reply to Mr Darlow.

2. We have no points to raise on the draft reply. We are not entirely sure, however, whether matters can be left there. David Norgrove's letter of 14 December indicates that the Prime Minister would be prepared to discuss issues arising from this correspondence at MISC 128 on Thursday. The Chancellor believes that it would be useful to consider at that meeting, in connection with the paper by the Secretary of State for Trade and Industry on terms of trade for independent producers (MISC 128(87)14), whether any further action is needed. It may be necessary to emphasise to the ITV companies that the Government not only wants the 25 per cent target to be met, but to be so on an equitable basis which is consistent with the underlying objective of a vigorous and internationally competitive independent sector.

3. I am copying this letter to the Private Secretary to the other members of MISC 128 and to Trevor Woolley.



Jan

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

15 December 1987

The Rt Hon Lord Young of Graffham
Secretary of State for Trade and Industry
1-19 Victoria Street
LONDON
SW1H 0ET

Jan

BROADCASTING SPECTRUM

I welcome your proposal (letter of 30 November to Douglas Hurd) to extend the current study of possible additional television services on UHF and MVDS frequencies so as to cover VHF frequencies also. It is fundamental to a healthy broadcasting industry that we minimise unnecessary restrictions on the possibility of new services being developed. So I very much agree with you that we need to look at the technical possibilities in all parts of the spectrum, as well as alternative ways of allocating spectrum so as to maximise the economic return from this scarce resource. I take it that no further commitments will be given about the use of these bands until we have been able to do so.

I am copying this letter to the Prime Minister, to other members of MISC128, and to Sir Robert Armstrong.

Jan
N.L.

N.L.



DEPARTMENT OF TRADE AND INDUSTRY
 1-19 VICTORIA STREET
 LONDON SW1H 0ET
 TELEPHONE DIRECT LINE 01-215 5422
 SWITCHBOARD 01-215 7877

PS/ Secretary of State for Trade and Industry

16 December 1987

P J C Mawer Esq
 Private Secretary to the
 Home Secretary
 Home Office
 50 Queen Anne's Gate
 LONDON SW1H 9AT

CH/EXCHEQUER	
REC.	16 DEC 1987 ✓
ACTION	MR GILMORE ✓
COPIES TO	CST FT FMCFTT SIR P MIDDLETON MR ANSON MR KEMP MR BURGER MR SCHULAR MR SPACKMAN MR CAVE MR SPIET MR WATSON MR PLANTAGAN MR CROPPER MR TYRRE

OS/DTI
 →
 PS/ HOME OFFICE
 16/12

Dear Philip

INDEPENDENT TELEVISION PRODUCERS

Thank you for copying to me your letter of 11 December to David Norgrove. As I told Colin Miller, Lord Young would prefer MISC 128 to discuss the issues before coming to a final view on how the Government should respond to Michael Darlow.

He agrees that the Government ought not to intervene in matters which are properly for the parties to resolve in detailed discussion but he did wonder whether we ought not be more positive in steering the independents towards the OFT. He was also unsure whether the reference to legislation was quite right. He thought that mentioning how long it would take for the legislation to come into force might make the ITV companies less willing to be accommodating.

Michael Darlow has written a further letter to Lord Young about the progress that has been made with the BBC. I understand he has also written to Mr Hurd but I am circulating his letter for the information of other MISC 128 colleagues.

I am copying this letter to David Norgrove, to Private Secretaries to other members of MISC 128 and to Trevor Woolley and Shaun Munday (Cabinet Office).

Yours

Jeremy Godfrey

JEREMY GODFREY
 Private Secretary

~~(to be replaced?)~~~~of to m~~ 18/12

FROM: R D KERLEY

DATE: 16 December 1987

- 222
12
1. MR BURR *TJ Burr 16/12*
2. CHANCELLOR
- mp*

cc Chief Secretary
 Financial Secretary
 Economic Secretary
 Sir P Middleton
 Mr Anson
 Mr Burgner
 Mr Gilmore
 Mr Odling-Smee
 Mr Spackman
 Mr Cave
 Mr Kaufmann o/r
 Mrs Pugh
 Mr Cropper
 Mr Tyrie

MISC 128 ON 17 DECEMBER: INDEPENDENT PRODUCERS

Briefing for the paper by the Secretary of State for Trade and Industry on terms of trade for independent producers (MISC 128(87)14) was provided in my minute of 9 December. Since then, however, events have moved on with the developments set out in Mr Burr's minute of 15 December. Briefly the independent producers broke off negotiations with the ITV companies on 8 December with their head of negotiations, Mr Michael Darlow, then writing to the Prime Minister and other Ministers claiming that the intransigence of the ITV companies had obliged him to take this course of action, and asking the Government to intervene. A draft reply from the Home Secretary to Mr Darlow was then circulated, but we understand that following an intervention from Lord Young this letter will not be sent until the issues have been discussed at MISC 128. Subsequent to the breakdown with the ITV companies the independents reached agreement with the BBC on 14 December.

2. The Home Office position is essentially that at this stage the best course of action would be for the independents to approach the IBA to try and resolve the impasse, rather than Government. Lord Young, on the other hand, will probably argue that more pressure needs to be brought to bear on the ITV companies and that they should be called to a meeting with Home Office Ministers and reminded that the Government wishes that the spirit and aims of the 25 per cent policy should be respected as well as the letter.

3. The DTI position does not seem unreasonable. Home Office Ministers have had discussions in the past with the independents and given the Government's objective of a vigorous and internationally competitive independent sector would be served by an equitable agreement between the independents and the ITV companies a direct Government initiative may well be necessary.

KERLEY
 CH EX
 16/12

We recommend, therefore, that you support Lord Young's position that the ITV companies should be called in for a meeting with Home Office Ministers rather than at this stage leaving the situation to be dealt with by the IBA.

R D Kerley

R D KERLEY

CONFIDENTIAL

FROM: N M KAUFMANN
16 December 1987

1. MR BURR *approved a list*
2. CHANCELLOR

cc Chief Secretary
Financial Secretary
Paymaster General
Economic Secretary
Sir P Middleton

Mr Anson
Mr Monck
Mr Burgner
Mr Gilmore
Mr Odling Smee
Mr Spackman
Mr Burr
Mr Cave
Mrs Pugh
Mr Kerley
Mr Cropper
Mr Tyrie
Mr Call

MISC 128: SUBSCRIPTION TELEVISION

The Home Secretary's proposals for policy on subscription contained in his paper MISC 128(87)15 deal with the obstacle to a fully competitive broadcasting market presented by the absence of a direct means for consumers to register their preferences by choosing to pay for what they actually watch. Subscription would serve to maximise the effect of consumer preferences. By providing a major additional source of finance, it has the potential to increase the amount and quality of programming in response to latent consumer demand. It would also help to level the playing field for new entrants to the broadcasting market by reducing the present need to contend with well-established existing services which are free at the point of consumption. It is therefore of key importance.

The Home Secretary's policy

2. The background to the Home Secretary's proposals on subscription is the CSP consultants' report published in July. The main conclusions and background analysis of the CSP report were summarised in the attachments to Mrs Pugh's submission of 17 July (which for ease of reference are attached at Annexes A and B respectively). The Home Secretary accepts the CSP recommendations that there should not be a wholesale switch to subscription finance for all four existing channels; that the TV licence fee should neither be

Kaufmann
To
Ch.
16.12.87

CONFIDENTIAL

collected through subscription nor replaced by requiring the BBC alone to finance itself from subscription; and that there should not be a full-scale move to a mixture of subscription and advertising finance on all four existing channels. Instead, again in line with CSP's view, he argues for gradual and incremental change by the introduction of subscription for new services and on the marginal (that is night-time) services of the existing channels. His long-term aim is for subscription to play an integral part in the financing of all channels so that viewers' demand has a direct means of expression which at the same time will allow broadcasters to raise the finance to supply that demand (especially where that involves a premium).

3. The Home Secretary's long-term aim seems right. His proposals for moving towards it are summarised in items (iv)-(ix) of his conclusions in paragraph 17 of the paper. We think they are rather too cautious to be effective in promoting his overall objective of establishing subscription as an integral part of broadcasting finance (paragraph 17(i)-(iii)). In particular the paper underestimates the importance of subscription being introduced into existing services for its overall development. Thus, while it is right to say that how strongly subscription will feature in the financing for all new services such as satellite TV, MMDS and the fifth terrestrial channel will be a matter of commercial judgement, it is wrong to suggest there is no link with what happens with existing services. So long as they remain perceived as "free" at the point of consumption it will be less commercially attractive to introduce subscription on new services. And Mr Hurd is anxious to restrict the introduction of subscription for existing services which are seen to be "free".

4. The following paragraphs discuss Mr Hurd's particular proposals (itemised as in his paragraph 17) from the standpoint of our general concern. The appendix summarises our specific recommendations in the form of a line to take.

BBC

(iv) (a) to allow the BBC to encrypt and charge for their services;

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(b) increasingly to restrict increases in the licence fee below the RPI from April 1991 onwards;

(v) (a) the BBC to retain the night hours; but

(b) on one channel, no programmes to be produced in-house

5. The Home Secretary says his ultimate objective is the replacement of the licence fee. But, for the reasons given above, that is not the sole objective of introducing subscription on the BBC. The Home Secretary recognises that the BBC would need financial encouragement to develop subscription by restricting the licence fee, but only by holding down increases in the fee and then only after April 1991 since indexation to the RPI is set to last until then. He proposes to leave the BBC with the night hours so that they can use those to introduce subscription without depriving viewers of the "free" services which they have become used to. He suggests back-up legislation to give a reserve power to require encryption and even subscription.

6. The Peacock Committee actually recommended that the night hours should be taken away from the BBC (and Independent Television) and sold to the highest bidder to be run on a subscription basis. CSP also warned that, left to their own devices, the BBC would soft pedal subscription by introducing it only in the night hours at first. While the Home Secretary acknowledges both these points, he does not really meet them. Under his proposals we believe the BBC would have insufficient incentive to give up the artificial advantage it gains from the licence fee by a whole-hearted adoption of subscription. There needs to be a sufficient adjustment of licence resource for the BBC to be given a real incentive to maximise its income by gearing its output to programmes suitable for subscription. What that adjustment should be, and whether it might mean an absolute reduction in the licence fee, should be the subject of further work by officials, on the basis of an examination of the scope for subscription to generate revenue. Subscription would enable the BBC, if anything, to extend the range of its broadcasting on, moreover, a more fairly competitive basis.

7. Even assuming the BBC keeps its night-time broadcasting, these arguments point to the BBC using subscription in the day as well

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as at night. Mr Hurd's point about unsettling viewers used to "free" TV would be met by the reduction in the licence fee. In fact, if that were not done, then viewers could justifiably complain that they were being charged twice for their programmes - once through the licence fee and second through the subscription charge.

Effective double-charging becomes a real problem - and it could become publicly very contentious - if the licence fee is not seen to be substantially affected. The same would be true - though less evident - of cross-subsidisation of the night-hours subscription service from the day-time licence fee service to price out other potential subscription services.

8. We are not convinced of the case for the BBC to be allowed to retain the night-time hours on both channels. The type of programmes they broadcast during this period are not likely to be of the kind normally associated with public service broadcasting. The response to the objection that both channels somehow 'belong' to the BBC is that the BBC never used to put anything out at night before Peacock made his proposals. Leaving the BBC with both channels will make it too easy for them to soft pedal on subscription as well as to price out other potential subscription services.

9. The Home Secretary goes some way to recognise this in his proposal to require one of the BBC's channels to broadcast exclusively independent productions at night. That semi-privatisation does not, however, seem a very logical route to the efficiency advantages of privatisation, since in-house production may well be more cost-effective for some purposes. Nor would it achieve the diversity benefits of privatisation since the BBC would still be controlling the broadcast output.

10. To remove both channels from the BBC at night is unlikely to be acceptable to the Home Secretary. As a compromise, we think it would be worth taking the Home Secretary's proposal to its logical conclusion, and removing one channel entirely from the BBC for the night hours. That would ensure at least 4 competing night time subscription channels (BBC, C4, Ex-BBC and ITV). That would help to ensure a varied and competitive market in night-time subscription services, fully exploited by both broadcasters and

viewers.

Independent Television

(vi) to discuss with IBA a separate contract or contracts for the ITV night hours from 1 January 1993;

(vii) enabling powers to authorise or require the IBA to encrypt its signals and its contractors to charge subscriptions.

11. We are not convinced that subscription on the night-hours need wait until 1993. 1993 represents a three-year extension of the ITV contracts because of the decision to move to a new basis of awarding franchises by competitive tendering. But there is no reason why that extension should affect the night-time hours. An early tender for night-time hours would increase competition (especially if existing ITV companies were disallowed from tendering to encourage new entrants) and would provide useful experience for the awarding of the day-time franchises in the main round of competitive tendering. It would also provide an early testing ground for subscription, which could then be introduced in the daylight hours on ITV from 1993 too.

Channel 4

(viii)(a) enabling power to require or authorise C4 to encrypt and charge subscription;

(b) C4 to keep its night hours.

12. CSP suggested that Channel 4's night hours (and BBC2's) could be used to develop a premium subscription service. Mr Hurd mentions the doubts which have been expressed on the viability of such a service by those who commented on the CSP Report. But others believe that it would be viable. In any case, Mr Hurd is right to say that no view needs to be taken now. He says that Channel 4 is already making "imaginative use" of the night hours and sees no reason to break up its monopoly given its specialist objects. We think you might accept that.

To allow or require subscription in the night hours?

13. The Home Secretary leaves it open whether contractors should be enabled or required to charge for subscription. Requiring night-time contractors to finance their services by subscription need not involve setting a minimum subscription as envisaged by the Home Secretary in his paragraph 14, but could be achieved by setting a very low limit on the maximum advertising time allowed at night. We think there may be a case for compulsion. Commercial considerations could well lead to 100 per cent advertising finance, with higher profits for broadcasters at the expense of the public welfare benefits to be gained from subscription. On the other hand, consumers of night-time TV are unlikely to want to watch or download much advertising, so that the programmes broadcast at night are likely to be of premium quality and therefore most suitable commercially for subscription. This issue needs to be explored. Meanwhile, it seems right to take the power to require encryption, so that the Government can if necessary ensure that the scope for subscription services on C4 frequencies as on ITV is properly tested.

Standardisation of Encryption/Payment Systems

(xi) (a) no common payment system;

(b) no standard for encryption technology, but whether minimum standards of compatibility to be prescribed should be considered.

14. CSP said that subscription would be helped if transaction costs were kept to the minimum and the payment collection process was made as efficient as possible for the operator and the user. They recommended therefore that the Government should set national standards for encryption and that there should be a common payment system with a single pay television authorisation agency under a Government franchise. The Home Secretary however doubts whether there is a role here for Government. He points out that BSB is already developing its own subscription film service. He argues

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that the market can be left to standardise equipment and organise payment systems where that is in the interests of the industry. We agree broadly, though in regard to encryption, we think there is a stronger case for the Government to ensure compatibility than the Home Secretary believes. BSB are likely to use their position as first into the market to lock as big a share as possible into their own technology, and experience with similar technologies - telecommunications, satellite transponders, video recorders, and cable - have shown that there is a role for Government in promoting, if not imposing, standardisation.

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N M KAUFMANN

Line to take

We recommend you to agree with the Home Secretary that it is a key objective for subscription to be established as an integral mechanism for financing broadcasting generally. Subscription services should be available where the consumers want them. For that to happen, however, the Home Secretary's proposals need to be carried somewhat further. There needs to be a proper test of subscription across the range of broadcasting. This means:

(i) The BBC should be required to encrypt its broadcast services;

(ii) The BBC licence fee should be limited, and an actual reduction should not be ruled out, since to do otherwise would give the BBC little incentive to introduce subscription and if they did it would mean charging people twice for the service;

(iii) the BBC should be allowed to charge by subscription for day as well as night-time services (though not at the same time on both channels);

(iv) The BBC's night-time use of one of its ^{channels} frequencies should be removed and put out to tender on the same basis as for ITV from 1 January 1990;

(v) The night-time hours on ITV should be allocated to new companies from 1 January 1990;

(vi) There should be enabling legislation to require the IBA to encrypt its signals and its contractors to charge subscriptions;

(vii) Similar powers should be taken in respect of Channel 4;

(viii) Channel 4 to retain its night-time hours;

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(ix) The Government should have a role in setting minimum standards of compatibility for encryption systems though not in establishing a common payment system.

ANNEX A

MAIN CONCLUSIONS OF THE CSP REPORT ON SUBSCRIPTION TELEVISION

Annex A

- (i) The technology for subscription is available now and the cheapest technique for charging would be to incorporate a decoder in a television set (rather than use a peritelevision socket as recommended by Peacock). This would add about £15 (in 1987 prices) to the price of a television set by 2000. The administration costs of subscription, for two channels, might be just over £5 per household, compared with £3 for collection of the licence fee.
- (ii) There is a high and growing demand for 'premium' type programmes (films, plays, major sporting events), as shown by the high levels of spending on VCR software and cable. Current subscription channels in the UK and abroad all have a relatively high content of premium programmes. Only 7½ per cent of current BBC schedules are premium programmes.
- (iii) The use of encryption to collect the licence fee would be inefficient: the additional resource costs of decoders and administering collection would outweigh the increase in BBC receipts due to reduced evasion.
- (iv) Neither BBC channel would be financially viable if financed by subscription when ITV and Channel Four remained 'in the clear' or unscrambled. The welfare benefits subscription BBC channels would also be considerably lower than the licence fee given the same programme costs and content.

- (v) All four terrestrial channels would be financially viable if financed by a mixture of subscription and advertising revenue. But again, given the current programme content and cost, welfare benefits would be lower because many (perhaps one half) of potential viewers of each channel would be excluded.
- (vi) A premium programme subscription channel would be profitable and yield higher welfare benefits than the present BBC channels. Benefits of a premium programme channel financed by a licence fee would be still higher.
- (vii) The report recommends that the night time hours on BBC 2 and Channel Four should be used to show premium programmes financed by subscription and that part of daytime BBC 2 hours should be replaced by a subscription service. It also recommends that terrestrial broadcasting should be extended to a new VHF band and to additional local and regional UHF services which would be financed by subscription. The report also emphasises the importance of the government's role in setting common technical standards.

ANALYSIS OF CSP RESULTS AND CONCLUSIONS ON SUBSCRIPTION TELEVISION

Financial viability of subscription and consumers demand for television programmes

1. The conclusions on the financial viability of subscription depend crucially on the estimates of the equipment and administrative costs of encryption and on the estimates of demand for subscription channels. CSP appear to have examined the former thoroughly and there is little reason to suppose that the estimates are biased in any one direction.
2. The estimates of demand are based on a questionnaire survey of viewers. It is easy to criticise such surveys, which will inevitably provide only a rough guide to what people will in fact pay for a good or service. However, the extremely small sample of only 84 viewers and the relatively crude and small number of questions asked in the CSP survey reduce the confidence that can be placed on the results.
3. The low willingness to pay for a monthly subscription compared with the licence fee suggests that demand may have been underestimated given the large number of hours of television currently watched by respondents. It is also not clear what meaning, if any, can be attached to the estimates of demand for BBC channels when ITV and Channel 4 are also charged for, because the charges for the commercial channels were unspecified.
4. However, the gap between net revenue and programme costs is too large for this to alter the CSP conclusion that, with the present programme content and costs, it would not be financially viable to finance either BBC channel by subscription if ITV and Channel Four remained 'free'.
5. Although not much weight can be placed on the precise estimates of demand when all four channels are charged for, CSP seem correct to conclude that a combination of subscription and advertising funding for all four channels would be financially viable. It would probably not be necessary to require ITV companies and Channel 4 to raise some finance through subscription: a more effective levy on profits from advertising, as proposed in the changes to the ITV system, and allowing some advertising on BBC would provide a good incentive to do so.

Annex B

6. The report's findings on the structure of demand for different types of programme are more robust and possibly more relevant. The key result is that consumers are willing to pay relatively high amounts for 'premium' type programmes than for 'light' or 'informative' programmes. However, less than 10 per cent of current BBC schedules are premium programmes. It follows that a channel for premium programmes would be profitable and presumably BBC would choose to broadcast such programmes if financed by subscription (when it would not be desirable or possible to regulate programme content tightly).

Welfare benefits of alternative forms of finance

7. The report uses conventional economic analysis to estimate the welfare benefits of alternative systems of finance. Thus benefits are consumer surplus ie the difference between the maximum amount consumers are willing to pay and the amount in fact paid.

8. The report is correct to argue that for a given set of programmes and level of costs, the net benefits for licence fee finance will always be higher than for subscription. This is because when the marginal cost of supplying television to an additional viewer is negligible benefits are maximised by charging a zero price. (Marginal benefit is thus equated with marginal cost). Subscription will reduce welfare by excluding some viewers who would benefit by less than the subscription but by more than the marginal cost of supplying programmes to them. The result holds despite the fact that with a compulsory licence fee, benefits for some viewers will be less than the amount paid. This is because payment of the licence fee is simply a transfer from viewers to producers of programmes: it does not affect the aggregate net benefits (although it does affect the distribution of benefits between different viewers).

9. CSP estimate that the size of the welfare loss from funding by subscription would be large: the economic benefits from subscription would be less than 10 per cent and 25 per cent of the benefits from the licence fee for BBC1 and 2 respectively, assuming programme content ^{and costs} remains as at present. This is essentially because with the estimated structure of demand BBC would maximise net revenue at a subscription bought by only 40 per cent (BBC1) and 25 per cent (BBC2) of all television households. In addition equipment and collection costs are estimated to be over six times higher for encryption than for the licence fee.

10. The low marginal cost of including additional viewers in a broadcast programme is inherent to broadcasting and distinguishes it from most other goods and services. This argument for not charging was recognised by Peacock but judged to be outweighed by benefits of better response to consumer preferences and improved incentives for efficiency.

The impact of alternative systems of finance on the response to consumer preferences, incentives for efficiency and technical change

11. A major advantage of charging consumers for any good or service is that suppliers thereby have information on consumers preferences, as revealed by willingness to pay, and the incentive to respond to these preferences and provide a wide variety of products. Despite CSP's argument that BBC responds well by intensive audience research, there is a strong presumption that a market based system where consumers pay for broadcasts would generally provide a more innovative and flexible response to consumers' demands.

12. The incentives for efficiency and cost minimisation provided by charging consumers would also be expected to be more effective than measures such as indexing the licence fee and quotas for independent producers.

13. However, these benefits from charging may only be fully realised if there is a large number of channels available for broadcasting. Otherwise the scope for programme variety will be restricted and competition limited. Peacock's argument for charging was based on a future state of technology when a multiplicity of channels had been developed. In such circumstances charging would be preferable to funding by the licence fee (and to advertising). There is thus less conflict between the CSP report and Peacock's objective of a competitive pay-TV market than appears at first sight.

14. However, the CSP report does not convincingly argue that a mixed funding system of subscription and advertising, supplemented by some public service broadcasting financed by a smaller licence fee or general taxation, would not be preferable to continuing with the existing system, albeit with the limited subscription recommended by CSP.

15. There are two issues here. One is that such a mixed funding system could supply more of the highly valued premium programmes and would generally supply programmes more cost effectively. Regulation and limits on the licence fee (for good reasons of encouraging efficiency) restrict the amount of premium programmes currently shown. Incentives for efficiency would be considerably greater if channels had to compete for subscription and advertising revenue; CSP seem incorrect to argue that four channels is too small a number for competition to be effective.

16. A second important issue overlooked by the report is that a constraint on the development of more channels *by investment* in cable and DBS is the continued availability of four free channels. There is thus a difficult problem of changing the existing system of finance in order to speed progress towards the long term objective for broadcasting without a large, albeit temporary, cost to viewers.

The pace and method of preparation for a competitive pay-TV market

17. There appear to be at least three policy options for proceeding towards a competitive pay-TV market. These are not mutually exclusive.

(i) CSP recommendations

18. These cover subscription financed nighttime hours, partial replacement of BBC2 daytime hours with subscription, and new terrestrial channels. All these proposals seem sensible, but the last is potentially the most important. The CSP report on Deregulation of the Radio Spectrum suggests that the net benefits of replacing existing radio users of four UHF channels with television broadcasting would be high. This takes into account the much lower cost of broadcasting on a terrestrial channel (£16.4 per household and for one year) than by cable (£80).

Collecting the licence fee by encryption

19. CSP recommend against this option essentially because they estimate that the resource costs of collection by encryption (which includes the decoders) would exceed the increase in licence fee receipts, mainly due to reduced evasion. However, this overlooks an important external benefit from collection by encryption which is that the cost of subscription for other channels would be reduced by common use of the same decoder. (This assumes that the cheapest form of decoder integrated with a television set could receive DBS in addition to cable and over the air signals).

(iii) A mixed system of subscription and advertising finance for BBC, ITV and Channel 4

20. This would be the most radical option and CSP argue that welfare loss would be high due to exclusion of viewers who would benefit by more than the additional cost of supplying them with the broadcast. But as suggested in para 15 above, the report appears to dismiss too readily the beneficial changes in programme mix and cost which could be brought about by increased competition and charging especially given the possibility of new terrestrial channels. There would also be a beneficial stimulus to cable and DBS development.

21. This option need not involve dispensing with all public service broadcasting. This could be provided, as recommended by Peacock, by a public service broadcasting council, funded by general taxation, and which commissioned programmes by tender from various commercial channels.

Conclusions

22. The CSP report on subscription does not invalidate the longer term Peacock objective of a competitive pay-TV market. But it does convincingly caution against a too rapid move towards subscription without increasing the number of channels available, continuing with some provision for public service broadcasting and ensuring that all channels were funded by subscription and advertising rather than subscription for the BBC alone.



HOME OFFICE
 QUEEN ANNE'S GATE
 LONDON SW1H 9AT

CH/EXCHEQUER	
REC.	30 DEC 1987 30.12
ACTION	MR BURR
COPIES TO	CST FST SIR P. MIDDLETON MR ANSON MR KEMP MR BURGESS MR GILMORE MR C. M. WHITE MR KAUFMAN MR SPUGH MR CNE MR TYRRE

23 December 1987

Dear David,

STRUCTURE OF BROADCASTING

I am sorry we have not responded before now to your letter of 2 November about the Prime Minister's interest in the operation of the IBA, and her question whether this could be improved, and if so, how?

The Home Secretary agrees that this is an important issue, which needs to be addressed. There is a lot of action already under way. First, the bulk of the IBA's resources is committed to its responsibility for transmission of television signals. Ministers have already agreed that transmission arrangements in relation to both the IBA and the BBC should be reviewed, including the scope for privatisation. That review, on which the next step is a discussion at the Official Group (MISC 129), will therefore focus on matters central to the IBA's existing responsibilities. Second, many of the IBA's functions will be crucially changed as a result of decisions Ministers are now taking on new broadcasting legislation. Ministers have recently decided that the IBA should no longer have responsibility for radio. The work now done by the IBA on the television side will depend on the arrangements for the award of ITV contracts, the future structure of Channel 4 and the provision of news, which are all under discussion. The networking system too will operate very differently from 1993 onwards.

The Home Secretary therefore proposes in the New Year to return, in the light of progress on the transmission system and other matters now being considered by Ministers, to the question of the nature and scope of the IBA's operations, bearing in mind that Lord Thomson's term of office as Chairman expires at the end of 1988.

I am copying this letter to the Private Secretaries to the other members of MISC 128 and to Sir Robert Armstrong.

James Stirling

P. J. C. Mawer
 P. J. C. MAWER



mp

10 DOWNING STREET
LONDON SW1A 2AA

5 January 1988

From the Private Secretary

Dees Philip

CH/EXCHEQUER	
REC.	06 JAN 1988 <i>6/1</i>
ACTION	MR BURR
COPIES TO	CST FST SIR P. MIDDLETON MR ANSON MR KEMP MR BURGNER MR GILMORE MR G. WHITE MR KAUFMAN MR SPURR MR KERLEY MR TYLIE MR ULL

STRUCTURE OF BROADCASTING

The Prime Minister has seen your letter of 23 December to David Norgrove which she has noted without comment.

I am copying this letter to the Private Secretaries to the other members of MISC 128 and to Trevor Woolley (Cabinet Office).

Les

Mark Addison

Mark Addison

Philip Mawer, Esq.,
Home Office.

dti

the department for Enterprise

CH/EXCHEQUER	
REC.	21 JAN 1988
ACTION	Mr Burt
COPIES TO	CST, FST SIR P. Middleton MR ANDON MR Kemp MR Gilmore MR Kerley Mr Tyné

Department of Trade and Industry

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Secretary of State for Trade and Industry

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Your ref
Date 18 January 1988



I have seen your Private Secretary's letter of 19 January, proposing a draft reply to Michael Darlow. I think the reply needs to refer to the proposal we discussed at MISC 128 on 17 December 1987 about the provision of regular reports to me and to the Director General of Fair Trading.

We need to ensure fair terms of trade between the independent producers and the broadcasters while still preserving a proper distance between the government and commercial decision making.

But I doubt whether an independent producer would in practice use the OFT machinery to try to ensure fair terms of trade in any individual contract he negotiates with a broadcaster. My experience is that in a monopoly or monopsony market like broadcasting, this is unlikely to happen on the scale needed to ensure the more competitive market which is our aim. At MISC 128, we agreed that a general monitoring of the overall developing picture of the many individual contracts being between particular broadcasting companies and individual independent producers was required. I am aware that the IBA has already asked the ITV companies to report details of their



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independent commissions on a six monthly basis and no doubt the BBC will be producing a similar survey on a regular basis for its senior management. While they will not be preparing these primarily with an eye to ensuring fairer competition, it is in their interests to demonstrate that this is a consequential effect.

I think therefore that we should ask the BBC and IBA to provide these reports to myself, given my Department's interest in competition issues, and to the Director General of Fair Trading who has day-to-day responsibility for administering competition law. The reports would not be made public, but would help the Director General to decide whether at any time a monopoly reference might be appropriate. This would both use the existing machinery of the OFT to the fullest extent possible, which we agreed at MISC 128 was desirable, while preserving a proper distance between the government and the commercial decisions involved in the individual contracts between broadcasters and independent producers. The OFT and my officials might wish to discuss the format of these reports with the BBC and IBA initially.

If colleagues agree to this proposal, it can be included in the reply to Darlow. I will write to the Director General of Fair Trading to draw his attention to the fact that the BBC and the IBA will be invited to submit reports regularly summarising the relevant terms of the contracts they will be signing with independent producers. If the BBC and IBA decline to provide such reports, this could in itself be of interest to the Director General. It would obviously be for you to approach the BBC and IBA in the first instance to ask to provide the reports voluntarily.

I am copying this letter to the Prime Minister, other members of MISC 128 and to Sir Robin Butler.

J. L.
Law



CH/EXCHEQUER	
REC.	22 JAN 1988 22/1
ACTION	MR BURR
COPIES TO	CST FST SIR P. MIDDLETON MR ANSON MR KEW MR GILMORE MR KERLEY MR TYRIE

QUEEN ANNE'S GATE LONDON SW1H 9AT

22 January 1988 ✓

Ch/ to be aware. DTI and Home Office very disgruntled with each other

mpw 22/1

Dear Lord Young,

Thank you for your letter in reply to my Private Secretary's letter of 19 January with a draft reply to Michael Darlow of the Independent Access Steering Committee.

You suggest that the reply needs to refer to the proposal discussed at MISC 128 concerning regular reports on progress towards the independent production initiatives. I think the immediate need is for a letter to go to Mr Darlow quickly to encourage the independents to look to the IBA's initiative as the immediate way ahead. I see some difficulty in including at this stage any reference to the idea of regular reports from the broadcasters. This all needs more careful thought and indeed preparation with the broadcasters if in the event we do decide to follow that route.

The particular possibility canvassed at our meeting on 17 December was that the BBC and IBA might be required to publish periodic information about the contracts concluded with independent producers. (The idea you mention in your letter of asking the BBC and IBA to provide six-monthly reports to you on the basis that they would not be made public but might be referred to the Director General of Fair Trading is rather different.) The conclusion of the meeting was that you were invited to work up proposals for requiring the BBC and IBA periodically to publish information about the contracts made with independent producers and to bring a paper to the group in due course.

I can see the attraction of an approach on something like these lines, though MISC 128 obviously wanted to look at the implications of a particular proposal before agreeing to it. For the moment I think we should aim to get a reply to Michael Darlow promptly and I hope that you can now agree to my sending the draft circulated with my Private Secretary's earlier letter. It does not of course preclude a later decision by MISC 128 in favour of your proposal or any variation of it. We might indeed cover your point in general terms by adding the words "or indeed other means by which Government might monitor progress" after the phrase "While I would not wish to rule out legislation at a later stage" in the third sentence of the last substantial paragraph.

I am sending a copy of this to the Prime Minister, other members of MISC 128 and to Sir Robin Butler.

Yours sincerely,

Glin R. Mille

Approved by the Home Secretary and signed in his absence.



the department for Enterprise

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

View on VHF at
X overleaf

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REC.	12 APR 1988 ✓ 1214
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COPIES TO	CST EST SIR P. MIDDLETON MR ANSON MR PHILLIPS MR BURGON MR SCHLAR MR SPACKMAN MRS CAVE MRS FLIGHT MR BUZZ MR KERLEY MR CROPPER

Direct line 215 5422
Our ref PS6AIY
Your ref
Date 12 April 1988

Dear Douglas,

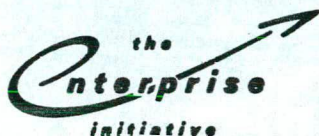
ADDITIONAL PROGRAMME SERVICES

I have read with interest your memorandum MISC 128(88)5.

I am sure you are right to say that our task is to create an enabling framework, and equally that it is not for Government to pick winners. The question of timing is important, and I have to say I am not yet persuaded of the case for delaying the introduction of any new services for a number of years. We shall clearly need to examine this point in some depth at MISC 128 on 21 April.

The main purpose of this letter, however, is to set out some points on the approach to new services at local level, discussed in paras 17-19 of your memorandum, and in particular the implications for our policy in this area of convergence of broadcasting and telecommunications. There may be issues here on which officials could usefully do some further work.

First, it may be helpful to colleagues to have set out in a little more detail the thinking of the Communications Steering Group, which underlines the so-called "technology neutral" approach to the provision of local services. To that end I ... attach a short paper prepared by my officials on the Steering Group's thinking, with which I very much agree. The main theme is that convergence is happening now, and we cannot afford to take decisions on the framework for the next ten years without taking that fact into account.



YOUNG
TO
HURD
12 APR

Second, we should not be too quick to attach the "monopoly" label to the technology neutral approach. As set out in the attached paper, the Steering Group envisages that a local TV service franchisee, able to use cable and MVDS technologies, would have to compete for viewers with the off-air services (including a fifth channel, if it goes ahead), DBS and Astra (as well as video shops). In any case, as paragraph 18 of your memorandum notes, even if transmission in a particular area were in the hands of a single operator, there would still be scope for competition in programme supply and, perhaps, retailing at the local level. Another possibility, which is touched on in the Official Group's report, would be the allocation of non-exclusive transmission franchises within an area. I think the feasibility of these various approaches merits further consideration and I suggest that officials should discuss the issues further, with a view to reporting back through the Chairman of the Official Group.

The promotion of local competition in telecommunications is important, but I do not think it is necessary to delay decisions on the broadcasting issues until after the telecommunication duopoly review. New local entertainment services would add to competition in broadcasting irrespective of the outcome of the telecommunications duopoly review, and they would therefore be worthwhile in their own right. If, in the light of the duopoly review, they could help to provide a basis for enhanced competition in mainstream telecommunications services, so much the better.

Finally, I agree that we should publish the results of the technical studies on the scope for additional TV services, and I suggest we ask our officials to put the necessary work in hand now with a view to early publication after we have discussed the issues on 21 April. On the question of a fifth or sixth channel at VHF, I agree with your conclusion in para 2 of MISC 128(88)5 that the VHF option is not worth pursuing further: especially as doubts have now been raised about possible interference with aircraft navigational aids and communication systems. Our consideration of the VHF option is a source of uncertainty to the mobile radio industry and users in their investment planning and to neighbouring administrations in their negotiations with us on related matters like the fifth channel we are pursuing at UHF. I see

dti

the department for Enterprise

X
considerable advantage therefore in an early announcement that an additional TV service at VHF will not be possible. If you and colleagues agree, perhaps such an announcement could be made by written answer within the next few days. This would save the time of the Home Affairs Select Committee in pursuing the subject when my officials appear before them on 20 April.

I am copying this letter to the Prime Minister, to other members of MISC 128 and to Sir Robin Butler.

Yours,
David

the
Enterprise
Initiative

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BROADCASTING AND TELECOMMUNICATIONS : THE WORK OF
THE COMMUNICATIONS STEERING GROUP

Note by the Department of Trade and Industry

Purpose of the Paper

1. This paper summarises the views emerging from the Communications Steering Group set up by MISC 131 to advise on the future of the electronic communications infrastructure. This paper covers only those aspects of the Steering Group's work which are relevant to the relationship between broadcasting and telecommunications.

The Impact of Technology on Policy Options

2. The communications scene is characterised both by increasing diversity and the breaking down of barriers between technologies. Electronic communications transmission media are increasingly overlapping. Digital transmission will soon make distinctions between the information being carried (whether visual images, telephony or data services) unsustainable.
3. This has major implications for policy towards all forms of electronic communications. Both in broadcasting and telecommunications, policy so far has been technology-based. Particular forms of communication have been seen as the natural province of particular transmission technologies. These divisions are already being blurred. BT transmits live racing events to audiences of off-course punters. The BBC and IBA broadcast text and data for use by business. There is a choice to be made between continuing with the

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previous technology specific approach which already shows signs of inflexibility or taking a more radical view so as to provide a framework to accommodate advances in technology.

4. The Communications Steering Group set up by MISC 131 has been considering the ways in which the electronics communications infrastructure might develop in the future. MISC 131 has yet to consider its findings but the Group has concluded that an enforced division between delivery technologies each subject to separate controls on what and how services can be carried is no longer an effective means of meeting consumer demand. The user does not in practice care how a service reaches him providing it does so cost effectively. The user's interest is that technologies should be freely usable in whatever way seems best to meet user needs as conveniently and cheaply as possible. Seen in this light the most important consideration in promoting effective service through competition is that policy (including regulation) should be technology-neutral. If not we may lock ourselves into non-optimal technology configurations in developing the infrastructure and the services carried over it.

Broadcasting and Telecommunications : The Steering Group's Approach

5. How would such an approach affect broadcasting and telecommunications given that BT and Mercury are currently barred from transmitting TV over their main Public Telecommunications Operator networks and the BBC and IBA are barred from telecommunications? Cable has a foot in both camps but has not so far really taken off. There are constraints on the competition possible between transmission networks. These include the high costs of market entry. Recognising this, the Steering Group favours the

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introduction of a comprehensive system of local renewable franchises for the provision of new TV and other one-way services whether information or entertainment is involved. These one-way franchisees should be free to choose from the delivery technologies available the mix they see as best suited to meet the demands they identify in their area. The mix will vary over time. The franchisees would contract with the producers of such services for their delivery to end users. Open competition for entry to the market would be retained through periodic competition for the franchise. It might also be possible to have competing franchisees in some areas. Franchises would need a population of 500,000 upwards for a variety of delivery media to be able to be used effectively within them.

6. The outcome of the telecommunications duopoly review starting in November 1990 cannot be pre-empted. One outcome of this might, however, be that such one way franchisees could be allowed to move into the provision of two-way telecommunications services at any time they wished to do so. This could provide a potential source of competition in two-way communications at the local level in the 1990s. To turn this into actual competition, franchisees would need to develop the cable element of their delivery systems. That in turn could open up the way for Government to permit British Telecommunications and Mercury to transmit TV services over their telecommunications networks in those areas. This both makes sense in technology terms and would inject more competition in TV delivery at the local level.
7. This is a radical approach achievable fully only in the long term. Mindful that Government is not starting with a blank canvas, the Group advocates a series of measured changes. First, the Group sees advantages (in terms of efficiency and the encouragement of competition) in the separation of the IBA and BBC transmission networks from their programme - provision activity. That apart, the four

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off-air channels would continue to be provided and transmitted as at present. DBS services too would continue to be provided in the way currently envisaged. Second, the winners of any franchises for a Fifth or Sixth Channel should be free to determine their own transmitting arrangements, though it is likely that these will mirror the arrangements for the four off-air national channels. Third, the Group advocates the creation of the technology-neutral regional franchises identified above for the provision of additional local TV and other one-way services. Government should leave it to franchise winners whether they wish to deliver the services by cable, by MVDS (if allowed by Government) or by any other technology - and, in turn, whether they wish to involve the ex-IBA (or BBC) transmitting companies in their transmission arrangements or not. Those franchisees will face competition from the four national channels, from any fifth or sixth channel and from DBS in their provision of entertainment services and from BT and Mercury in their provision of other one-way services (since these can readily be provided over the conventional two-way telecommunications network). Fourth, Government should continue to encourage the development of competition in "two-way" telecommunications services at local level. The ways in which this can be done will depend on the outcome of the telecommunications duopoly review starting in November 1990. Prior to the review one-way franchisees would be free to use cable and MVDS (if licensed) to provide telecommunications services within the current duopoly controls. If the review then enabled the one-way franchisees to move freely into two way services during the 1990s the expectation should be that before too long the prohibitions on British Telecom and Mercury carrying TV services over their telecommunications networks could be lifted. This constraint is needed now in the interests of encouraging competition. But it produces both economic and technological distortions; and Government should seek eventually to dispose of it.

8. These ideas represent a distinct change in approach. The Steering Group believes they provide a way to increase meaningful choice for the consumer, and a more flexible framework to allow the full capabilities of new technologies and services to be exploited. Unless a credible evolutionary path to the development of competition at the local level in two-way (ie telecommunications) services can be sustained new TV services seem very likely to kill off most cable developments. Much will depend on the telecommunications duopoly review, but if cable did not prosper BT could be left as the predominant force in local telecommunications delivery for the foreseeable future. Current prospects for cable are not good enough to warrant denying users other access to new TV services for which there is a demand. In any case this should not be a judgement for Government. But in the Steering Group's view the opportunity for entertainment service providers to evolve by way of cable into telecommunications should not be foreclosed.



10 DOWNING STREET

LONDON SW1A 2AA

15/4

From the Private Secretary

15 April 1988

CHEXECHEQUER	
REC.	15 APR 1988
ACTION	MR BOLT
COPIES TO	CST FST SIR P. MIDDLETON MR ANSON MR H. PHILLIPS MR BUREMAN MR SCOTLAND MR SPACKMAN MR CAVE MRS RUGH MR SURE MR KERLEY MR LORRIMER

Dear Jeremy,

ADDITIONAL PROGRAMME SERVICES - VHF

The Prime Minister has seen your Secretary of State's letter of 12 April to the Home Secretary. She is content for your Secretary of State to make an early announcement indicating that an additional TV service at VHF will not be possible.

I am copying this letter to the Private Secretaries to members of MISC 128 and Trevor Woolley (Cabinet Office).

Yours,
Paul

PAUL GRAY

Jeremy Godfrey, Esq.,
Department of Trade and Industry

GRAY
→
GODFREY
15/4



In the
Cms,
W. J. M.

Ch/MISC 128 on Thursday is to consider various questions on additional programme services (pps behind). One fairly small aspect of this is whether to hold open possibility of 5th or 6th VHF channel. Home Sec's paper argues we should not pursue further. Lord Y and PM agree (pps behind) and Lord Y wants to announce tomorrow, before officials appear before Home Affairs Select Committee tomorrow.

HE's advice is that they would have preferred to hold open option. But chances of carrying that at MISC 128 slim if PM, Lord Y + Mr Hurd agreed. Main argument against VHF is it interferes with air / rto



QUEEN ANNE'S GATE LONDON SW1H 9AT

15 April 1988

Dear Lord Young

ADDITIONAL PROGRAMME SERVICES

Thank you for your letter of 12 April.

I agree that the question of the timing and phasing of the introduction of any new services is one of the most important issues before us, and will require considerable discussion.

As regards technology-neutrality, I agree that it would be helpful if officials discussed the various options further with a view to reporting back through the Chairman of the Official Group. But I would like to register my concern about the consequences for the timing of the White Paper. It is well known that we are conducting a fundamental review of broadcasting policy and we have been under pressure for some time to announce our conclusions. This pressure is now strong. I am clear that we should aim to publish a White Paper before the summer recess. We are sufficiently far advanced on most of the major issues before us (the reform of the ITV system, Channel 4, subscription and the night hours) to make this a realistic aim. I am, however, a little concerned that if we do approach MVDS in a way which links it to future telecomms scenarios - and that may well be the right thing to do - we shall not be able to reach conclusions in time for a July White Paper. There is also the considerable awkwardness about the link between all this and the review of the BT/Mercury duopoly which is not to be undertaken before November 1990.

It would be undesirable either to delay unnecessarily announcing conclusions on those matters on which we had reached decisions, or to rush into difficult, long-term decisions on local services. One possibility would be to decouple the question of local services from the remainder. We could still aim to cover the main part of the agenda (including any additional terrestrial channels on UHF) in a July White Paper, but defer announcing our views on local services, perhaps only until the autumn (and perhaps in the form of a Green rather than a White Paper). We could signpost clearly in the White Paper that a further announcement on local services would be made before too long. This would, of course, still allow sufficient time to legislate on local services in the 1989/90 Bill if we wished to do so, and if we were clear that we could do so in advance of any wider changes to the telecomms environment.

Perhaps I could make one or two comments on the discussion in your letter, and the accompanying paper, of technology-neutrality. First, the extent to which the technology-neutral approach would involve the creation

CH/EXCHEG	
REC.	18 APR 1988 15/4
ACTION	MR BOLT
COPIES TO	CST FST SIR P MIDDLETON MR ANSON MR PHILLIPS MR BURGNER MR SUTCLIFFE MR J PEARSON MR CAVY MR PUGH MR BURR MR KELLY MR ROYER

/of local

The Rt Hon Lord Young of Graffham

HURD
Young
15/4

of local monopolies would naturally depend on the degree to which local franchise-holders were allowed to develop vertically integrated businesses free from competition. If their franchise covered both the transmission and retailing of services (which is basically the approach advocated in the paper you circulated) then they would have a monopoly over local services, just as broadband cable operators do now (although they would, as you say, face competition from national services). For the reasons given in my memorandum, I believe that we should be wary of incurring the disadvantages of local monopolies - in a situation where, unlike cable, they were not justified by heavy investments in infrastructure. But I welcome your willingness to consider the possibility of monopolies confined to the conveyance of services on a common carrier basis, thereby allowing for competition in the retailing of services, or even of non-exclusive franchises. I think that these are the kinds of possibilities which it will prove the most fruitful for officials to explore.

In their further work officials will also need to take account of the possibility of spectrum pricing, which I know is under active consideration in your Department following the CSP Report on spectrum allocation. Although this may be a relatively long-term prospect, if we decide to pursue it at all, it would be unfortunate if we created structures now which might inhibit the development of a spectrum market in the future. On the face of it, exclusive local franchises (of whatever form) would not sit easily with spectrum pricing, as only the local franchise-holder could bid to use spectrum in his area for those purposes in which he had a monopoly. The interface between technology-neutrality and spectrum pricing clearly needs a lot of thought.

I was interested to see the references in the paper attached to your letter to the possibility of lifting the prohibition on BT and mercury carrying television services over their main PTO networks. One of the starting points for the work of the Communications Steering Group was, of course, Peacock's recommendation 15 that BT and Mercury (and any subsequent entrants) should be permitted to deliver television services on a common carrier basis. I take it, however, that the Steering Group now envisage that BT and Mercury might provide programme services, not merely carry them on behalf of other operators. We will clearly need to consider this carefully in due course. In particular, it will need to be alert to a potential asymmetry between broadcasting and telecommunications policy. If the transmission and programme provision responsibilities of the IBA and the BBC need to be separated in the interests of competition and efficiency - as the paper argues - then it must be questionable whether it would be acceptable for BT at some stage in the future to act as both a provider and deliverer of programme services. (Although it might by then be facing competition from local operators it would still be combining two activities which, in the case of the broadcasters, the Steering Group has argued should be separated). Beyond pointing to this connection with the role of BT and Mercury, I have no comments at this stage on the proposals in the paper on the transmission responsibilities of the BBC and the IBA. I understand that MISC 129 has not yet completed its consideration of the transmission system, and I think that it would be sensible to wait until its analysis of the options and issues is to hand before reaching firm views.

/Lastly,

Lastly, I am glad you agree that we should publish soon the results of the technical studies, and I agree that officials should be asked to put the necessary work in hand. As my office has already told yours, I am also content with your plan to announce that an additional channel on VHF will not be possible.

I am copying this letter to the Prime Minister, to other members of MISC 128 and to Sir Robin Butler.

Yours sincerely

Catherine Bannister

Approved by the Home Secretary
and signed in his absence.

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FROM: MOIRA WALLACE
DATE: 19 APRIL 1988

MR BURR

cc PS/Financial Secretary
Mr Anson
Mr Phillips
Mr Burgner
Mrs Case
Mr Bolt

MISC 128: ADDITIONAL PROGRAMME SERVICES/VHF

This is just to record that the Chancellor has seen Lord Young's letter of 12 April, arguing for early announcement of a Government decision not to pursue the question of a fifth or sixth VHF channel. The Chancellor's view was that in the circumstances he was not minded to resist this. I have passed this message on to Lord Young's office.

A handwritten signature in black ink, appearing to read 'mw'.

MOIRA WALLACE

MW
→
BURR
19/4

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FROM: T J BURR
20 April 1988

CHANCELLOR

- cc Chief Secretary
- Financial Secretary
- Paymaster General
- Economic Secretary
- Sir P Middleton
- Mr Anson
- Mr Monck
- Mr Phillips
- Mrs Case
- Mr Burgner
- Mr Spackman
- Mr Waller
- Mr Bolt
- Mr Cave
- Mrs Pugh
- Mr Cropper
- Mr Tyrie
- Mr Call

MFW
to pick out key
pts. Highlight 902
is counterproductive.
M.

MISC 128: ADDITIONAL PROGRAMME SERVICES

At its meetings on 21 and 25 April, MISC 128 will be considering the scope for new broadcast services. The basis for the discussion will be the Home Secretary's memorandum MISC 128(88)5, supported by the note by the Chairman of the Official Group (MISC 128(88)4) to which is attached a detailed note prepared by the Official Group (MISC 129). In addition, the Secretary of State for Trade and Industry has commented in his letter of 12 April, to which the Home Secretary has replied in his letter of 15 April.

2. The meeting on 21 April will be based on a presentation on the technical aspects by DTI officials, followed by questions and a seminar-type discussion of the options. Specific decisions will then be taken at the further meeting on 25 April. The briefing in this submission is intended to cover both meetings, but we can of course provide further material ahead of the 25 April meeting if required on any specific points which you may have following the 21 April presentation.

Objectives

3. There is no fundamental disagreement about the objective, which is as summarised in the Home Secretary's paper:

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 TO
 CH/EX
 BRIEF
 20 APR

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"The task before us is to chart the course from our present highly regulated television duopoly towards a more competitive future providing a genuine consumer market in broadcasting."

There are, however, a number of constraints on progress in this direction:

(a) the maintenance of the existing four channels with the present near-universal coverage: the work of the Official Group, and the supporting technical studies, have been based on this assumption, and there seems to be no disposition on the part of your colleagues to question it;

(b) the maintenance of programme standards, which the Home Secretary emphasises in paragraph 3 of his paper;

(c) commitments already given to existing or prospective service providers, notably cable operators, British Satellite Broadcasting (BSB), and the telecommunications duopoly (BT and Mercury);

(d) spectrum availability: although the options which now exist are based on the availability of additional spectrum, spectrum constraints continue to limit both the number and form of new services and the scope for a fully competitive market in broadcasting.

You will wish to ensure, however, that these constraints are addressed in a way which is as far as possible consistent with the emergence of a competitive and differentiated market, and that they are not given undue weight in determining the direction of future policy.

4. Similarly, you will want to argue that decisions on the emergence of new services should as far as possible be left to the market. Ideally, even the allocation of spectrum to

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new services would be left to the market, by auctioning it to competing users of which broadcasting would only be one. The Home Secretary makes a helpful reference to spectrum pricing in his letter of 15 April, and the issue of making limited progress in this direction is shortly to be considered in E(CP). In practice, it will probably not make sense to decide by auction whether the new spectrum which is in prospect should be used for broadcasting or for other services (such as mobile communications) in the absence of either an existing market in spectrum or, indeed, a better developed market in broadcasting services. But as the Home Secretary's paper acknowledges, Government is not good at picking winners; and we think that the White Paper which he wants to publish in the summer should not be too prescriptive, but should concentrate on setting out the possibilities and constraints so that policy can be further developed in the light of the commercial interest which emerges following the White Paper.

Timing

5. There should be time for policy to develop in this iterative way. The Home Secretary is now very anxious to publish a White Paper before the summer Recess, and it will in any case be virtually impossible to delay announcements of some key decisions, notably competitive tendering for ITV contracts, beyond then anyway. But legislation on the ITV system, including additional programme services, will be for the Broadcasting Bill in the 1989-90 Session, not the one in the 1988-89 Session (which will deal with radio and with broadcasting standards). A year will therefore elapse following the White Paper in which it will be possible for the Government to refine its proposals in the light of market reaction to them.

6. Looking beyond the legislation, key dates include the review of the telecommunications duopoly in 1990; the expiry in the autumn of 1992 of the Government's undertaking to BSB that it would not allocate additional Direct Broadcasting by Satellite (DBS) channels until BSB had been in operation for at least three years (assuming a start in autumn 1989 as scheduled); and the start of the new ITV contract period from the beginning

of 1993.

Options for additional services

7. Discussion of the options for additional services cannot avoid a certain amount of technical detail. It will be the purpose of the presentation to explain these technical aspects. They have been condensed to a minimum in the one-page summary immediately behind the note by the Chairman of the Official Group (annex 1). I will not attempt to repeat that in this brief. The discussion which follows is addressed to the policy aspects.

Ultra High Frequency (UHF)

8. UHF is of course the method used for delivering the existing four TV channels. Existing TV sets operate at these frequencies and could therefore receive new UHF services without adaptation (although an additional aerial would be needed). Retuning of most video cassette recorders and some home computers would also be necessary.

9. Spectrum has been identified for one channel with 70 per cent coverage and a possible further channel with 40-50 per cent coverage (the "fifth" and "sixth" channels respectively). Programming on each channel could be either national or regional. Although he does not say so explicitly, it is implicit in Mr Hurd's paper that he accepts that the Government should make way for the fifth channel. His attitude to the sixth channel is less clear. He expresses the general view, in paragraph 4 of his paper, that "viable opportunities for new programme services should in principle be made available for commercial development"; but it is not clear whether the sixth channel, with its limited coverage, is regarded as "viable".

10. We recommend you to argue that the White Paper should indicate the Government's willingness to make provision for both a fifth and a sixth channel subject to the emergence of worthwhile commercial interest. It is important that the less than universal coverage of the fifth channel, and the limited coverage of the sixth channel, should not be presented as an

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a priori objection . It will be for the market to decide whether the services are worth running in spite of having only partial coverage. (It is not, incidentally, an option to combine the fifth and sixth channels into a single channel with more nearly universal coverage, since the coverage of the sixth channel overlaps to a substantial extent with that of the fifth.)

Very High Frequency (VHF)

11. Black and white television used to be broadcast on VHF spectrum. It presents more technical difficulty than does UHF, since it is more vulnerable to serious interference, and the Civil Aviation Authority are not prepared to exclude the risk that it could itself interfere with aircraft navigation. There would have been a case for leaving the first of these considerations to the commercial judgement of potential service providers, and for examining whether the latter really represents a serious risk which could not be overcome at acceptable cost. But Lord Young's letter of 12 April indicated that it would be convenient for his officials if, ahead of their appearance before the Home Affairs Select Committee on 20 April, he announced that a VHF service would not be possible. We secured the agreement of his officials that this announcement should not be made before MISC 128 had considered the issue, but they backtracked when the Prime Minister agreed such an announcement. You subsequently decided that in these circumstances we should not resist the proposed announcement. The question of a VHF service is therefore now closed.

Microwave Video Distribution Systems (MVDS)

12. MVDS uses microwave frequencies, higher than either UHF or VHF. More spectrum is available here, but the range of transmitters becomes increasingly limited. MVDS lends itself, therefore, to the provision of a variety of local services, at much lower capital cost than for cable; although it could also be used for delivery, over local transmitters, of a regional or even a national service. It seems likely that 12 or more channels would be possible. Because it requires a direct line

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of sight to the transmitter, it is a characteristic of MVDS that coverage is less than complete even within range of the transmitter, with gaps wherever the topography or large buildings obstruct the line of sight. But coverage of at least 65 per cent could probably be achieved.

13. In the Official Group's work on MVDS, however, the emphasis has shifted away from the provision of specifically MVDS services towards the idea of "technology neutral" services, with service providers free to decide what technology (in practice either MVDS or Cable, but other possibilities could in principle develop) should be used to deliver their services. The reasons for the shift of emphasis are partly to do with the market (it makes no difference to the consumer how he receives a service provided that he receives it), and partly technical (it will become increasingly difficult to maintain the distinction between a television signal and other kinds of signal on which the concept of a "technology specific" service is based). There is also the interesting possibility that cable could develop first as a means of filling the gaps in MVDS coverage, and then more widely as a means of providing two-way services (which cannot be provided on MVDS) within franchise areas.

13A. Mr Hurd's paper acknowledges the attractions of the technology neutral approach, and the issue is also further discussed in Lord Young's letter of 12 April and Mr Hurd's reply of 15 April. It is clear that this approach is gaining ground. There has however been some debate between the Home Office and DTI (which is reflected in Lord Young's letter of 12 April and Mr Hurd's reply of 15 April), in which we have joined, as to how the technology neutral approach would be applied in practice. DTI have argued for local monopolies, to whom all the available MVDS spectrum and cable rights would be allocated, who would then provide services using whatever mix of technology they found most appropriate. The Home Office have resisted the monopoly approach, and have argued for competition at least in service provision. We have argued for competition in both transmission and service provision, since that seems to us to be the best way of enabling the market to decide how MVDS and Cable transmission technologies should be combined. Our approach has gained a good deal of support in the official work, although it is recognised that, at least in some areas, the market may not initially be able to support competing transmission franchises.

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14. Against this background, the Home Secretary's letter of 15 April suggests that the question of local services might be decoupled from the other issues which will need to be covered in the White Paper, to allow time for further work on the options. That work would have to cover telecommunications aspects, because it would be a natural development for technology neutral franchise operators to extend their activities into the provision of telecommunications links. Similarly, telecommunications operators (looking beyond the review of the duopoly) might extend their activities into delivery of broadcasting services. Decisions could be announced some time after the White Paper, and still be in good time for the second Broadcasting Bill in the 1989-90 Session. We therefore recommend that you should go along with this approach.

Direct Broadcasting by Satellite (DBS)

15. We already have five DBS channels, of which 3 have been allocated to BSB, and the other 2 will be allocated once BSB has been in operation for at least 3 years. But not all the available channels have yet been allocated by international agreement, and it would be open to us to make a bid for additional channels. This issue is not directly addressed in the Home Secretary's paper. It is of course not yet clear whether BSB will be able to make a success of DBS; but if it can, further DBS spectrum would be potentially valuable, since unlike other options for additional services it can achieve near universal coverage. The main obstacle to DBS services is not technical, although additional channels could pre-empt spectrum from MVDS, but arises from the heavy capital cost of providing the satellite. If BSB shows that this obstacle can be overcome, then the way will be clear for more DBS channels.

16. If only defensively, therefore, it would seem prudent for the UK to seek unallocated DBS spectrum, preferably at wavelengths which would not conflict unduly with transmission of MVDS services. We recommend that you propose this.

Implications for Existing Services

17. The Home Secretary is concerned about the implications

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of new services for existing services, with whom they will compete for advertising and possibly subscription revenue. He therefore takes a cautious line on the timing of introduction of new services, and believes that the first channel, at least, should be subject to the same public service obligations as existing services. The services affected are:

(a) **Cable.** Cable has ^{so} far failed to take off, although there has been recent evidence of fresh investor interest. The most direct effect on cable operators would come from any development of technology neutral local services. It might be necessary to allow them to convert their cable franchises into mixed cable/MVDS franchises. But this is an issue which can be considered in the further work on local services which will be necessary.

(b) **British Satellite Broadcasting (BSB).** The only specific commitment to BSB is that it will be given a clear run of 3 years before further DBS services are allowed. But if new service developments using other delivery mechanisms appear to undermine the commercial prospects of BSB, it will not be able to raise the full £600 million capital which it requires, of which it has so far raised only some £200 million. That would mean an end to the immediate prospect of 3 additional channels with near universal national coverage, and would greatly reduce the subsequent prospect of further DBS channels. That could be a considerable loss. On the other hand, we do not want to hold up, let alone rule out, additional services and then find that DBS fails to provide a satisfactory alternative. Experience with cable, which was given a protected position in the belief that it provided the best means of achieving new services, but actually failed to provide them on any significant scale, is salutary here. While therefore it would be wrong to take action which killed off BSB before the commercial possibilities of alternative technologies had become clearer, BSB and its backers should not be allowed to proceed on the assumption that they will ^{have} indefinite protection from

competing services.

(c) **ITV.** Mr Hurd raises the possibility that a fifth UHF channel with no public service obligations could pose a major threat to at least some ITV franchises, and implies (in his paragraph 6) that it might drive some of them out of business. A successful fifth channel could undoubtedly be a powerful player in the television market. But competitive tendering for ITV franchises will enable future contractors to take account of the presence of the fifth channel (and other new services) in the price which they pay for their franchises. It is therefore not clear that they would be at a disadvantage. Whether the fifth channel and other new services should also be subject to public service obligations, as the Home Secretary proposes, is considered further below.

Public Service Broadcasting

18. In his paragraph 14, Mr Hurd presents a stark choice between deregulating ITV on the one hand, so that it can compete with new services, and applying public service obligations to the fifth channel, so that it did not become a threat to ITV. We do not in fact believe that the choice is as stark as that. There is a range of possible regimes, extending from complete deregulation to full public service obligations. Mr Hurd himself refers to the possibility of a modified public service regime, and you might ask him to be more explicit about what he has in mind. But the guiding principle ought to be that, as the number of services is expanded, so the market can play a greater role in differentiating programme content, and the need for direct regulation of the balance of service provision is reduced. We suggest that your objective should be a lighter regulatory regime for new services than applies to the existing services, and that this should be made clear in the White Paper.

Other issues

19. The White Paper will also need to set out any Government requirements on such matters as the financing of services, and

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on whether they should be regionally differentiated. We recommend that on these and any other similar points you should argue that the White Paper should simply set out the possibilities, leaving final decisions to be taken in the light of the commercial interest which is forthcoming. It may for example be necessary to take a view about the extent to which new and existing services can all expect to finance themselves through advertising; and it might be necessary, both on these grounds and on grounds of increasing responsiveness to consumer choice, ^{to insist} that some at least of the new services should be financed by subscription. But there is no need to be prescriptive about that at this stage.

Publication of technical studies

20. Finally, the Home Secretary proposes that the results of the technical studies underlying the work of the Official Group should now be put in the public domain. We recommend that you agree to this, which will help to secure the emergence of informed commercial interest in providing new services which is needed as a basis for the development of policy conclusions.

Conclusion

21. We recommend you to agree that local services, and the question of technology neutral MBDS/Cable franchises, should not be covered in any detail in the White Paper but should be remitted for further examination by officials. Further technical studies may need to be commissioned as part of this work. On the issues for substantive decision now, we recommend that you should argue as follows:

(a) the White Paper should not be too prescriptive on the question of additional programme services. It should set out the possibilities, and any minimum constraints which the Government would want to impose. But final decisions should be left until they are needed for the Bill in a year's time, in the light of emerging commercial interest and the reaction to the White Paper.

(b) both a fifth and a sixth UHF channel should be presented

CONFIDENTIAL

as possibilities for which the Government would be prepared to provide if the right sort of commercial interest was forthcoming.

X (c) the Government should take steps to secure additional DBS channels, focussing on those where there is least conflict with MVDS. What is said about this in the White Paper will need to have regard to negotiating sensitivities and the need to avoid pre-emptive bids by other countries.

Cons. Nov
(d) if public service broadcasting obligations are imposed on new services at all, they should take a lighter form than the existing obligations, in recognition of the principle that the need for regulation of programme balance and content diminishes as the number of players in the market increases.

(e) the White Paper should also leave potential operators free, as far as possible, to formulate their own proposals on such issues as methods of finance and regional differentiation, so that these can be taken into account in later decisions on the legislative framework.

T. J. Burr

T J BURR



CH/EXCHEQUER	
REC.	03 MAY 1988
ACTION	MR BOLT
COPIES TO	CST FST ANG EST, Sir P Middleton Mr ANSON, Mr Pugh, PS Mr Buggie, Mr Scholar Mr Spackman, Mr Cave MRS CASE, Mr Cave MR PUGH, MR BUTT Mr Kerley, Mr G

3 May 1988

13/5
HOWE
→ PM
3/5

Prime Minister

BROADCASTING STANDARDS COUNCIL

Mr Wicks' letter of 31 March to Mr Mawer signalled your agreement that I should discuss further with Sir William Rees-Mogg the terms on which he might become Chairman of the Broadcasting Standards Council (BSC).

Since then I have had three long talks with Sir William about the role of the BSC. There have been leaks in the Press which have complicated the handling, and I have had strong representations as a result from the Chairmen of the BBC and IBA.

The present position is as follows. Sir William wants to see a bigger and more powerful BSC than we originally envisaged. Since, after all that has occurred, I believe him to be the right man for the job I have been working out with him how this might be achieved. We do not want to transfer to the BSC the regulatory duties of the BBC and IBA as regards sex and violence, partly because we said in our Manifesto that we would not, partly because it would be a mistake to let the broadcasting authorities off the hook of their responsibilities. Whatever our present frustration, it would not be sensible to start the BSC on terms which ensured that its relationship with the broadcasters was one of permanent trench warfare. More widely, we are entering a phase of strong argument with many broadcasting interests about the future of broadcasting, and it would be inept to start this phase with resignations provoked by our proposals for the BSC.

/The argument

APPOINTMENTS IN CONFIDENCE

2.

The argument turns on the previewing of programmes. Sir William is concerned, not mainly with home-produced programmes, but with programmes (eg Miami Vice) bought from abroad and in his view containing gratuitous violence. Without entering into the full intricacy of the problem, I would sketch as follows the outcome which would in my view be acceptable to us and to Sir William, and might just be swallowed by the broadcasters, with protest but without major convulsions.

The BSC would be set up this summer on a non-statutory basis and would be established by legislation in the 1989-90 session. During the interim it would monitor and deal with complaints about sex and violence across the whole range of broadcasting including cable, where particular difficulties may arise. It would act as we originally proposed, ie receive complaints, and issue findings about particular programmes which would - if necessary - be broadcast in the same slot as the original broadcast, but of course some time later. But it would also encourage the broadcasters to submit voluntarily for preview any bought-in material which might arouse controversy on grounds of excessive sex or violence. In such cases the decision whether or not to broadcast would rest, as now, with the broadcasting authorities, but if they decided to broadcast they would broadcast simultaneously any adverse finding by the BSC. In discussing this voluntary procedure with the BSC during the interim period, the broadcasters would know that if this did not work they would be faced with legislation to the same effect in our main broadcasting Bill in the 1989-90 session.

Although I cannot be certain, and the whole situation is now so tense that I need some tactical flexibility, I hope that I might, subject to your views, be able to bring about an outcome on these lines in a series of meetings this week. If you agree, I will proceed accordingly.

/Sir William

APPOINTMENTS IN CONFIDENCE

3.

Sir William will not come cheap. He estimates that for the BSC to operate efficiently, it would need an annual budget of £2.5 million. This will of course build up slowly, but even so will be substantially more than the £0.5 million for which we had budgeted. I have seen his calculations, which will need discussion between the Treasury and my officials if we decide to go ahead on this basis. However, Sir William is likely to make his acceptance dependent on the Council's securing resources on broadly this scale. Accordingly I shall need to make a PES bid for the years 1989/90 and beyond of approximately £2 million and I hope that colleagues will agree, in these rather unusual circumstances, to my proceeding now on the basis that this is approved. For the current year, I undertake to contain any expenditure above the £0.5 million, for which provision has been made, by off setting savings within the Home Office Vote.

I am sending copies of this letter to Nigel Lawson, David Young, John Major and Sir Robin Butler. (It would be helpful to have your views by lunchtime tomorrow if possible, as I hope to see Sir William later tomorrow before he departs for a visit to Japan.)

Catherine Bannister

Approved by the Home Secretary
and signed in his absence.

CONFIDENTIAL

FROM: MRS A F CASE

DATE: 4 May 1988

CHANCELLOR*No small circular*

cc Chief Secretary
 Financial Secretary
 Paymaster General
 Economic Secretary
 Sir P Middleton
 Mr Anson
 Mr Monck
 Mr Phillips
 Mr Burgner
 Mr Spackman
 Mr Burr
 Mr Waller
 Mr Bolt
 Mr Cave
 Mrs Pugh
 Mr Cropper
 Mr Tyrie
 Mr Call

MISC 128 : BROADCASTING : OPTIONS FOR ADDITIONAL PROGRAMME SERVICES

The Secretary of State for Trade and Industry's paper (MISC 128(88)7) fulfills the remit he was given at the last MISC 128 meeting to consider further the options for additional programme services and their timing. The Home Secretary has also circulated a separate paper (MISC 128(88)6) in which he urges early decisions on the remaining major broadcasting issues, including additional programme services, with the object of making a White Paper possible this summer.

Lord Young's proposal

2. Discussion to date has implicitly been in terms of supplementing the existing terrestrial channels and three proposed DBS channels in the short term by further terrestrial channels and, in the longer term, by further DBS channels (if the market showed BSB to be viable) and by MVDS services. Lord Young believes that this will increase new services too slowly. He therefore proposes an approach which makes the maximum use of DBS to deliver more national services in the short term.

Specifically he proposes

- i. to negotiate additional DBS channels at BSB's orbital position ie not requiring a separate dish and
- ii. to require BBC2 and Channel 4 to be transmitted by satellite using the remaining 2 unallocated UK DBS channels, in parallel with terrestrial broadcasting for a transitional period but with the intention of withdrawing the terrestrial channels in order to replan the UHF spectrum to offer four or five new commercial channels;
- iii. to provide cable operators with access to 2.5 GHz MVDS on a short term basis.

This brings into question the basic assumption hitherto of maintenance of the existing four channels with the present near universal coverage. Lord Young proposes further work by officials on this approach.

Line to Take

3. We recommend that you agree that Lord Young's proposal should be explored quickly, in particular to establish its costs, its impact on the BSB services and viability and the extent to which it would exclude longer term MDVS alternatives.

Background

4. Mr Burr's brief of 20 April on MISC 128(88)5 and 4 provides comprehensive background on the main alternatives. At its last meeting MISC 128 decided

- a. against additional VHF services and
- b. to bid for unallocated DBS channels, preferably those accessible on BSB dishes.

Ministers reached no conclusions about the remaining options and when they should be authorised.

Bidding for additional DBS channels

5. Paragraph 5(iii) looks at the possibilities in more detail. Lord Young's immediate proposals do not depend on their availability. The paper makes clear that the options are relatively limited if those involving a second, steerable dish are excluded. The options would be narrowed still further - to the channels already allocated to the Irish - if Ministers wanted to protect the possibility of future development of MVDS services at 12 GHz. It is not clear how far the use of Irish channels would be negotiable or what, if anything, they would cost. However, negotiations with the Irish and in the ITU for additional, BSB compatible channels can be started without making decisions now on whether or when to make any further allocations available. It would therefore seem sensible to go ahead.

Additional UHF channels

6. Lord Young's paper ignores the possibility of a sixth channel, perhaps for the reasons identified at the last MISC 128 meeting ie the loss of existing services by some households. He proposes however that a fifth UHF channel should operate from 1992 whilst concluding that, on its own, a single additional channel will not meet the demand for advertising outlets. This seems to be borne out by the Booz Allen (Jonscher) report on television advertising, although the demand figures there are projections rather than forecast. Indeed, there may be a risk, as BSB claim, that an additional channel may fragment the audience, making it more expensive for advertisers to reach a given audience. Authorising a fifth channel now may raise problems in relation to BSB who - not unexpectedly - argue that an early start on a new terrestrial channel will undermine their ability to get their new DBS channels off the ground by limiting their penetration and weakening investor confidence. Lord Young effectively proposes to give them broadly the same protection as they already have on additional DBS services by delaying the introduction of a new UHF channel until 1992. There is a nice judgement to be made here of the balance of risks/advantages, which is complicated by Lord Young's other proposal to switch BBC2 and Channel 4 to DBS.

Switching BBC2 and Channel 4 to DBS

7. This is the new element. Its attractions are that it would

i. improve the speed and depth of penetration of the new satellite broadcasting technology. BSB would presumably reach lift off sooner and, if additional DBS channels were acquired, their influence would also be felt sooner;

ii. it frees part of the UHF spectrum for a more efficient use in terms of numbers of channels and with the possibility of a regional dimension which DBS cannot deliver.

8. Against this there are risks which have not yet been properly explored. These include

i. Cost. No proper estimate has been made of the size and distribution of additional transmission costs. Although the BSB satellite could transmit the two additional channels, the signal would be too weak to meet ITU standards. An alternative possibility might be to use BSB's back-up satellite: otherwise, a new satellite(s) would be needed. The costs seem likely to be heavy viz BSB's £600 million capital requirement and the BBC and IBA might well look to HMG for a contribution. This would add to public expenditure, although it might be offset by revenue from the sale of the additional UHF services in due course;

ii. Acceptability to the public. Lord Young's paper notes this as a problem but makes the point that the path could be eased by presentation. This may understate the problem. Not only will there be hostility from those who feel forced to invest in a receiving dish in order to receive programmes which have hitherto been paid for from the licence fee/advertising. There will be others who may not be able to receive either the switched services or the replacement terrestrial services. There could be pressures from some groups for HMG help with reception costs (free dishes for OAPs);

iii. BSB. The balance of advantage should make BSB favour this approach. However, earlier competition from a wider range of terrestrial channels, plus a fifth channel, could make the whole package unattractive to BSB and its potential backers. There could therefore be a trade off for BSB between the "switch" proposals and the speed of start up of the new fifth channel;

iv. Picking winners. To a considerable extent Lord Young's approach would involve the government specifying more closely than has been envisaged so far the framework for the development of broadcasting services. It would be "plumping" for DBS. Though the technology is available, there are still risks both about DBS ability to deliver audiences and on the equipment front.

MVDS

9. With the exception of the short term use of the 2.5 GHz spectrum in conjunction with cable, Lord Young's approach relegates the possible use of technology neutral MVDS services both for broadcasting and telecommunications to the very long term. Indeed, under an approach in which DBS took off and additional channels were allocated which pre-empted spectrum at 12 GHz, there could be a real inhibition on developing these types of services. This would make it much more difficult to secure a competitive market in broadcasting/telecommunications in the longer term.

White Paper : Timing

10. As the Home Secretary's paper makes clear he is anxious to publish a White Paper before the Summer Recess. It is becoming increasingly difficult to delay announcements of some key decisions. He therefore urges that Ministers should be prepared to put some issues on one side in order to meet the timetable. If Ministers are attracted by Lord Young's proposals and want to keep to this timetable, it will be important for the further work to be done quickly since they would involve setting out quite firm proposals in the White Paper. But, if Ministers want to take longer to explore some of these issues,

it would seem possible to explore alternative two-stage timetables, given that the necessary legislation will be for the 1989-90 Broadcasting Bill.

A handwritten signature in dark ink, consisting of a stylized 'A' and 'F' followed by a long horizontal stroke.

MRS A F CASE



10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

CH/EXCHEQUER	
REC.	04 MAY 1988
ACTION	MR BOLT
COPIES TO	CST, FST, PMG, EST SIR P. M. DOLETON MR ANSON, MR PHILIP MR BURGNER, MR SCHOLAK MR SPACKMAN, MS CASE MR CAVE, MR BURR MR KERLEY, MR CROPPER

NICKS
→ MAWER
4/5

4 May 1988

Dear Philip,

BROADCASTING STANDARDS COUNCIL

The Prime Minister has seen the Home Secretary's minute of 3 May about his discussions with Sir William Rees-Mogg regarding the terms on which he might become Chairman of the Broadcasting Standards Council (BSC).

The Prime Minister agrees that the Home Secretary should try to secure Sir William's services on the basis of the framework described in the second paragraph on page 2 of his minute though she believes that the formulation, described in this paragraph, is on the weak side; and she is of the view that in the last resort the decision of the BSC on whether a programme should be shown must be final.

She recognises that these arrangements will not be welcomed by the broadcasters, but she does not mind if the outcome is to produce major convulsions among them if it leads to less violence on T.V. She does not believe the broadcasting authorities recognise their responsibilities or indeed are on the 'hook', which the Home Secretary refers to in the third paragraph of his minute.

The Prime Minister is not ready to agree to an annual budget for the BSC of £2.5 million which Sir William seeks. She believes that perhaps £1 million or a little more might be justified, but £2.5 million is a lot bearing in mind the sums previously envisaged for this and other purposes. The Prime Minister would like the Council's budget to be settled on the basis of need as agreed with departments.

I am sending a copy of this letter to Alex Allan (HM Treasury), Jeremy Godfrey (Department of Trade and Industry), Jill Rutter (Chief Secretary's Office) and Trevor Woolley (Cabinet Office).

Nigel Wicks

N. L. WICKS

Philip Mawer, Esq.,
Home Office



Ch

(* he claimed "Other reasons" he couldn't discharge)

I have complained to Nigel Wides about bouncing this through like this*. And told Douglas Hurd's office that there's no question of us agreeing any RES bid - that will have to be discussed in the Survey.

V. G. J. & P. H. S. L. Lane
M. J. W. & P. H. J.

Treasury officials are sceptical about what on earth BSC could spend £2 1/2 m on (or even £1 m plus). I am asking Pell to write to Douglas Hurd's office to say careful scrutiny etc needed.
OK? OK - Art

W. J. L.



FROM: A C S ALLAN

DATE: 4 May 1988

PS/CHIEF SECRETARY

cc Sir P Middleton
Mr Anson
Mr H Phillips
Mrs Case
Mr Burr
Mr Bolt
Mr Cropper

BROADCASTING STANDARDS COUNCIL

You have received copies of the Home Secretary's minute of 3 May to the Prime Minister and Nigel Wicks' reply of 4 May.

2. I have already told Philip Mawer that there can be no question of the Treasury accepting a PES bid of £2 million a year, or indeed for any lesser sum; and that there would need to be proper scrutiny of how large the Council's budget needed to be, given their¹ functions.

3. The Chancellor thinks it would be helpful if you followed this up with a letter to Philip Mawer, confirming this and putting any additional glosses HE may think are necessary.

A handwritten signature in black ink, appearing to read 'ACSA' with a flourish underneath.

A C S ALLAN -

8/5/2519

70/1/5

APPOINTMENTS IN CONFIDENCE

pps pt.

my

FROM: C W BOLT

DATE: 5 May 1988

1. MR BURR *FB 5/5*
2. PS/CHIEF SECRETARY

cc PS/Chancellor
Sir P Middleton
Mr Anson
Mr Phillips
Mr Beastall
Mrs Case
Mr C W Kelly
Mr Cropper

BROADCASTING STANDARDS COUNCIL

The Home Secretary's minute to the Prime Minister of 3 May 1988 set out proposals for an expanded role for the Broadcasting Standards Council, and an increase in its budget from £0.5 million to £2.5 million a year. Nigel Wicks' letter of 4 May to Philip Mawer recorded the Prime Minister's agreement to an extended role for the BSC, and suggested that, if anything, its powers should be even greater than proposed by Mr Hurd. However, it was suggested that a budget of "perhaps £1 million or a little more" would be more appropriate than the £2.5 million envisaged in Mr Hurd's minute. Mr Allen has now, as recorded in his minute to you of 4 May, spoken to Mr Mawer to say that there can be no question of the Treasury accepting a PES bid of £2 million a year, or indeed for any lesser sum, and suggesting that you might follow this up with a letter to the Home Office confirming this position, and adding further glosses on the detail. A draft letter is attached.

Background

2. The Home Secretary announced on 7 October 1987 his intention to establish a Broadcasting Standards Council which would receive complaints, and be able to publish its findings, about taste, decency and violence on all forms of television and radio including cable and satellite broadcasts. There was a manifesto commitment to take action in this area, and H Committee agreed, on 30 September 1987, that the Council should be established, initially on a non-statutory footing pending the passage of the forthcoming broadcasting legislation. It was subsequently agreed that provision of £0.5 million should be made available for 1988-89, and that the costs of the BSC should be met by central government rather than by the broadcasters themselves, as in the case of the Broadcasting Complaints Commission, which has a budget this year of £0.24 million.

3. Pay Division have also agreed that the Chairmans ' salary should be £30,000 for a 3 day week. This is broadly comparable with the salary for the Chairmen of the BBC Governors and of the Independent Broadcasting Authority (IBA).

Revised Proposals

4. Following approaches to other candidates, the Home Secretary approached Sir William Rees-Mogg to see if he would be willing to serve as Chairman of the BSC. He has agreed to do so only on condition that the role of the Council is substantially extended from that initially envisaged, and, in particular, has the power to preview material (in particular that bought-in from other countries), rather than simply review it on broadcast with any adverse findings being carried by the broadcasters at a later date. Although the Home Secretary is concerned not to override the role of the BBC Governors and of the IBA in respect of programme standards, this expanded role for the BSC has received strong support from the Prime Minister. There does not, therefore, seem to be any likelihood of resisting these proposals to extend the role of the Council; but, apart from questions on costs, there are in any case no particular Treasury interests in this matter.

5. Sir William has presented the Home Office with an illustrative budget for the Council amounting to £2.5 million a year. This includes provision for 42 staff, including a Director on a salary of £45,000. We have a number of reservations about both the number and grading of the staff proposed, and the ancillary costs. For example, it is envisaged that the Chairman should have a car and a driver (even though he works for the Council for only 3 days a week), and that 7 senior employees should be given cars. It is also proposed that premises should be acquired at a rent of £40 per square foot, which is a very high rate, even for central London.

6. It is clear that, in the matter of costs, the Home Office have simply acted as a post box for Sir William's proposals, and have not attempted any independent scrutiny. They had not, for example, noticed that the budget contained a Chairman's salary of £35,000, compared with the £30,000 already agreed. We have already indicated to the Home Office that we will want to scrutinise the proposals in considerable detail; we should clearly use the figure of £1 million mentioned in Nigel Wicks' letter as a limit in any revised proposals.

7. On funding, there are essentially two options, if a PES bid is ruled out. The obvious one would be to seek to identify offsetting savings within existing Home Office provision; the other could be for the broadcasters themselves to contribute to the costs, as they do (in full) for the Broadcasting Complaints Commission.

8. A further point of concern is the proposal that statutory backing for the BSC should not be sought until the 1989-90 Session, whereas it had been intended until now to legislate in the first Broadcasting Bill, in the 1988-89 Session. We know of no good reason for this delay, which is clearly a matter of concern in that expenditure for this continuing service would have to rest on the authority of the Appropriation Act for a year longer than expected.

9. I attach a draft letter which identifies the options on funding, and which raises some of our concerns about the proposals on costs and on the timing of legislation.

C. W. Bolt.

C W BOLT

4. We are also concerned that your Secretary of State proposes that the legislation to give the Council its statutory powers should be delayed until the 1989-90 Session, and should not now form part of the Broadcasting Bill accepted for the next Session. There do not appear to be any strong grounds for such a delay, whereas there are weighty arguments in favour of early legislation. For your part, you will want the Council's powers to have statutory backing at the earliest opportunity. But you will also wish to avoid - as do we - a situation where a new service of this kind, which will be of a continuing nature and is of considerable Parliamentary interest, has to be funded solely on the authority of the Appropriation Act for any longer than is necessary.

5. I am copying this letter to Nigel Wicks (No.10), Alex Allan (here), Jeremy Godfrey (Department of Trade and Industry) and Trevor Wooley (Cabinet Office).

APPOINTMENTS IN CONFIDENCE



CH/EXCHEQUER	
REC.	09 MAY 1988 4/5
ACTION	CST
COPIES TO	

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

6 May 1988

Dear Nigel,

BROADCASTING STANDARDS COUNCIL

Thank you for your letter of 4 May conveying the Prime Minister's views on the Home Secretary's minute of 3 May about his discussions with Sir William Rees-Mogg. The Home Secretary has subsequently seen Sir William, who has agreed to become Chairman of the Broadcasting Standards Council (BSC) on the basis set out in the second paragraph on page 2 of the Home Secretary's minute of 3 May. The Home Secretary has made clear to Sir William the reservations Ministers hold about funding the Council on the scale he proposes, and that the Council's budget will need to be discussed with Home Office and Treasury officials on the basis of proven need. Those discussions will form part of the forthcoming PES round.

The Home Secretary now intends to see the Chairmen of the BBC and IBA to inform them of how the Government proposes to proceed. The Chairman of the Broadcasting Complaints Commission, Lady Anglesey, and Lord Bridges (as prospective Deputy Chairman of the BSC) will also be contacted. This should clear the way for an announcement of the terms of reference of the Council and of Sir William's appointment on Monday 16 May, following Sir William's return from Japan. The Home Secretary believes that it would be sensible for the announcement to be made by way of a brief oral statement in view of the speculation which has surrounded the proposed terms of reference of the Council and to head-off opposition criticism if a statement is withheld. While he would not normally see an oral statement as the vehicle for such an announcement, the risks of a row if one is not offered seem on balance to favour one on this occasion. Moreover he believes that Government supporters will welcome the opportunity to endorse this implementation of one of the Government's Manifesto commitments. I understand that the business managers agree with the Home Secretary's general assessment.

/I am copying

Nigel Wicks, Esq, CBE

I am copying this letter to Alex Allan (HM Treasury), Jeremy Godfrey (Dept of Trade and Industry), Alison Smith (Lord President's Office), Murdo MacLean (Chief Whip's Office), Jill Rutter (Chief Secretary's Office) and Trevor Woolley (Cabinet Office).

Yours sincerely,

P J C Mawer

P J C MAWER

APPOINTMENTS IN CONFIDENCE



PS/Chancellor
Sir P Middleton
Mr Anson
Mr H Phillips
Mr Beastall
Mrs Case
Mr C W Kelly
Mr Burr
Mr Bolt
Mr Cropper

Treasury Chambers, Parliament Street, SW1P 3AG

Catherine Bannister
Private Secretary
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

9 May 1988

Dear Catherine,

BROADCASTING STANDARDS COUNCIL

Alex Allen has already spoken to you, following the exchange of correspondence with Number 10 on the terms under which Sir William Rees-Mogg might become Chairman of the Broadcasting Standards Council (BSC). He told you that there can be no question of the Treasury accepting a PES bid of about £2 million a year, as implied by your Secretary of State's proposals, or indeed for any lesser sum.

It is obviously important that the Council's budget should be subjected to careful scrutiny, taking properly into account its proposed functions. The proposals which Sir William has put forward envisage the employment of more than 40 staff, including a Director on a salary of £45,000. The associated costs including cars and accommodation, also seem very generous. You will, I am sure, be giving very careful thought to the numbers and grading of staff required to carry out the functions envisaged for the Council, with the aim of containing this within a total cost of £1 million as suggested in Nigel Wicks' letter to you of 4 May. It is important that the budget for the BSC should be agreed between our officials before any announcement is made about the appointment of Sir William.

Even assuming that you could satisfy us on the need for such a budget, there can be no question of the Treasury agreeing that the excess over existing provision could be accepted as a PES bid. Your Secretary of State has already undertaken to meet any additional costs in the current financial year from within the existing provision, and the presumption must

APPOINTMENTS IN CONFIDENCE

be that the same applies for future years. There may, however, be a case for re-examining the earlier decision that the costs of the Council should not fall on broadcasters themselves.

We are also concerned that your Secretary of State proposes that the legislation to give the Council its statutory powers should be delayed until the 1989-90 Session, and should not now form part of the Broadcasting Bill accepted for the next Session. There do not appear to be any strong grounds for such a delay, whereas there are weighty arguments in favour of early legislation. For your part, you will want the Council's powers to have statutory backing at the earliest opportunity. But you will also wish to avoid - as do we - a situation where a new service of this kind, which will be of a continuing nature and is of considerable Parliamentary interest, has to be funded solely on the authority of the Appropriation Act for any longer than is necessary.

I am copying this letter to Nigel Wicks (No. 10) Jeremy Godfrey (Department of Trade and Industry) and Trevor Wooley (Cabinet Office).

Yours,
Jill Rutter

JILL RUTTER
Private Secretary

RESTRICTED



10 DOWNING STREET

From the Principal Private Secretary

9 May 1988

CH/EXCHEQUE	
REC.	09 MAY 1988
ACTION	CST
COPIES TO	

✓
9/5

✓
Dear Philip,
[Handwritten signature]

BROADCASTING STANDARDS COUNCIL

I have shown the Prime Minister your letter of 6 May about the announcement, planned for Monday 16 May, of the Chairmanship and terms of reference of the Broadcasting Standards Council.

The Prime Minister agrees that the announcement should be made on 16 May, but she thinks that an oral statement is a bad precedent and would give rise to endless demands for oral statements for similar announcements.

I am copying this letter to Alex Allan (HM Treasury), Jeremy Godfrey (Department of Trade and Industry), Alison Smith (Lord President's Office), Murdo Maclean (Chief Whip's Office), Jill Rutter (Chief Secretary's Office) and Trevor Woolley (Cabinet Office).

[Handwritten signature]
Nigel Wicks

(N.L. WICKS)

Philip Mawer, Esq.,
Home Office.

RESTRICTED

APPOINTMENTS IN CONFIDENCE

FROM: C W BOLT

DATE: 10 May 1988

1. MR BURR *TJB* 10/5
2. CHIEF SECRETARY

cc Chancellor
 Sir P Middleton
 Mr Anson
 Mr H Phillips
 Mr Beastall
 Mrs Case
 Mr C W Kelly
 Mr Cropper

BROADCASTING STANDARDS COUNCIL

The Home Secretary's minute to the Prime Minister of 3 May 1988 set out proposals for an expanded role for the Broadcasting Standards Council (BSC) following discussions with the prospective Chairman, Sir William Rees-Mogg. The Prime Minister subsequently agreed that the Home Secretary should try to secure Sir William's services on the basis outlined, although she believed that the BSC budget should be about £1 million, rather than the £2.5 million which Sir William is seeking. The Prime Minister has also agreed that there should be an announcement next Monday, 16 May, of the terms of reference of the Council and of Sir William's appointment. Although it is not necessary at this stage to agree all the details of the Council's budget or of the Financial Memorandum that will set out the terms on which ^{it} receives grant in aid, it is important that Sir William should accept that a budget of £1 million, or thereabouts, will be sufficient before any announcement is made. You are, therefore, recommended to write to the Home Secretary making this point. We are, meanwhile, pursuing with the Home Office at official level questions about the budget necessary to run a Council on the lines proposed by Sir William.

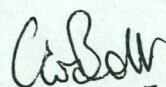
Proposed Budget

2. H Committee agreed, on 30 September last year, that the BSC should be established, initially on a non-statutory footing, to receive complaints, and be able to publish its findings, about taste, decency and violence on all forms of television and radio. Provision of £0.5 million was made available in the Survey, following agreement that the costs of the BSC should be met by central Government rather than by the broadcasters themselves. Sir William Rees-Mogg has subsequently presented the Home Office with an illustrative budget for the Council amounting to £2.5 million a year. This includes provision for 42 staff, including 7 with salaries of £30,000 or more.

Even given the wider role now envisaged for the BSC (by voluntary agreement with broadcasters, it will be able to preview brought-in material, rather than simply receive complaints after programmes have gone out), it is hard to see that the number and grading of staff proposed by Sir William can be justified. However, it is clearly important that a lower figure should be agreed with him before his appointment as Chairman is announced. To deal with it as part of the forthcoming PES round, as proposed in the letter from the Home Secretary's Private Secretary to No.10 of 6 May, is not satisfactory: there is a significant risk that, by threatening to resign if his proposals are not met in full, Sir William would be able to secure a budget substantially in excess of the £1 million envisaged by the Prime Minister.

Recommendation

3. It is clearly desirable that there should be an early announcement, as proposed by the Home Secretary, to defuse speculation about the powers of the BSC. In agreeing to this, however, it will be important to emphasise the point contained in your Private Secretary's letter of 9 May that the basic size of the budget should be agreed in advance of the announcement. A draft letter is attached.



C W BOLT

APPOINTMENTS IN CONFIDENCE

DRAFT LETTER FROM CHIEF SECRETARY TO HOME SECRETARY

cc: as indicated

BROADCASTING STANDARDS COUNCIL

I have seen your Private Secretary's letter of 6 May to No.10 proposing that the terms of reference of the Broadcasting Standards Council (BSC) and of Sir William Rees-Mogg's appointment as Chairman should be announced next Monday, 16 May. I have also seen the Principal Private Secretary's letter of 9 May conveying the Prime Minister's agreement to an announcement then.

2. While it is clearly desirable to end speculation about the powers that the Council will have, I am afraid that I cannot accept the proposition in your Private Secretary's letter that discussions between our officials about the Council's budget ~~can form part of~~ ^{should simply be left until} the forthcoming PES round. As the Prime Minister has indicated, Sir William's proposals for a budget of £2.5 million cannot be justified. While the budget proposed initially of £0.5 million clearly needs to be revised in the light of the extension to the Council's role, a budget of £1 million should be more than sufficient to meet the Council's needs. It is important that Sir William should accept that a budget of this order will be sufficient in advance of the announcement next Monday. We obviously need to avoid the potential embarrassment that might result from a subsequent dispute about the size of the budget, ~~which might lead to threats of resignation.~~ The details of the budget, in terms of precise numbers and grading of staff, and the terms of the Financial Memorandum that will govern the grant in aid to the Council can, of course, be decided later.

3. I ^{am} copying this letter to the Prime Minister, David Young, John Wakeham, David Waddington and Sir Robin Butler.

RESTRICTED

HOME OFFICE
 QUEEN ANNE'S GATE
 LONDON SW1H 9AT

11 May 1988

CHIEF SECRETARY	
REC.	11 MAY 1988
ACTION	Mr Bolt,
COPIES TO	Cx, Sir P. Middleton, Mr Anson, Mr Phillips, Mr Beasdale, Mr C. Kelly, Mrs Case, Mr Burr, Mr Cropper.

Dear Nigel,

BROADCASTING STANDARDS COUNCIL

Thank you for your letter of 9 May conveying the Prime Minister's view that there should not be an oral statement about the Chairmanship and terms of reference of the Broadcasting Standards Council (BSC). The Home Secretary has discussed this issue with the Lord President in the light of the Prime Minister's views.

The Home Secretary shares the Prime Minister's dislike of setting a precedent for an oral statement about an appointment to an existing body. But the purpose of this statement would be to announce the establishment of the BSC and its terms of reference, not simply Sir William Rees-Mogg's appointment as its Chairman. It would therefore set no adverse precedent. There is intense interest in the new body in the media world in particular, and in its proposed powers. The Home Secretary believes that if he does not make an oral statement on the issue and instead proceeds by way of an arranged Written Question, there is certain to be an application for a PNQ which would almost certainly be allowed. The alternative of using the "Pursuant to" device might well lead to accusations that the Government was trying to sneak the announcement through. Either course would entail adding a procedural row to any argument about the substance of the Home Secretary's announcement.

The Home Secretary is anxious to avoid such a development. He would therefore be grateful if the Prime Minister would be prepared to allow him to make the announcement by way of a short oral statement. As to the timing of the statement, the Home Secretary will be out of London on Tuesday and Wednesday, 17 and 18 May, and other reasons of which you are aware point conclusively towards the announcement being made on Monday, 16 May. This is not from a business management point of view the best option, as it is the day for consideration of Private Members' motions and a statement would intrude on the time available for these motions. But for

/the reasons

Nigel Wicks, Esq, CBE

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2.

the reasons I have given there is no real alternative. The Home Secretary will be happy to have a word with Mr Sidney Chapman MP, whose motion is first in the order, explaining why we have had to proceed on Monday, and will of course aim to keep his statement as short as possible.

I shall be writing later today to Jill Rutter, in response to her letter of 9 May to Catherine Bannister. For the present, copies of this letter go to Jeremy Godfrey (DTI), Alison Smith (Lord President's Office), Murdo Maclean (Chief Whip's Office), Jill Rutter (Chief Secretary's Office), and Trevor Woolley (Cabinet Office).

Yours sincerely,

P J C Mawer

P J C MAWER

RESTRICTED

From: THE PRIVATE SECRETARY

RESTRICTED

CHIEF SECRETARY

REC.

11 MAY 1988

ACTION

Mr Bolt

COPIES TO

2
 Sir P. M. de la Pen, Mr Anson,
 Mr Phillips, Mr Beestall, Mr CW Kelly
 Mrs Case, Mr Burr, Mr Cropper.

HOME OFFICE
 QUEEN ANNE'S GATE
 LONDON SW1H 9AT

11 May 1988

Dear Jill,

BROADCASTING STANDARDS COUNCIL (BSC)

In my letter earlier today to Nigel Wicks I mentioned that I would be writing to you in reply to your letter of 9 May to Catherine Bannister about the budget for the Broadcasting Standards Council (BSC). I have subsequently spoken to Zoe Everest-Phillips about this.

The Home Secretary entirely accepts the Chief Secretary's view that the budget for the BSC should be worked out according to need and in close discussion with Treasury officials. No commitment has been entered into with Sir William Rees-Mogg over the size of the BSC's budget during the discussions with him about his acceptance of the Chairmanship, indeed the Home Secretary has made clear the reservations which both the Prime Minister and the Chief Secretary have expressed about Sir William's initial views on resources. The position which the Home Secretary has established with Sir William is that Sir William will be involved with the Minister of State, Mr Renton, and Treasury and Home Office officials in discussion of the detail of the budget following the announcement of Sir William's appointment. Sir William has indicated that he is content to proceed on this basis.

Expenditure by the BSC is likely to build up slowly as the organisation finds its feet. The Home Secretary is not looking for anything more this year by way of financial provision than is already in Home Office estimates. Whether more is needed in later years will depend upon the outcome of the discussions with Sir William which I have mentioned, in which Treasury officials would be involved. The Home Secretary believes that it would be reasonable for the outcome of those discussions to be considered further, as far as future years are concerned, as part of this year's PES round.

You mention the possibility of considering again the possibility of the broadcasters paying for the Council. We have given the reasons why we do not believe this to be a runner in earlier correspondence. Quite apart from the need to avoid giving any incentive to the broadcasting authorities to run down their own work in the area of standards, the BSC will be involved

/additionally

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2.

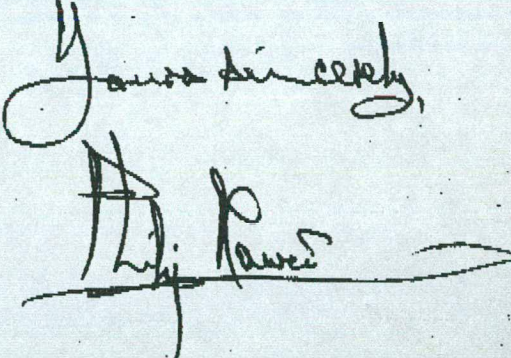
additionally with forms of broadcasting such as foreign satellite services from which the existing broadcasting and cable interests could not gather revenue, and of course with videos.

As regards the timing of legislation on the BSC, the Home Secretary understands the arguments for securing such legislation at the earliest possible opportunity. But there are sound reasons of policy for leaving over legislation on the BSC till the 1989/90 session. The co-operation of the broadcasting authorities and of the cable and broadcasting companies is essential to the Council's success and if they have the opportunity of developing a satisfactory working relationship with the BSC in advance of legislation it will produce the right climate for progress and smooth the passage of the eventual legislation. Moreover there is the additional consideration that the prospects for a broadcasting Bill in the 1988/89 session are now somewhat uncertain in view of other pressures on the legislative programme.

As you will have seen, there is continuing speculation in the press about the powers of the BSC and about the appointment of its Chairman. The Home Secretary therefore regards it as desirable that the announcement of the establishment of the Council and of Sir William's appointment should proceed as rapidly as possible. You will have gathered from my letter earlier today to Nigel Wicks that he would like the announcement to be made next Monday, 16 May.

For the reasons I have given, the Home Secretary attaches considerable importance to this matter, and would be glad of the opportunity of a word with the Chief Secretary about it. Zoe has kindly undertaken to consider how best this might be achieved before Cabinet tomorrow.

I am copying this letter to Nigel Wicks (No 10), Jeremy Godfrey (DTI), Alison Smith (Lord President's Office), Murdo Maclean (Chief Whip's Office), and Trevor Woolley (Cabinet Office).

Yours sincerely,


P J C. MAWER



Prop
passed on
to 200

Ch/ to be aware. Officials
most anxious that
Sir W.R-M should
sign up to £1m
budget before
announcement.

Quits
W.R-M

CST may be discussing
with Home Secretary
tomorrow, pre-Cabinet

1
form:

W.P.W

4/5

2519/11/11

*I agree. It is
essential to reach
an understanding
with the Home Secretary
that the discussions
involving Sir William
on the budget should be
constrained by the £1m limit
set by the Prime Minister.*

FROM: C W BOLT

DATE: 11 May 1988

1. MRS CASE

2. CHIEF SECRETARY

cc Chancellor

Sir P Middleton

Mr Anson

Mr Phillips

Mr Beastall

Mr Burr

Mr C W Kelly

Mr Cropper

BROADCASTING STANDARDS COUNCIL (BSC)

AP 2 1/5

The Home Secretary's Private Secretary wrote to your Private Secretary today repeating his earlier proposal that the budget for the Broadcasting Standards Council (BSC) should be considered as part of the Survey discussions, and that it would not be possible to reach agreement on it in advance of the announcement planned for next Monday. The Home Secretary proposes to speak to you about this tomorrow: you are recommended to seek his agreement that the budget should be, at most, about £1m. A speaking note is attached.

Background

2. As explained in my submission of 10 May, Sir William Rees-Mogg has indicated that he will only agree to become Chairman of the BSC if it has an expanded role (to include previewing of bought-in material rather than simply receiving complaints and monitoring material as it is broadcast). The Prime Minister has agreed to this expanded role, but believes that a budget of about £1m would be sufficient, rather than the £2.5 million proposed by Sir William. It is proposed that an announcement of the terms of reference of the Council, and of Sir William's appointment as Chairman, should be made on Monday.

3. Your Private Secretary's letter of 9 May asked that the budget for the BSC should be agreed between officials before the announcement was made. This was to avoid the risk that, having announced that Sir William would be Chairman, there followed an embarrassing - possibly public - disagreement about the resources to be made available.

Home Office letter

4. The Home Office letter indicates that the Home Secretary has indicated to Sir William Rees-Mogg the Prime Minister's, and your own, views on the appropriate level of resources for the Council. Sir William has accepted that the budget should be discussed between him and the Minister of State at the Home Office, and Home Office and Treasury officials, following the announcement of Sir William's appointment. However, although we understand that Home Office officials are sceptical of the justification for a budget above the level of £1 million suggested by the Prime Minister, they believe that this will be unacceptable to Sir William, and are working up an alternative budget of about £1.6 million.

5. Although it would clearly now be difficult to delay the proposed announcement until a budget was agreed with Sir William, it is important that the Home Secretary should accept that subsequent discussions with Sir William should be constrained by the budget suggested by the Prime Minister.

6. The Home Office letter also touches on the question of the timing of legislation. At the last meeting of MISC 128, the possibility of postponing all broadcasting legislation until the 1989-90 Session was discussed. In that event, it would be inevitable that legislation for the BSC would be in the following session. However, we understand that there is still a possibility that some regulatory measures (such as removing the exemption of broadcasters from the Obscenity Act) would be enacted in the next session. In that event, we still see advantages for such legislation also to cover the BSC.

C W Bolt

C W BOLT

SPEAKING NOTE

- Not reasonable for Sir William to dictate to Government what the budget for the Council should be.
- No wish to challenge the wider role now envisaged for the Council, but have great difficulty in seeing justification for a budget above £1 million - which represents a doubling of the budget previously agreed.
- Recognise that expenditure will build up over time, but important not to raise false expectations. Seek your agreement that Sir William should be told that maximum budget for Council, once in full swing, should be £1 million.
- Content for announcement on Monday if you will give such an assurance.
- Believe there are good arguments for giving Council statutory backing at earliest opportunity, though recognise that this is linked with wider decisions on broadcasting legislation.

BF to MA 18/7
19/7
[spk H.O.]



BROADCASTING TRI-LATERAL.

uh / Anthea tells me the
gossip at Monday's seminar
was that end-July MISC 128
may well have to be cancelled
[general cabinet committee overload]
and so the trilateral may be the
last chance to sort out what
officials should be working on
over summer.

Are you content for each
Dept to bring one official a
side, plus one from Cab Office
+ Professor Griffiths?

OK
mpw.

FST

Professor G

Mrs Case

Mr Hyde [H.O.]

Mr Macdonald [DT]

Mr Langdon [Cab Off]

→ ~~Mover~~ This is in the
"chain", at 10.1. At the
moment there are no
Officials attending



John
11/7.

BF to m 13/7

Ch,

The Home Office have rung
to pencil in a Broadcasting
"trilateral" for 4.00 pm on Tuesday
26 July, with Messrs Hurd, Renton
& Lord Young [plus I suppose
an official a side, and perhaps
someone from Policy Unit...]

The idea will probably be to
clear ground before an end-July
MISC 128, which will have to
reach decision on the "Lord
Young wheeze", where lack
of a decision soon could put
in jeopardy a Christmas White
Paper. Anthea Case thinks it
would be sensible to meet.

OK?

OK

mpw

BF to M.

8/7



Mara'

Hurd's Office have
ring to fix a meeting
on Broadcasting for
4.00pm on Tuesday 26
July ~~before~~ ~~me~~ ~~at~~ ~~12.00~~

+ Lord Young, Mr Renton

I have suggested it should
be at Doll.

Should we request briefing-

Who from?

Should any officials
attend at this end?

Julie
47.

Another Case 4509

273 2559

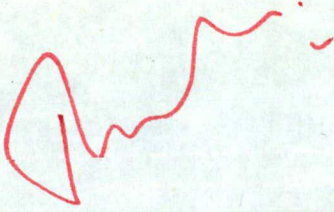
Whither Lord Y's
wheeze? Christmas
White Paper will fall.
Broadcasters to report
back 17/18

CONFIDENTIAL

FROM: A F CASE

DATE: 12 July 1988

CHANCELLOR



cc PS/Chief Secretary
PS/Financial Secretary
Mr Anson
Mr Phillips
Mr Farthing
Mr Cave
Mr Tyrie
Mr Call

HOME SECRETARY'S BROADCASTING SEMINAR: 11 JULY

You might like a brief report on the Home Secretary's seminar with Lord Young on broadcasting yesterday which I attended. Other participants were Mr Renton and Jeffrey Sterling, officials from the Home Office and DTI and Professor Griffiths from No.10. Two main areas were discussed: reform of commercial TV and additional programme services. No decisions were taken but the Home Secretary thought that discussion on reform of commercial TV, in particular, had advanced issues sufficiently to enable his officials to prepare a paper designed to get decisions at the MISC 128 meeting at the end of this month. They could then get ahead with drafting a White Paper. The proposed "trilateral" Ministerial meeting is apparently to ensure that you are fully in the picture.

Reform of Commercial TV

2. Mr Renton opened the discussion by proposing:

- (a) A single regulatory authority concerned only with consumer protection and not with scheduling or networking;
- (b) Minimum threshold quality control on programming covering regional programming, news and current affairs, independent production quota and internal diversity;
- (c) An enhanced role for C4, reinforcing its particular the remit. C4 might be the inheritor of dropped ITV programmes.

Case
Home
Sec
Seminar
12/7

This broad approach seem to commend itself to Lord Young, although he questioned the need for fixed term franchises if franchises could be transferred during their currency. He also questioned how the quality threshold would be maintained throughout the life of a fixed term franchise, particularly in the final year/s when it had been reallocated. This seem to be a new point to the Home Secretary. Mr Griffiths suggested that a public review process would provide better pressure for quality than competitive tender. The Home Secretary, however, felt that it would be politically impossible to reallocate the present franchise on a competitive basis for an unspecified time. A fixed term franchise was also the ultimate sanction on quality. The paper by his officials for MISC 128 seem likely to propose a fixed term franchise, subject to rolling quality review, with perhaps a presumption against change at the end of the franchise period if quality had been maintained and commercial take-over procedures could operate.

4. There was some discussion of C4 with the Home Secretary coming down as before in favour of a separate agency to sell C4 air time but C4 financed from the total advertising revenues of C3 and C5. His main argument was that this would enable the quality remit to be preserved without moving toward the Peacock Arts Council of the Air. A questionmark remained over whether this approach would be acceptable to the ITV companies.

Additional Programme Services

5. Lord Young acknowledged that his wheeze (BBC2/C4 to satellite) had elicited no enthusiasm. Other ways were therefore needed of increasing advertising air time in order to reduce its price. BSB alone was not enough. In discussion of possible options, a number of points were made:

(i) The new Channel 5 might be technically available in some regions as early as 1991, more generally by 1992. It could therefore be introduced as part of the same package as the changes in the present ITV network. Even with 70 per cent coverage, it would provide more advertising time than BSB. Its introduction would need to take account of BSB's requirement for finance. The important point here was that position was clear before BSB went to the market.

(ii) There was some feeling (Lord Young and Brian Griffiths) that BSB were underestimating competition from Murdoch and were not very impressive managers. It would be important to avoid the Government being blamed for any lack of success.

(iii) On MDVS, officials were minded to recommend a technologically neutral approach with the greatest possible competition on both transmission and provision of programmes. There was considerable enthusiasm for enabling local TV services through MDVS, perhaps along the lines now being introduced in the Irish Republic.

(iv) The stirring in Cable seem to be due to an influx of US money. The basis of US interest was not clear. Given a free choice of technology at local level, MDVS would win out over Cable on cost terms, although some operators might stick with Cable because of its longer term possibility for interactive services.

The Home Secretary invited officials to do further work in this area, particularly on local TV.

A F CASE



CH/EXCHEQUER	
REC.	18 JUL 1988
ACTION	MR Bolt
COPIES TO	CST, FST, PMG, EST SIR P. Middleton Mr Anson, Mr Phillips, Mr Burgner, Mr Culpin Mr Spackman, Mrs Case Mr Farthing, Mr Waller Mr Cove, Mrs Pugh Mr Cropper

QUEEN ANNE'S GATE LONDON SW1H 9AT

18 July 1988

21/7
BF 20/7
W M

Dear Secretary of State

BROADCASTING

I was most grateful to you for coming to Silchester last Monday and for your help with what I think all present agreed was a useful seminar.

I have reflected the outcome of our discussion in the enclosed draft paper which, subject to any comments you might want to make, I propose to circulate for consideration by MISC 128 at the meeting now scheduled for 28 July. I hope the draft is self-explanatory and that you can agree to my indicating to colleagues that you are broadly content with the proposals it contains.

Nigel Lawson is meeting us both on the afternoon of 26 July when we shall have an opportunity to discuss these matters further. However, in order to give the Prime Minister, and other colleagues, time to consider what are important, and, in some respects, new proposals, I think the paper itself must be circulated at the end of the previous week. Might I therefore ask for comments by Thursday, 21 July.

I am copying this letter and its enclosure to Nigel Lawson and should also be grateful for any comments he wishes to make. Points of detail can, of course, be fed in by DTI or Treasury officials to mine.

Yours sincerely

Catherine Bannister
(Approved by the Home Secretary
and signed in his absence)

The Rt Hon The Lord Young of Graffham

PS/Hand
Sec
L. Young
18/7

MISC 128(88)

Copy No.

CABINET

MINISTERIAL GROUP ON BROADCASTING SERVICES

BROADCASTING REFORMS: THE STRATEGIC FRAMEWORK

Memorandum by the Secretary of State for the Home Department

1. On the assumption that colleagues agree that we should not further pursue the idea of transferring BBC 2 and Channel 4 to DBS, the way is open to us to bring our prolonged consideration of other means of providing additional programme services to a head. After useful discussions with the Trade and Industry Secretary, and involving representatives of other Departments, I can now put proposals for the framework of our reforms. [I understand that the Trade and Industry Secretary is broadly content with these proposals].

2. It is important that we make progress. Given our decision not to proceed with a Bill on Radio in the 1988/89 Session, we face the necessity for a major Broadcasting Bill, covering both radio and television, in the 1989/90 Session. While our plans on radio are clear and have received a general welcome, we need to settle our approach to television and expose it in a White Paper, which should be published by the end of this year; this will enable time for informed comment on what will be sweeping changes. There are two main outstanding issues:

(i) the reform of commercial television;

(ii) the framework for additional programme services.

3. Our general approach should be not to lay down a blueprint but to create an enabling framework allowing entrepreneurs, subject to suitable regulation, particularly on programme content, to decide in the market place which technology should win through. Apart from the need for continued supervision of programme content, in which the Broadcasting Standards Council will have a helpful role to play, the main task of the regulatory agency will be to ensure fairness and propriety in the allocation of franchises, with a fair return to the Exchequer, and that the players are operating on a fair and competitive playing field. Given the need for flexibility, particularly in the face of growing technological opportunities, it seems right, as the Home Affairs Select Committee also recently recommended, that all commercial television services should be brought within the ambit of a single agency which can look at developments across the board, rather than being limited, as the IBA and Cable Authority now are, to a particular delivery technology. I accordingly propose that we should simplify the framework by establishing an Independent Television Authority (ITA), which would be formed by bringing the IBA and the Cable Authority together. (We have already agreed that radio should be supervised by a separate Radio Authority). I envisage that the ITA would apply lighter, more objective, programme requirements, the enforcement of which would be justiciable; the ITA could accordingly adopt a less heavy handed and arbitrary approach than does the IBA at present.

Regime for Channel 3

4. As we move towards a more competitive market, I believe we can and should make major changes to the regime for ITV, or Channel 3 as it should become known. The channel should continue to meet the "consumer protection" requirements: for example, to ensure that news is impartial and accurate; that nothing is included in the programmes which offends against taste or decency or encourages crime or is offensive to public

feeling; and that there is oversight of advertising content. However, I do not believe we need retain the present aspirational requirements that the service should be of high quality and should comprise education and information as well as entertainment. By contrast I believe that positive programme obligations should be limited to the following:

- (i) a requirement to show a defined amount of regional programming (i.e. both programmes about the region, and programmes produced in the region);
- (ii) a requirement to shows news and current affairs - in the interests of ensuring an alternative to the BBC. But we need not stipulate how this should be done, or retain the statutory provision underpinning ITV;
- (iii) a requirement that the companies should provide a diverse programme service calculated to appeal to a variety of tastes and interests (similar to that which we have agreed in the case of national commercial radio). Without such a requirement there is too great a risk of narrowing of programme type;
- (iv) possibly, a requirement that a minimum of 25% of original programming should come from independent producers.

5. The programme service should be provided by the companies and, subject to these rules, it would be their responsibility rather than, as now, being provided by a broadcasting authority. It follows from this that the ITA would not have the IBA's responsibility for detailed approval of scheduling or prior clearance of particular programmes; it should be for the operators to decide when and what to show, subject to general, and largely reactive, oversight of the kind the Cable Authority

exercises. It would also be their responsibility to decide on commercial grounds on any arrangements for networking or syndicating programmes among themselves. We would thus bring to an end most of the detailed supervisory work of the IBA.

6. As we have already agreed, I believe that subject to these quality requirements, the contracts should be awarded by competitive tender with the highest bid securing the licence. The existing controls on takeovers would be removed, though there would continue to be rules to prevent non-EC ownership and to limit concentration of ownership; and those buying into companies would have to satisfy those tests.

7. The ITA would exercise supervision of the obligations set out in paragraph 4 above during the course of the franchise. An important issue, which officials should be instructed to analyse further, is whether the licences should be for a fixed term or whether we could make them for an unlimited time, subject to the clear responsibility of the ITA to carry out a thorough review of performance after two or three years, and at fixed intervals thereafter, so that it could and should remove a licensee who failed to meet his obligations.

8. There is in my view no need for the Government to propose any change to the geographical framework for Channel 3, though I believe this should remain a matter for the regulatory authority (i.e. the ITA).

Channels 5 and 6

9. The same regime should apply equally to Channel 5 and, if it proves feasible, to Channel 6. Channel 5 should come on stream from the beginning of 1993, when the new ITV contracts will start. I envisage that Channel 5 also should be made up of regional companies, though because of the patchy coverage which can be obtained on the relevant UHF frequencies the areas may need to be different and somewhat larger. The details would be a matter for the ITA to determine.

10. The technical possibilities for Channel 6 have not yet been studied fully in the way that we have achieved for Channel 5. I hope that we can now put in hand the necessary work on the assumption that if this is feasible Channel 6 should also start as soon as possible after 1993. DTI advise that it is essential, if coverage is to be maximised, for Channels 5 and 6 to be planned together. In any event our legislation should provide an enabling framework for this and any other new services which may become practicable.

Channel 4

11. MISC 128 has already agreed that Channel 4 should retain its remit. The partial deregulation of ITV proposed above, which makes some narrowing of its programme range inevitable, would make even more important the retention, and indeed enhancement, of that remit to provide a distinctive and complementary service. Its ability to meet this prescription depends on its income being determined separately from its net advertising revenue. It should be separated from ITV but should remain as a non-profit making subsidiary of the new ITA, which would be responsible for ensuring that it kept to its statutory obligations. The ITA would franchise the selling of advertising on Channel 4 (and S4C) by a new and separate company, as advertising interests have proposed. Channel 4's income should be determined by a formula, to be set by the ITA subject to Government approval, related to Net Advertising Revenue (NAR) on all commercial off-air terrestrial channels. An approach on these lines should meet the reasonable needs of Channel 4, and the Welsh Fourth Channel Authority, and will I believe give us a good answer to any who suggest that the loosening of the reins on Channels 3 and 5 implies any weakening in the Government's commitment to ensure quality programming. Our Manifesto too included a commitment "to preserve the high standards which we have traditionally enjoyed in British broadcasting".

Additional DBS Channels

12. We have agreed with BSB that the fourth and fifth DBS channels should not be made available to new operators until their service has been in operation for at least three years. We should make it clear in the White Paper that we shall ask the ITA to allocate these franchises, by competitive tender to be consistent with our decision on Channel 3, as soon as the moratorium expires.

Local Programme Services

13. There is growing interest in the possibility of local television services. It was one of the hopes of cable that it would, among other things, meet this need. So far cable's progress has been slow and operators have in practice been able to devote few resources to original programming at the local level.

14. We also have the possibility of using MVDS to provide, on a local configuration, a number of channels. While more work is needed on the details - I suggest that we invite officials to work up the options further - our stance should be one of creating opportunities for this technology to be used both in combination with other technologies and in its own right. MVDS could be used to fill out the reach of Channel 5, which without this is likely to cover only 65-70% of the population excluding much of the South East and, if we agree on it, Channel 6. Similarly, MVDS could be used in combination with cable to reach parts of the country which cable would not reach, or would not reach early on. But the technology, which has the merit of being cheap relative to cable, should have a future in its own right. We need a structure which opens up all these possibilities, allowing the particular application of MVDS to be decided by entrepreneurs in the market, rather than by regulatory imposition. We should instruct officials to work up the options and to consider the relationship between cable and MVDS. I know too that officials are considering the feasibility of giving Mercury a bigger role to play.

Financing of Programme Services

15. We have already decided that the licence fee should be indexed to the RPI for at least three years. In the meantime the BBC should be encouraged to introduce subscription and I will report back separately on my discussions with the BBC on this.

16. There has been intense demand for television advertising, with the result that prices have increased markedly. The provision of additional services on the lines described above, together with BSB's service starting in 1989, should go some way to providing relief, the need for which the Secretary of State for Trade and Industry rightly emphasised. But there is a risk that new services will to some extent merely fragment audiences, and increase viewing for commercials only to the extent that audiences are captured from the BBC, or overall viewing time is increased. In that event the cost per thousand viewers which an advertiser has to pay may not greatly reduce. Partly for that reason I suggest we take ourselves control of the limits on advertising minutage, which rests at present with the IBA, so that we can ourselves increase this if necessary to bring quick relief to the overheated advertising market.

17. The approach we earlier considered of allowing new commercial channels, like BSB and cable, the freedom to decide their own mix of advertising and subscription seems right. That should apply equally to Channels 3, 5 and 6, and to the additional DBS channels proposed.

Other Matters

18. There remain some important issues outstanding. In particular we need to invite officials to come forward with proposals for reform of the transmission arrangements, which need to take account of the need to transmit new services including Channels 5, 6 and those at MVDS.

Conclusion

19. If colleagues are content, I suggest we now instruct officials to carry work forward on this basis towards our **promised White Paper**. In particular we should instruct them to put in hand:

- (i) the preparation of more detailed proposals for the **powers and responsibilities of the ITA**, including whether its licences should be for ~~fixed~~ terms, to supervise all non-BBC programme services whether delivered by cable or transmitted on the ground or from satellite;
- (ii) a detailed study of the technical feasibility of **Channel 6 at UHF**;
- (iii) proposals for **local programme services using MVDS**, and its relationship with cable;
- (iv) **options for the reform of the transmission system, taking account of developments on MVDS.**

D.H.

Home Office

July 1988

dti

the department for Enterprise

CONFIDENTIAL

PRIME MINISTER

20/7/88 ✓

CH/EXCHEQUER ✓ 20/7	
REC.	20 JUL 1988
ACTION	Mr Bolt
COPIES TO	CST, Sir P. Middleton, Mr Anson, Mr Monck, Mr Phillips, Mr Wagner, Mr Spackman, Mr Farthing, Mr Waller, Mr Curie, Mrs Cone, Mrs Pugh, Mr Cropper

TRANSFER OF TERRESTRIAL TV SERVICES TO SATELLITE

This minute reports the outcome of the discussions Douglas Hurd and I have had with BSB and the broadcasters about the possibility of transferring BBC2 and Channel 4 to DBS.

2. Douglas and I outlined the proposition to the Chairman of BSB on 9 June and the Chairmen of the BBC and the IBA on 10 June. Officials have since had more detailed discussions with BSB and the broadcasters, and have also met the Independent Television Association.

3. We now have formal written responses from the BBC, the IBA and the Board of Channel 4. None of them want to take up the opportunity they have been offered: indeed, the responses express a number of misgivings. We have not yet heard formally from BSB, but we know that they are at best lukewarm. I understand they are working on some counter-propositions, but as far as we can judge none of them would achieve the basic objective of freeing spectrum for more terrestrial services at UHF on any reasonable timescale.

4. In the light of this reaction I conclude - and Douglas Hurd agrees - that it is not practicable to pursue the proposition further. Douglas and I both believe it would be right to inform the broadcasters of this conclusion as quickly as possible - not least to prevent any further nugatory work by BSB. I hope you and MISC 128 colleagues will agree that we should now do so.

the
Enterprise
Initiative

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5. I am naturally disappointed that neither the broadcasters nor BSB have sought to make more of the opportunity we offered them. We shall now need to redouble our efforts to deal with the advertising problem through other approaches to new programme services. I understand Douglas Hurd hopes to put forward, for consideration at the meeting of MISC 128 arranged for 28 July, some proposals which officials might be asked to work up in more detail over the summer.

6. I am copying this minute to other members of MISC 128, and to Sir Robin Butler.



D Y

20 July 1988

DEPARTMENT OF TRADE & INDUSTRY

FROM: R M PERFECT
DATE: 20 JULY 1988

- 1. MRS CASE
- 2. CHANCELLOR

I agree that there is no need to comment on the Home Secretary's proposals (which look broadly satisfactory) at this stage. The new ideas (Government Control of minitape) can be probed further at the meeting you are chairing in advance of Misc 128.

cc: Chief Secretary
Sir P Middleton
Mr Anson
Mr Phillips
Mr Culpin
Mr Spackman
Mr Farthing

BROADCASTING

✓

AF 20/7

1. The Home Secretary's letter of 18 July covered a draft paper for MISC 128 and invited comments by Thursday 21 July. There are no points you need to raise at this stage. This note mentions the main new features of the Home Secretary's proposals.

Objective

2. The purpose of the paper is to settle the Government's approach to television.

Main Points

3. The draft MISC paper assumes colleagues agree BBC2 and Channel 4 should not be transferred to DBS. Lord Young told the Home Secretary's recent seminar that there was no enthusiasm for transferring these channels to satellite and he believed his proposal would have to be withdrawn. This view is probably right. The recent report on the Future of Broadcasting by the Home Affairs Select Committee (HC 262, 22 June 1988) found reason to doubt the prospects of obtaining wide coverage of BBC2 and Channel 4 on satellite. So these channels will need to be available on terrestrial frequencies to maintain consumer choice. There would be little merit in duplicating these channels on satellite and terrestrial frequencies.

New
Minitape
satellite
proposal
Lord Y.
Select
Committee

4. The paper envisages that Channel 4 will remain as a non-profit making body with its revenue related to net advertising on all commercial off-air terrestrial channels. A separate company would be set up to sell advertising on Channel 4 to ensure it is properly marketed. These arrangements would not provide Channel 4 with much incentive to maximise its advertising revenue. But the Home Secretary believes they would help meet the Manifesto commitment to preserve high standards in British broadcasting.

5. Advertisers' need for more TV advertising would be met by satellite television and by introducing Channel 5 in 1993 and Channel 6 as soon as possible thereafter. The quality controls on the ITV companies (Channel 3) would be relaxed so they could appeal to larger audiences. And the same regime would apply to Channels 5 and 6.

6. The Home Secretary also proposes that the Government take direct responsibility for setting limits on advertising minutage on television. The supply of television advertising could then be quickly increased when demand was strong. And this might help increase Government revenue from the levy on advertising revenue. The main disadvantages are that Government would be subject to conflicting pressures from advertisers and programme-makers. And critics could suggest the independence of commercial companies would be undermined as a result. But if the Home Secretary is prepared to defend his proposal there is no Treasury reason to dissent.

R.M. Perfect.
R M PERFECT



Catherine B to get back

~~MP~~ ~~W/Spect~~ - BF
MP 17

Ch / As you know we have a broadcasting
Trilateral in the diary for Tuesday
afternoon, in advance of MISC 128.
I'm beginning to wonder whether
2 meetings on this subject in one week
is perhaps a bit over the top. When Home
Office suggested it the idea was to
keep you in the picture post - Silchester
& pre MISC 128 - but you've had a report
on Silchester & seen the paper for Misc.
So there cannot be much news on this front.
Another argument for having the trilateral
was that MISC 128 might be cancelled - but
that now looks most unlikely. Home Office
say they have nothing else on the agenda.
Would you perhaps like us to call it
off?

mpw

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[Handwritten signature]

FROM: MISS M P WALLACE

DATE: 21 July 1988

MR PERFECT

cc Chief Secretary
Financial Secretary (with copy
of Mr Perfect's minute)
Sir P Middleton
Mr Anson
Mr Phillips
Mr Culpin
Mr Spackman
Mrs Case
Mr Farthing

BROADCASTING

The Chancellor has seen and noted your minute of 20 July.

[Handwritten signature]

MOIRA WALLACE

dti

the department for Enterprise

[imp] For
~~BT~~ MISC
128 folder

CONFIDENTIAL

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

The Rt Hon Douglas Hurd CBE MP
Secretary of State for Home Affairs
Home Office
50 Queen Anne's Gate
LONDON SW1

**Department of
Trade and Industry**

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

CH/EXCHEQUER	
REC.	22 JUL 1988
ACTION	MR Bolt
COPIES TO	CST, FST, PMG, EST SIR P. Middleton MR Anson Mr Phillips Mr Bugner MR Culpin MR Spackman MRS Cape MR Farthing MR Waller, Mr Carr MRS Pugh Mr Cropper

Direct line 215 5422
Our ref DW3APO
Your ref
Date 21 July 1988

BROADCASTING

Thank you for your letter of 18 July with a copy of your draft paper for MISC 128.

I am indeed broadly content with the proposals in the paper and am happy that the paper should say so. My officials have fed in a few comments to yours.

As you say in your letter, the proposals in the paper are important and, in some respects, new. You have identified in paragraph 19 some specific areas which will need further work. There may be others. For example, we perhaps need to consider further whether it is in fact necessary for Channel 5 and, if it proves feasible, Channel 6, to be subject to precisely the same positive programming obligations as Channel 3; and while I believe the approach you have suggested for Channel 4 is on the right lines, I should like to see how the role and responsibilities of the new ITA take shape before we finally decide that the right constitutional arrangement for Channel 4 is for it to be a subsidiary of the ITA.

I hope therefore that you will agree that officials should interpret widely their remit to do further work on the detail of the proposals outlined in your paper.

I am copying this letter to Nigel Lawson.

L. Young
→ HURD
21/7

28/2

Kerley
20/6/88
Brief
22/7

CONFIDENTIAL

FROM: R D KERLEY
DATE: 22 JULY 1988

1. MRS CASE

Afz 22/7

2. CHANCELLOR

cc: PS/Chief Secretary
PS/Financial Secretary
Mr Phillips
Mr Farthing
Mr Perfect

DINNER WITH DAVID McCALL: ANGLIA TELEVISION

1. You have agreed to have dinner with David McCall, Chief Executive of Anglia Television and David Shaw, Director of the ITV Association, on Tuesday 26 July. You will be accompanied by Nigel Forman.

2. Both Mr McCall and Mr Shaw are, not unnaturally, keen observers of the broadcasting industry. They may well wish to raise with you the Home Affairs Select Committee report on the future of broadcasting and, particularly in the light of the Home Secretary's recent seminar on broadcasting, when the Government is going to publish its White Paper. We also think it likely that they will use this opportunity to press you on the form of the levy for the 1990-93 contract extension period.

Home Affairs Select Committee Report

3. The report was published on 22 June and was welcomed by the Home Secretary as 'perhaps the most extensive inquiry into broadcasting ever conducted by a parliamentary select committee'. Whilst emphasising that public service broadcasting should be an integral part of any new broadcasting environment, the report advocated some fairly radical changes which were, in fact, broadly in line with the Government's thinking, including:

- a new commercial television authority to replace the IBA and Cable Authority
- a fifth advertising financed channel to be set up as soon as possible

- separate night-time franchises for ITV companies
- from 1993 ITV franchises should be awarded on the basis of a regulated tendering process

Home Secretary's Seminar

4. Mrs Case (her minute of 12 July) reported back to you on the outcome of this seminar which formed the basis of the draft MISC 128 paper circulated under cover of the Home Secretary's letter to Lord Young of 18 July (discussed in Mr Perfect's minute of 20 July). The press reports of the Seminar have been largely accurate, although somewhat sketchy, reporting that decisions were taken on competitive tendering, separate night-time franchises and a fifth channel. (Anglia are one of only three ITV companies currently broadcasting throughout the night, the others being Thames and LWT). The line to take on the seminar is that the meeting made useful progress with broad agreement being reached on a range of issues. Final decisions, however, will be taken in due course by Ministers collectively. The Government's thinking will then be outlined ^{in a White Paper} to be published in the next few months. Many in the broadcasting industry have expressed irritation at the delay in the publication of the White Paper. IF PRESSED on the delay the line to take is that the Government wanted to give full consideration to a wide range of options in this complex and fast moving area.

Form of the levy for the contract extension period

5. The background to this is that when, in 1986, MISC 128 decided to extend ITV contracts to the end of 1992, it also decided that the possibility of changing the form of the levy (at present charged as a percentage of profits) should be considered. The Home Secretary then wrote to you on 18 April indicating his preference for changing to a levy based partly on profits and partly on net advertising revenue (NAR); he also indicated that the IBA had a strong preference for a mixed scheme. You responded on 3 May restating your preference for a levy based only on revenue mainly on the grounds that a revenue levy would provide the most direct incentive to companies, through lower marginal tax rates, to reduce costs and improve efficiency.

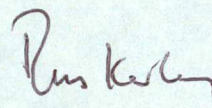
6. However soon after the Home Secretary wrote to the IBA indicating that he "inclined on balance to favour a revenue based scheme" press reports with headlines such as "Treasury wins on ITV levy change" started appearing. David McCall was then quoted as saying he strongly preferred a mixed levy formula which, he argued, was better able to withstand the ebbs and flows of varying economic circumstances, and we therefore think it likely that he will wish to lobby you on the merits of a mixed scheme. His line will probably be that a revenue levy will harm programme quality since the high production costs of these sorts of programmes will no longer be able to be offset against the levy, and also that since ITV companies are finally getting to grips with inefficiencies and restrictive practices the need for a levy designed to bear down so heavily on costs no longer applies.

7. He may also be expressed the view that if a revenue levy is introduced it should apply to satellite channels as well. Channels uplinked from outside the UK are, of course, outside UK jurisdiction and therefore could not be liable for levy. UK DBS services, however, are subject to levy on the same basis as terrestrial television services, but it was always recognised that BSB would not be in a position to pay levy in its first few years of operation, until it started generating profits. With a profits levy, there would have been no need to establish separate rates for DBS contractors and terrestrial contractors to protect the position of the former; with a revenue levy, this would however be necessary, and we accepted the proposal by Home Office officials that the DBS levy should be zero for the period from 1990-92. From 1993, the presumption would be that BSB would pay levy. The line to take is that the Government will, of course, take due account of all representations made to it (it is quite likely that the IBA will wish to respond to the Home Secretary's letter) and that the Government's final decision will be announced in due course.

Satellite Channels

8. Anglia TV are shareholders in BSB (and in fact also in Superchannel) where they have invested £2.5 million and will be called on for a further tranche of around £10 million next year. Mr McCall may therefore wish to express his views on Lord Young's BBC2/C4 to satellite idea. Mr McCall is likely to follow the rest of the broadcasting industry in showing little enthusiasm for the idea, and Lord Young has, of course, now written to the Prime Minister proposing that the scheme be dropped.

and the
PM had
now
agreed
AFZ



R D KERLEY

CONFIDENTIAL

FROM: MRS A F CASE
DATE: 26 July 1988

CHANCELLOR

cc Chief Secretary
Financial Secretary
Mr Anson
Mr Phillips
Mr Burgner
Mr Spackman
Mr Farthing
Mr Perfect
Mr Nicol
Mr Cave
Mr Tyrie
Mr Call

BROADCASTING REFORMS : THE STRATEGIC FRAMEWORK MISC 128(88)9

Memorandum by the Home Secretary

This paper, cleared with you and Lord Young in draft, draws on discussion at the Home Secretary's recent seminar. Now that the "planning blight" of switching BBC2 and Channel 4 to DBS has been lifted, Mr Hurd wants agreement on some key issues so that drafting of the White Paper can get ahead, and any further work by officials be set in hand.

2. The general approach of the Home Secretary's proposals is acceptable. The Treasury objective is therefore

(i) to help the Home Secretary get agreement so that drafting can begin on the White Paper; and

(ii) to ensure that any decisions on outstanding topics - term of franchise, C4, advertising minutage, ITN - or work commissioned by officials is directed towards securing agreement on the more competitive course.

3. The line to take on the topics covered by the paper is as follows.

Independent Television Authority (ITA) (para 3)

4. A single regulatory authority would be formed by bringing the IBA and the Cable Authority together. It would apply a

lighter regime (see below) enforceable through the courts. Proposal satisfactory, subject to the further work proposed on powers and responsibilities. The Prime Minister is said not to be opposed subject to the suitability of the chairman.

Regime for Channel 3 (ITV) (paras 4-8)

5. (i) **Quality Threshold.** This would consist of consumer protection requirements plus quantitative (rather than qualitative or aspirational) programming obligations. The diversity requirement is intended to prevent an unending diet of quiz shows. The ITA would have no responsibility for scheduling or networking. Mr Hurd's proposals include getting rid of the statutory provision underpinning ITN (already agreed by MISC 128). There is some suggestion that the Prime Minister may want to backslide on this (see para 7 below). We should resist reinstating the ITN monopoly. We should also argue that the 25% minimum requirement for original programming be retained. Subject to these points and a satisfactory detailed regime being worked out, proposals acceptable.

(ii) **Competitive Tender Agreed.**

(iii) **Term of Franchise.** Mr Hurd poses a choice between limited term franchises, reallocated by competitive tender and unlimited franchises, subject to periodic review. This reflects concern that in the period after a franchise had been reallocated, the franchise holder might milk the franchise together with a wish to treat TV companies like "ordinary" companies, subject to only market takeover disciplines. You will recall LWT putting these points to you. Other countries' arrangements are said to be closer to the unlimited franchise with review model. Despite these points, there are strong arguments against unlimited franchises. The periodic review would reimport an administered element and the uncertainty would reduce the Exchequer yield. I attach a speaking note (Annex A) setting out these arguments.

(iv) **Geographical Framework.** No change. Proposals satisfactory.

Channels 5 and 6 (Paras 9-10)

6. Mr Hurd proposes that the light regulatory regime would apply to Channels 5 & 6, which would come on stream from 1993 (or as soon thereafter as practicable). Channel 5 would be regionally based. Lord Young has questioned whether these channels need be subject even to the lighter regime to be applied to C3. These proposals seem on the right lines, although the case for a regional rather than national C5 needs arguing. NERA suggests that the regional nature of ITV adds perceptibly to costs. A study of the technical feasibility of Channel 6 is necessary. In the meantime, the White Paper need not be too precise on the shape of these channels. It could leave that to be decided in the light of the commercial response to the possibilities outlined in the White Paper and the impact of BSB and other satellite services.

ITN

7. The Prime Minister has apparently been attracted by Sir A Burnett's suggestion that ITN be allocated a news and general entertainment franchise for the night hours on C3. Such a special regime would be inconsistent with the Government's general approach. Mr Hurd therefore suggests the possibility of earmarking slots in C5 for an independent news contractor which would be allocated competitively. ITN would be in a good position to bid. Provided that the slots were open to competition, no fundamental reason to object.

Channel 4

8. Decisions on this were postponed in February until Ministers had an opportunity to consider additional programme services. There was general agreement then that C4 distinctive remit should be maintained and that it should sell its own advertising time. Mr Hurd is opting for minimum change, as a means of ensuring that quality programming continues, with C4's income coming from a levy on C3, C5 and C6 NAR. The paper does not deal with the arguments which you have put forward in the past for auctioning the C4 franchise like the others but with a special remit. These arguments are set out in Annex

B attached. Mr Hurd seems likely to argue that "privatisation" of C4 is unnecessary as a means of increasing cost consciousness. The independent sector will be under considerable pressure from other channels. Lord Young may be an ally but he may have doubts about the ability of the new ITA to police the special regime, given the lighter regime for other channels. He suggests deferring a final decision until the ITA regime is clearer.

Additional DBS Channels (para 12)

9. Proposal satisfactory. The White Paper needs to eliminate uncertainty on this point, before BSB goes to the market during 1989

Local Programme Services (paras 13-14)

10. This is the area where work is least advanced and further work is needed at official level. Mr Hurd's stance is right ie one of enabling MVDS to be used both in combination with other technologies and in its own right; the particular application to be decided by the market. The "technology neutral" approach has been gaining ground at official level and at the seminar. It will be important in the future work to look not just at the cable/MVDS interaction but also at telecommunications. Work on the transmission options (para 19) is already quite well advanced.

The Financing of Programme Services (para 15-17)

11. (i) **Control of Advertising.** Mr Hurd has suggested this in response to Lord Young's concerns. The intention is to provide the possibility of a short term increase in supply. It would expose the Government (rather than the ITA) to the opposing interests of broadcasters and advertisers. The Home Office view is that this is right because the Government, not the ITA, is the proper institution to decide whether the cost of advertising is too high in national economic terms. Given the relief to advertisers from the increasing number of channels especially after 1993, it is not clear that there will be a real need for this power during the life of the first franchises. It would ^{be} better simply for the Government to take a view when

the new ITV contracts are let. Any uncertainty or ambiguity could adversely affect the auction process.

(ii) **Subscription or advertising.** In principle, right to leave decisions to operators but White Paper might leave leaving decisions eg on delaying subscription on Channels 3, 5 and 6 to protect BSB, to be made in light of commercial response to White Paper.

Conclusions

12. You are recommended, therefore

i. to agree the work programme for officials outlined in paragraph 20, questioning the need for work on fixed term franchises;

ii. to agree that drafting should begin on the White Paper on the lines set out in paragraph 21(i) to (v), reserving your position on C4 regime.

13. You may also like to have for background purposes, a copy of the minutes of the Silchester Seminar (Annex C) and a timetable of broadcasting developments (Annex D).



MRS A F CASE

CONFIDENTIAL

ANNEX A

SPEAKING NOTE

Fixed or unlimited franchises

- No objection to officials looking again but doubt whether unlimited franchises sensible way forward
- "Milking" problem should be reduced by lighter regulatory touch less tension between maximum returns and programme mix
- Exchequer yield likely to be reduced. Given uncertainties about the nature of the market beyond the next decade (on top of considerable doubt about its development in that period) bidders would be reluctant to commit themselves to paying a large annual sum. These arguments led to earlier agreement on 8 year franchises
- Shorter term contracts will promote independent production, as bidders will be less willing to sink costs in production facilities
- Would periodic performance reviews be in addition to regulatory authority's continuing check on quality conditions? If so, what criteria? Would seem to reimport administered, judgemental element in place of regular competition.
- Difficult in practice to terminate franchises where no term fixed. Compensation if Government wanted to alter the terms.

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ANNEX B

CHANNEL 4 (C4)**Objective**

To let the C4 franchise by competitive tender, retaining its distinctive remit.

Points to Make

- Proposal deals with the limited question of a lack of competition in advertising, but not with the basic issue of developing cost-consciousness and efficiency in broadcasting, particularly in production.
- Continuing to finance C4 from protected revenues will tend to allow restrictive practices and high costs to develop even in a new independent production sector. It will lose the opportunities that lie ahead for an internationally competitive broadcasting industry.
- The distinctive remit of C4 need not be threatened. Competition will be beneficial so long as the contract clearly sets out the kind of service on the basis of which the winning bid was chosen, and the ITA police it. They will have the full armoury of safeguards as for ITV contracts generally. It is defeatist to suppose the ITA could not make them work for C4, even though the franchise conditions were different.
- Adequate revenues to sustain the remit are available from advertising to the distinctive, high-spending audiences which C4 enjoys.
- If the ITA cannot police the remit, what sort of regulation would there be as a subsidiary of ITA?

ANNEX C
✓ cc Mr Spackman
Mr Faithing
Mrs Pugh
Mr Perfect

NOTE OF A SEMINAR HELD ON 11 JULY 1988

BROADCASTING POLICY

Present:

Home Office

DTI

Home Secretary
Mr Renton
Mr Heathcoat-Amory
Mr Lidington

Trade & Industry Secretary
Sir Jeffrey Sterling
Mr Luff

Sir Clive Whitmore
Mr Hyde
Mr Thomas
Mr Sibson
Miss Bannister
Mr Cooke

Mr MacDonald
Mr Nieduszynski
Mr Avery
Mr Whitlock
Mr Thornton

Others

Professor Griffiths, No 10
Mrs Case, HMT
Mr Langdon, Cabinet Office

Introduction

1. The Home Secretary welcomed those attending. Broadcasting policy was a rich but complex subject. A major Bill would be needed in the 1989/90 Session of Parliament. It was important to gather the threads and prepare for issue of a White Paper as a prelude to the legislation. This seminar was not an occasion for decision taking, but it would be valuable to take stock, especially in key areas where decisions were outstanding.

2. The Home Secretary suggested that the two main topics on which the seminar might concentrate were the regulation of commercial television, and additional programme services.

Regulation of commercial television

3. The Home Secretary noted that a major question was how to regulate commercial television in a way which reconciled greater competition with programme quality. MISC 128 had decided that ITV contracts should be awarded by competitive tender subject to a quality threshold which incorporated public service obligations.

But this implied continued close supervision of such matters as scheduling by a body such as the IBA. Could this thinking be developed in a way which removed the drawbacks? He asked Mr Renton to outline a modified model.

4. Mr Renton noted that under the present proposal Company B could secure a franchise by bidding £1 more than Company A even though its programme plans were inferior to Company A's, provided Company B's plans could scrape over the quality hurdle. The present proposal also implied heavy discretionary regulation by the IBA. There was attraction in a more objective quality test, a lighter regulatory style, and perhaps a greater role for the courts (although long drawn out law suits would not be desirable). A modified model (which might broadly apply to Channel 5 and any Channel 6 as well as to ITV) might have the following elements:

(a) lighter touch regulation by a new Independent Television Authority (replacing the IBA and perhaps also the Cable Authority);

(b) cable-type consumer protection requirements (including those regulating the contents of advertisements); and

(c) allocation of contracts or licences by competitive tender, subject to those tendering having the capacity to meet lighter and more objective programming obligations, including:

(i) a requirement to show a defined amount of regional programming;

(ii) a requirement to show news and current affairs;

(iii) an internal diversity requirement, of the sort proposed for national commercial radio;

(iv) perhaps a requirement to take 25% from independent producers.

5. Mr Renton added that under such an arrangement there would be a need, if consumer choice were not to be reduced, for additional quality programming to be brought into the system by another means, since licensees would have insufficient incentive to show much of the high cost/lowish audience material which now appeared on ITV at peak times. One way of doing this would be to enhance the role of Channel 4 so that its remit would naturally expand into the territory vacated by ITV. This raised the question of how Channel 4 was to be funded.

6. In discussion of this modified model the following main points arose.

(a) The Trade and Industry Secretary and others present questioned the need under such a system for fixed term contracts or licences, bearing in mind that the present takeover restrictions would be relaxed. A fixed term could have the effect of distorting performance around the point when the licence was put up for competition again, and of creating continuity problems. A system of periodic reviews might be more satisfactory. The Home Secretary questioned whether Parliament would agree to new licences of unlimited duration, but saw attraction in giving greater weight to a mechanism for staggered periodic performance reviews the first of which could be held after a relatively short period.

(b) There was general agreement that a requirement to show a defined amount of regional programming was politically indispensable, notwithstanding that on one view licensees were likely to want to include such an element anyway. There was a case for redrawing ITV (Channel 3) into about 6 big regions, perhaps looking to Channel 5 to provide greater regionality. But it was noted that it would be politically very difficult to do away with such regions as Grampian and Border for Channel 3. It was less clear that another ITV company should be barred from controlling smaller regional companies such as Grampian and Border.

(c) The Trade and Industry Secretary suggested that one way of making the quality test more objective on the modified model would be to set percentage requirements for the various types of obligatory programming rather than looking at the quality of the programme proposals within these categories.

(d) It was agreed that it would be for the companies themselves to decide on commercial grounds the extent to which they shared or networked programmes. The Monopolies and Merger Commission would be available to examine allegations of unfair practices.

(e) To look to Channel 4 to provide quality programming which would otherwise be uneconomic could on one view give them too much influence. But there was general agreement that the main alternative - an Arts Council-type model - was less attractive. The outcomes achieved by the Arts Council were in some cases not a happy precedent for television. Under such a model it would be difficult to secure prominent scheduling for quality programmes.

(f) How would an enhanced Channel 4, in the context of the modified model, be funded? A privatised Channel 4 would be reluctant to replace its more popular programming with quality programmes of the sort which ITV might previously have carried. Another view was that Channel 4 should continue to be a kept woman but a woman kept for her virtue. One possibility would be a subscription on all commercial

channels (and not just ITV) based on a specific but variable percentage of net advertising revenue. Channel 4's airtime would be sold separately from ITV airtime, but not in a way which made Channel 4 directly dependent for its funding on sale of its own airtime. Channel 4's performance would be overseen by the new Independent Television Authority.

7. Summing up this part of the discussion, the Home Secretary said that officials should work up proposals for the regulation of commercial television in line with the modified model, but taking account of points made in discussion. There was a broad measure of agreement that something less heavy handed than the IBA regulatory style was needed; that more objective programming requirements (the enforcement of which would be justiciable) were preferable; that regional programming in particular was important; that the Channel 4 quality route was preferable to the Arts Council model; and that the present Channel 4 arrangements were ingenious, had proved successful and should be built upon. He also saw the strength of the arguments for greater emphasis on performance review.

Additional programme services

8. The Trade and Industry Secretary opened this part of the discussion by noting that there had been little enthusiasm for the proposal to transfer BBC 2 and Channel 4 to satellite. He believed that the proposal would have to be withdrawn. But technology preference should still have an important place in the Government's thinking. The potential of extended definition television in particular was impressive. The opportunity offered by the unallocated DBS channels had to be exploited. Astra had potentially a spoiling role.

9. In discussion of the prospects for additional programme services the following main points arose.

(a) Concern about the high and rising cost of TV advertising had been a main reason for the proposal to transfer BBC 2 and Channel 4 to satellite. This concern, along with other considerations, pointed to introducing an advertising-financed Channel 5 as early as possible. It should be technically available by 1992, and there was a possibility that it could be available outside London in 1991.

(b) The timing could be crucial for BSB, who in fifteen months time would have to raise a further £400 million. Although Astra was also very relevant, BSB, if ultimately unsuccessful, could put the blame on a Government decision to authorise Channel 5 sooner rather than later. The timing and content of the Whiter Paper could affect confidence in BSB's fund raising, although there was a case for an early clear indication of the Government's intentions which at least ended uncertainty. There was general agreement that there

was a strong case for authorising Channel 5 from 1 January 1993 (and for auctioning the UK's present two remaining DBS channels as soon as the moratorium ended.) Even though this would not go down well with BSB it was not clear that they could not live with it, and the need to exert downward pressure through Channel 5 on advertising rates was very strong.

(c) Both Channel 5 and, a fortiori, any Channel 6 would have coverage gaps. Much of Hampshire, Sussex and Kent would not be covered. Yet these were some of the areas where the advertising market was most overheated. There would be political problems, too. One possibility would be to use MVDS to supplement the coverage of Channel 5/6. But it might be undesirable to use a technology capable of delivering six or more channels just for one or two.

(d) There was general agreement that further urgent work by officials was needed on MVDS, although the outlines of a policy were beginning to emerge. MVDS trunking for cable operators could be useful in certain specific cases such as Glasgow, but the Chairman of the Cable Authority had recently made clear that the cable industry as a whole would regard it as a poor substitute for authorisation of MVDS to pull through cable. Pull through had the drawback that it would be very difficult to take action against cable operators who failed to cable areas pulled through by MVDS when the specified time was up. Experience in Ireland suggested that entrepreneurs were likely to become very interested in using MVDS in its own right to provide entertainment services. MVDS could have a key role to play in any technology neutral approach to local service provision. It might be right to leave the operator to decide the appropriate mix of cable and MVDS to provide services within a given franchise area. If so, it would, however, be important to achieve the maximum competition in the provision of programme services.

(e) One way of viewing MVDS was as a means of providing local TV services. Pressure for local TV would continue. There was a case for an experiment with something like an MVDS-delivered TV Brighton. It would be possible to combine this with a must carry rule for Channel 5.

(f) Different models would be optimal in different parts of the country. This suggested the need for a broad enabling framework in legislation, with use of secondary legislation to flesh out the details.

(g) As to technical considerations, it was noted that GEC were now saying that the cost of an MVDS dish and converter at 2.5 GHz could be as little as £30. Other estimates were higher. There was likely to be increasing pressure later in the 1990s on spectrum at around 2.5 GHz, particularly as a

result of increasing use of cellular telephones. From the spectrum efficiency viewpoint it would be better eventually to look to 12 GHz or above to be the home for MVDS. In the areas of the country it covered MVDS was unlikely to reach more than 50-70% of houses: foliage, for instance, was a problem. The lattice aerial or dish needed to be above chimney level.

(h) Environmental considerations needed to be taken into account but were perhaps not decisive on their own. There was a need to look again at the implications of planning law requirements for the combinations of dishes and aerials which could result on various scenarios involving DBS and non-DBS satellite services and MVDS.

(i) Cable was showing some signs of stirring, and US money was looking towards UK cable systems, but no investors in UK cable were yet seeing much of a return for their money. There was no realistic prospect of anything approaching a national cable grid without Government subsidy.

10. Summing up this part of the discussion the Home Secretary said there was a good chance that a further burst of work by officials could produce a sustainable policy on MVDS. There was no reason to preclude trunking, but it would not be enough on its own. The idea of TV Brighton with a must carry obligation in that part of the country for Channel 5/6 provided a starting point. Enabling provisions were needed rather than anything set in concrete. Secondary legislation should also be used to allow for technology change. There was a very strong case for authorising Channel 5 and the two remaining DBS channels to start at the beginning of 1993. It looked as though the proposal for transferring BBC 2 and Channel 4 to satellite would need to be withdrawn.

European instruments

11. The seminar briefly took stock of the position in Brussels and Strasbourg. Mr Renton reported that the draft EC Directive seemed likely to slip into the middle distance. There was some chance that the Council of Europe Convention would be opened for signature in Stockholm in November. But the German draft of Article 15 was causing problems, because it was not compatible with the natural breaks spacing of advertising which had developed in the UK, but instead gave a push towards the German arrangement of blocks of advertising at the end of programmes. This was opposed by UK advertisers and the ITV system. The UK was currently pressing for an Article which would permit either the German or the UK models. There was general agreement that, given the other advantages of the Convention such as its attempts to achieve common consumer protection standards, the UK should continue to press for a workable Convention which was not unduly restrictive on UK advertisers.

12. The seminar briefly noted the mechanism which had been suggested for deterring unacceptable extra-Convention satellite services by penalising UK advertisers who supported them. It had to be accepted that there were ways round any such arrangement. It might be possible, alternatively, to bring such advertisers before the Advertising Standards Authority, but it was not clear that this would be effective. Further thought needed to be given to this issue.

Conclusion

13. The Home Secretary said that the discussion had been very helpful. Officials should now work towards his being able to put some of the key issues to MISC 128, which was due to meet on 28 July. If MISC 128 could take outline decisions on the main headings, MISC 129 could work up the proposals in greater detail.

14. It was agreed that the press could be briefed on the outcome of the seminar in the following terms. It had examined a number of the main broadcasting policy options, and had carried discussion forward in a thoroughly useful way. The Government would aim to publish its White Paper within the next few months.

Home Office

12 July 1988

Circulation: Those present

<wk>D/Sem/11788/Bd/Pol

TIMETABLE OF BROADCASTING EVENTS

Autumn 1988	White Paper on Broadcasting
Spring 1989	ASTRA start broadcasting by satellite (weak signal)
Autumn 1989	BSB start Direct Broadcasting by Satellite (high powered signal)
Autumn 1989	Legislation introduced on TV and radio
1990-1994	Radio franchises expire and need to be renewed under new legislation
January 1990	Extended ITV franchises begin
1990	Telecommunications duopoly reviewed
1990	Radio Authority operating
1991	New ITV franchises distributed
Autumn 1992	Fourth and fifth DBS channels can be allocated three years after BSB start broadcasting
January 1993	New ITV franchises begin
1993	Fifth channel to be established

~~BF 2/19~~

FROM: T U BURGNER
DATE: 27 JULY 1988

CHANCELLOR

MP

cc Chief Secretary
Financial Secretary
Mr Anson
Mr Phillips
Mr Monck or
Mrs Case
Mr Spackman
Mr Waller
Mrs Pugh
Mr Stevens or
Mr Tyrie
Mr Call

Dr Freeman CCTA

**PEACOCK RECOMMENDATION 15: MISC 128(88)10 - Note By the Chairman
Of The Official Group On Telecommunications Policy**

1. This paper

(i) recommends against the adoption of Peacock recommendation 15 for the present time and proposes that the Government's decision on this should be announced in the forthcoming White Paper on Broadcasting;

(ii) reports the conclusions of the Communications Steering Group (CSG) on the future telecommunications infrastructure and the views of the Official Group on their recommendations;

(iii) recommends against publishing the CSG report but is in favour of publishing the underlying PA consultants report.

2. These conclusions are acceptable. They are unlikely to face significant challenge in MISC 128.

Peacock Recommendation 15

3. Peacock 15 proposed that:

"National communications systems (eg British Telecom, Mercury and any subsequent entrants) should be permitted to act as common carriers with a view to the provision of a full range of services, including delivery of television programmes."

However in order to minimise any damage to competition, Peacock recommended that the common carriers should not be permitted to provide television or value added services over their networks and they should be forced to divest any interests in cable franchises.

4. The Official Group's objection to this course are:

(i) It is unworkable: BT have made it clear that they would not invest in a broad band cable infrastructure if they could not provide value added or entertainment services. Primary legislation would therefore be needed in order to change the BT licence in a way inconsistent with the 1984 prospectus. Even then there is no reason for BT to change its attitude if it thought that an investment without the additional services would not be sufficiently profitable.

(ii) It is undesirable even assuming BT did co-operate, there would be a real risk that such a predominant player would in the present telecommunications environment develop an effective monopoly and put off competitors, including potential cable operators.

5. The Official Group thought that some form of common carrier route might be worthwhile in the future if cable companies or Mercury were sufficiently established to provide effective competition to BT at local level. In those circumstance the requirement not to provide entertainment or value added services might reasonably be modified and the proposal would then be more attractive. The Group recommended looking again at Peacock 15 or more probably some variant in the future, possibly as part of the review of the telecommunications duopoly (due to begin in November 1990) and certainly no later than 5 year's time.

6. The Group recommend that the Government should include a decision on Peacock 15 in the forthcoming White Paper on Broadcasting.

7. The Official Group considered a variant of Peacock 15 under which Mercury, but not BT would act as common carrier and also be able to provide a limited number of television services (it is already allowed to provide some value added services). This variant too would require primary legislation. The Group would like to consider this option further, before the Broadcasting White Paper. You are recommended to agree. It may prove impractical on further consideration, but if not it could give a significant boost to Mercury. This seems entirely desirable in the interests of stimulating competition to BT.

Line to take

- Agree that the government should decide against Peacock Recommendation 15 in its present form and should include this in the Broadcasting White Paper.
- Agree that officials should look at the Mercury variant further even though it could not be implemented in the short term.

Official Group Conclusions on Development of the Telecommunications Infrastructure

8. The Group (which was set up to advise MISC 131) considered a report by the CSG, a DTI-led Group comprising senior representatives of telecommunications supplier and user interests. The conclusions of this report do not call for decisions by Ministers, other than on publication (see below). (But they are of some interest. You may want to read annex A of the MISC paper which summarises the Official Group's response to the reports recommendations). Their main thrust (Recommendations 1,2,4 and 5) is that the Government should avoid a policy of picking winners in the form of a preferred technology, but should concentrate on

creating a competitive environment with as few controls as possible, within which a "technology neutral" policy could flourish. However there is recognition that for the foreseeable future the extent of competition and hence the scope for deregulation will be limited. CSG also consider that, given the speed of change in this area, there should be a further review of the communications infrastructure before long - possibly in the context of the duopoly review beginning in November 1990 and certainly in not more than 5 years time. A short note about these reports is annexed.

Publication

9. The paper recommends in favour of publishing the report by PA but not the report by the CSG.

10. The case for publishing the PA report seems clear cut. It is a contribution to discussion about future developments in a complex and fast changing field and it does not commit the Government in any. (An Executive Summary is at Annex C of the MISC paper).

11. The arguments for publishing the CSG report are less clear cut way. It could be argued that it is helpfully pro-competitive and in any case does not commit the Government. However Ministers will not have a chance to consider it properly and given the participation of officials it will be difficult for the Government to distance itself if particular aspects caused embarrassment. The proposal that it should be used as a quarry for Ministers to draw on in speeches etc seems preferable.



T U BURGNER

ANNEX

The PA Consultants Study (Annex C of MISC paper)

PA were commissioned by the Communications Steering Group to look at alternative scenarios for the development of UK telecommunications infrastructure in the next 20-25 years.

PA looked at three scenarios:

- Likely regulated competition, with the Government limited to oversight of fair competition and preventing abuse of market power. It assumed re-sale of telecom transmission capacity and further fixed link PTOs in addition to BT and Mercury following the duopoly review.

- The laissez faire scenario - very rapid deregulation without direct controls on dominant players and free rein to market forces. It assumed that BT and Mercury (and any other fixed link PTOs) would be allowed to carry entertainment TV as well as telecoms over local networks.

- National Grid, an interventionist scenario with the aim of creating an integrated national broad band network within a more rapid timescale.

PA also considered two further variants on the lightly regulated competition scenario - a fifth TV channel and a nationally distributed subscription television system.

PA made forecasts of the costs and revenues and the effects on employment, output, balance of payments and regional effects of the different scenarios. Their overall conclusion was that differences between them were quite small in the context of the UK economy as a whole. Much of the gain to commercial users from improved telecoms were common to all scenarios. They considered that choices between the scenarios could not therefore be based on economic forecasts alone. Given the evident differences which could arise if different assumptions were fed into the scenarios, this conclusion is clearly right.

Communications Steering Group Report (Annex B of MISC paper)

The Steering Group concluded:

(i) Given the rapid rise in delivery technology and increased choices (and uncertainties) for telecommunications, the decisions about alternative systems should be for the market to decide not for Government. A technology driven solution should not be imposed.

(ii) Technological change was making the differences between broadcasting, telecoms and information technology increasingly irrelevant. The users' concern was with having the full range of services available at an economic price.

(iii) The right environment to adapt to the changes and to seize the opportunities which technology brought was one which was flexible and encouraged entrepreneurial drive, with the maximum choice and the fewest practical barriers.

(iv) Peacock Recommendation 15 advocated a technology driven solution at the expense of competition and delivery of services which would be provided through a universal fibre grid. While optical fibre transmission was likely to be important there was not a strong case for intervening to bring it forward at an artificial rate.