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CABINET

BROADCASTING WHITE PAPER

Memorandum by the Secretary of State for the Home Department

1. This paper summarises the key points in the proposed White Paper on the future of broadcasting (copy attached) and sets out my handling proposals.

BACKGROUND

2. Our last Manifesto included a commitment to bring forward major broadcasting legislation in the course of this Parliament. It indicated that our objectives for broadcasting were "to provide consumers with a wider range of programmes, to encourage independent producers, and to preserve the high standards which we have traditionally enjoyed in British broadcasting".

3. The White Paper proposals show how we can fulfil this commitment. They have been worked out by the Ministerial Group on Broadcasting Services under the chairmanship of the Prime Minister. They take account of the recommendations of the Peacock Committee (in the "Report of the Committee on Financing the BBC" July, 1986) and the Home Affairs Committee (in their report "The Future of Broadcasting", June 1988).

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THE WHITE PAPER'S PROPOSALS

4. Our general approach is as follows. The broadcasting scene is changing very fast indeed as new opportunities become available. The legislative framework has to change accordingly. The Government should not seek to lay down a blueprint for the future by picking favoured technologies; rather it should create an enabling framework with increased opportunities for additional channels as the viewer chooses. More channels, together with a steadily increasing role for subscription (which enables the viewer to signal his preferences directly), and greater separation of the different activities making up broadcasting (for example, programme production, channel packaging, transmission), will bring us closer to a broadcasting system based on consumer choice. Safeguards on minimum standards to protect viewers and listeners and their families from shoddy wares and exploitation will remain essential but they should be able to exercise much greater choice over what they hear and see. They will be better served by a more competitive, innovative and efficient broadcasting industry. Certain important positive programming obligations are retained, but there is a substantial liberalisation, particularly of ITV, and increased reliance on choice, rather than regulatory imposition, to sustain range and quality.

5. The key proposals are these:

(i) a new fifth channel with 65-70% national coverage will begin broadcasting at the start of 1993, and a sixth channel will also be authorised if technical studies show it to be feasible;

(ii) there will be a new flexible framework enabling operators to deliver multi-channel local services using such combination of cable and microwave transmission (MVDs) as they judge best;

(iii) the UK's fourth and fifth Direct Broadcasting by satellite (DBS) channels will be advertised early next year, with the consequence that five new high quality DBS channels should soon be available to British viewers. Viewers will continue to be able to receive other satellite services direct, but steps will be taken to safeguard standards on taste and decency;

(iv) the White Paper invites views on possible models for the future constitution of Channel 4 on the basis that its distinctive remit is retained and its advertising air time is, as advertisers demand, sold separately from that on ITV. The Welsh Fourth Channel Authority will continue to provide the Fourth Channel in Wales;

(v) the ITV system will be replaced by a regionally based and less regulated Channel 3;

(vi) all commercial services will be free to decide their own mix between advertising and subscription. In most cases licences will be allocated by competitive tender subject to a quality threshold;

(vii) all these services will be subject to consumer protection obligations on programme content. Operators of Channels 3, 4 and 5 will be expected to show high quality news and current affairs programmes dealing with national and international matters and to show the news (and possibly also current affairs) in main viewing periods. In addition, provision will be made for at least one body which is effectively equipped to provide high quality news programmes on Channel 3. Channel 3 and Channel 5 will be expected to provide a diverse programme service, to ensure that a minimum of 25% of original programming comes from independent producers, and to ensure that a proper proportion of programme material is of EC origin;

(viii) the IBA and the Cable Authority will be replaced by an Independent Television Commission (ITC), which will have tough sanctions at its disposal including the right to remove or refuse to renew a licence but will not have the IBA's detailed involvement in scheduling. There will be provisions, which the ITC will enforce, to guard against too great a concentration of ownership and monopolistic cross media holdings. The ITC will also have a duty to plan for and arrange provision of schools broadcasts by independent television;

(ix) the night hours from one of the BBC's channels will be assigned to the ITC for allocation by competitive tender. The BBC will be allowed to retain the other set for developing subscription services. The White Paper looks forward to the progressive introduction of subscription on the BBC's television services and the eventual replacement of the licence fee;

(x) we will proceed with the plans which I announced on 19 January for the deregulation and expansion of independent radio as foreshadowed in the Radio Green Paper;

(xi) there will be increased separation of the different economic activities involved in broadcasting; thus there will be greater scope for licensees to act as publishers, with reduced reliance on in-house production, and increased opportunities for independent producers. Full privatisation on a common carrier basis is the longer term objective for the transmission infrastructure; and if that cannot be achieved promptly the BBC and ITC will be required in the meantime to contract out the operation of the transmission system.

(xii) the Broadcasting Standards Council (BSC), established to reinforce standards on sex and violence, will be made

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statutory. The exemption of broadcasting from the obscenity legislation will be removed. All UK television and radio services will be subject to consumer protection obligations, and sanctions will be sought against unacceptable foreign satellite services receivable here.

HANDLING

6. I propose to publish the White Paper in the week beginning 7 November and to make an Oral Statement at the time of publication. The White Paper is eagerly awaited, and I will be making publicity arrangements accordingly.

7. While both Houses are likely to wish to debate the White Paper in the coming year, we cannot legislate until the succeeding (1989/90) Session. Our Bill cannot be delayed beyond that if the IBA/ITV system is to be reformed before new contracts fall to be awarded as from 1993.

CONCLUSION

8. I invite colleagues' agreement that the White Paper should be published, and that publication should be handled in the way proposed in paragraph 6.

D H

Home Office

24 October 1988

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Draft: 24/10/88

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HOME OFFICE

BROADCASTING IN THE '90's: COMPETITION, CHOICE AND QUALITY

The Government's plans for broadcasting legislation

Presented to Parliament by the Secretary of State for the Home
Department, November 1988

LONDON
HMSO

PRICE

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CONTENTS

	<u>Paras</u>
I SUMMARY	1.1 - 1.5
II THE GOVERNMENT'S APPROACH	2.1 - 2.7
Introduction	2.1 - 2.3
Future prospects	2.4
The Government's approach	2.5 - 2.7
III THE BBC	3.1 - 3.19
Introduction	3.1 - 3.2
The pursuit of efficiency and accountability	3.3 - 3.4
Commercial enterprise	3.5
The licence fee settlement	3.6 - 3.7
Subscription, the licence fee and night hours	3.8 - 3.15
Programmes	3.16 - 3.17
Sponsorship	3.18
Review of the BBC's role	3.19
IV THE INDEPENDENT TELEVISION SECTOR: THE RECENT BACKGROUND	4.1 - 4.27
Introduction	4.1 - 4.4
The ITV system	4.5 - 4.10
Cable	4.11 - 4.14
Direct broadcasting by satellite	4.15 - 4.22
Low and medium powered satellite services	4.23 - 4.27

V	THE INDEPENDENT TELEVISION SECTOR: TECHNICAL OPTIONS FOR ADDITIONAL PROGRAMME SERVICES	5.1 - 5.14
	Introduction	5.1 - 5.5
	Further terrestrial channels	5.6 - 5.8
	Multipoint Video Distribution System (MVDS)	5.9
	Satellite services	5.10 - 5.11
	Cable	5.12
	Comparative features	5.13
	Delivery of BBC 2 and Channel 4 by satellite	5.14
VI	THE INDEPENDENT TELEVISION SECTOR: THE WAY FORWARD	6.1 - 6.53
	Introduction	6.1 - 6.2
	Structure of chapter	6.3 - 6.4
	Independent Television Commission (ITC)	6.5 - 6.8
	Regime for Channels 3-5	6.9 - 6.27
	(i) Channel 3	6.9 - 6.20
	(ii) Channel 5	6.21 - 6.22
	(iii) Reinforcing quality: Channel 4 and S4C	6.23 - 6.27
	Direct broadcasting by satellite	6.28 - 6.30
	Other satellite services	6.31
	Local services: cable and MVDS	6.32 - 6.41
	Telecommunications issues	6.42 - 6.45
	Financing of independent sector programme services	6.46 - 6.47
	Ownership	6.48 - 6.53

VII	PROGRAMME STANDARDS	7.1 - 7.14
	Consumer protection obligations	7.1 - 7.3
	Exemption from Obscene Publications Act 1959	7.4
	The Broadcasting Standards Council	7.5 - 7.10
	Regulation of satellite services	7.11 - 7.14
	Powers of direction	7.15
VIII	RADIO	8.1 - 8.8
IX	TRANSMISSION	9.1 - 9.6
X	PROGRAMME PRODUCTION	10.1 - 10.6
	The independent productions initiative	10.2 - 10.4
	Reference to Monopolies and Mergers Commission	10.5 - 10.6
XI	THE INTERNATIONAL DIMENSION	11.1 - 11.10
	Annex A: FUNCTIONS OF THE INDEPENDENT TELEVISION COMMISSION (ITC)	

I. SUMMARY

1.1 This White Paper sets out the Government's proposals for broadcasting in the UK in the 1990s.

1.2 The Government places the viewer and listener at the centre of broadcasting policy. Because of technological, international and other developments, change is inevitable. It is also desirable: only through change will the individual be able to exercise the much wider choice which will become possible. Our aim is to open the doors so that individuals can choose for themselves from a much wider range of programmes and types of broadcasting. In this as in other fields consumers will rightly insist on safeguards which will protect them and their families from shoddy wares and from exploitation. But the Government believes that, with the right enabling framework, a more open and competitive broadcasting market can be attained without detriment to programme standards and quality. Its single biggest advantage will be to give the viewer and listener a greater choice and a greater say. The Government is also clear that there need be no contradiction between the desire to increase competition and widen choice and concern that programme standards on good taste and decency should be maintained. Both are essential if the quality of British broadcasting is to be safeguarded and enhanced into the next century.

1.3 Chapter II sets out the Government's general approach. It explains more fully why radical reform of the framework for broadcasting in the UK is both necessary and desirable. Chapters III to XI contain the Government's specific proposals. The main ones are these:

- Most viewers will have a major increase in choice with the authorisation of a new fifth channel, to be operated as a national channel, with different companies providing the

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services at different times of the day. A sixth channel will also be authorised should technical studies show this to be feasible.

- The present ITV system will be replaced by a regionally based Channel 3 with positive programming obligations but also greater freedom to match its programming to market conditions.
- Provision will be made for at least one body which is effectively equipped to provide high quality news programmes on Channel 3.
- Options are canvassed for the future constitution of Channel 4 on the basis that its distinctive remit is preserved and its advertising is sold separately from that on Channel 3. The Welsh Fourth Channel Authority will continue to provide the Fourth Channel in Wales.
- There will be a new flexible regime for the development of multi-channel local services through both cable and microwave transmission (MVDS). This will provide a further major extension of viewer choice.
- The UK's two remaining Direct Broadcasting by Satellite (DBS) frequencies will be advertised by the IBA early next year. This will provide scope for two further UK DBS channels in addition to the three being provided by British Satellite Broadcasting (BSB).
- Viewers will continue to be able to receive other satellite services directly, including those from the proposed medium-powered Astra and Eutelsat II satellites. Steps will be taken to ensure that the programme content of all such services is supervised.

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- All television services (including those of the British Broadcasting Corporation (BBC)) will be given freedom to raise finance through subscription and sponsorship (subject to proper safeguards). All services (except the BBC) will also be free to carry advertising.
- A new agency, the Independent Television Commission (ITC), will be established in place of the Independent Broadcasting Authority (IBA) and the Cable Authority to license and supervise all parts of a liberalised commercial television sector. It will operate with a lighter touch than the IBA but will have tough sanctions. Its functions are set out in Annex A to this White Paper.
- The BBC will continue as the cornerstone of public service broadcasting. The Government looks forward to the eventual replacement of the licence fee which will, however, continue for some time to come.
- The night hours from one of the BBC's channels will be assigned to the ITC. The BBC will be allowed to retain the other set on the basis that it uses it as fully as possible for developing subscription services.
- The part played by independent producers in programme making in the UK will continue to grow.
- The Government will proceed with its proposals for the deregulation and expansion of independent radio, under the light touch regulation of a new Radio Authority.
- All UK television and radio services will be subject to consumer protection obligations on such matters as taste, decency and balance.

CONFIDENTIAL

- The Broadcasting Standards Council (BSC), established to reinforce standards on taste and decency and the portrayal of sex and violence, will be placed on a statutory footing.
- The exemption of broadcasting from the obscenity legislation will be removed.
- There will be a major reform of the transmission arrangements, giving scope for greater private sector involvement.

1.4 The likely timetable for the main additional television services in prospect is summarised in Table 1.

1.5 The Government intends to bring forward at the earliest opportunity legislation to give effect to those of the proposals in the White Paper for which legislation is needed. In framing the legislation the Government will have discussions with the relevant regulatory and other bodies, and will take account of any views on its proposals. Comments should be made by 28 February 1989 to the Under Secretary of State, Broadcasting Department, Room 669, Home Office, 50 Queen Anne's Gate, London SW1.

TABLE 1

PROSPECTIVE ADDITIONAL TELEVISION SERVICES¹

Year	Delivery arrangement	Number of TV Channels
1989	Astra ² (medium powered satellite)	Multiple ²
1989	BSB (DBS)	3
1990 or later	4th and 5th UK DBS channels	2
1990	Eutelsat II ² (medium powered satellite)	Multiple ²
1991 onwards	New local ³ franchises (cable/MVDS)	Multiple ³
1993	Channel 5 (UHF) ^{4,5}	1 ⁵

1. Table does not show separately existing television services now receivable via cable systems or direct from low powered satellites.

2. May include existing services mentioned in Note 1.

3. Will permit delivery by MVDS as well as cable. May include some existing and prospective services.

4. National channel with 65-70% coverage and different licensees for different times of day.

5. The technical feasibility of a 6th UHF channel is now being assessed.

II. THE GOVERNMENT'S APPROACH

Introduction

2.1 This White Paper contains the Government's proposals for a new enabling framework for the expansion of British broadcasting. In many areas the Government has reached clear decisions. In others it has identified options which it will consider further in the light of comments on this White Paper. This Chapter explains the Government's general approach.

2.2 The Government has not started with a blank sheet of paper. Recent debate about the future of broadcasting has produced many valuable suggestions and ideas. The Government has tried to take account of as many of these as possible. The Government understands and values the rich heritage of British broadcasting: although its proposals are radical they preserve strong elements of continuity. Our broadcasting system has had notable successes. One of the Government's main objectives is to enable it to maintain and strengthen its quality, diversity and popularity.

2.3 Two reports have been particularly influential in recent debate about the future of broadcasting: the Peacock Report ("Report of the Committee on Financing the BBC," Cmnd 9824, July 1986); and the main report of the Home Affairs Committee's inquiry into broadcasting ("The Future of Broadcasting", Third Report of the Home Affairs Committee, Session 1987-88, June 1988.) The Government owes a particular debt of gratitude to the work of both these bodies, whose recommendations have shaped or informed its proposals at many points. (The Government is responding separately to those of the Home Affairs Committee's recommendations not covered in this White Paper.)

Future prospects

2.4 There are bound to be uncertainties about the nature and pace of change. Even so there are a number of developments already in train which, even if Government were to take no action, would affect the broadcasting environment.

- Broadcasting and telecommunications are increasingly converging. Technological developments are making possible, and very probably economic, the delivery of additional services in new ways. By one means or another the limitations imposed by spectrum scarcity are likely to be overcome or bypassed.

- This means that more programme services will be feasible, both domestically and internationally. Some of these will develop whatever the attitude of the Government.

- Technology will make possible the provision of improved sound and visual images. A new high quality transmission standard, MAC (Multiple Analogue Components), is being introduced for DBS services. There is also the prospect of satellite-delivered high definition television services, using the MAC-compatible system being developed by a consortium of European industry and broadcasters.

- Direct payment for television programme services is likely to grow significantly. The development of the market for video rental and for prerecorded video tape is evidence of the demand, and technology for subscription including pay-per-view now exists.

- The curiosity and range of tastes of British audiences - which have helped to make Channel 4 a success - will increasingly influence the shape of new services as they develop.

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- The combination of additional programme services and an increasing role for subscription is good for quality as well as choice of programmes. It makes it easier for high quality programmes to be aimed profitably at particular sections of the market.
- As delivery systems proliferate, national frontiers begin to blur or disappear. There will be increasing demand from an international market for programme material. Programme services of international reach are likely to develop further. There will be increasing interest in the scope for agreement on programme standards, particularly within Europe.
- With increasing prosperity, and greater leisure time and expenditure, the audio visual sector is likely to become more important in advanced economies.
- There is some international evidence to suggest that even in a more open market, where a large number of services can exist, a few services become considerably more popular than the rest and attract much of the viewing time. (This may be partly because services with a major share of the market are best placed to sustain programmes with high production values). There will need to be regulatory safeguards - eg on media ownership - to ensure that the opportunities are realised to provide the viewer with a broader and more varied choice.

The Government's approach

2.5 In a rapidly changing environment, the existing framework for broadcasting in the UK must change too. But change is desirable as well as inevitable. Through it the individual can exercise choice from a greater range and variety of services. The growth

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of choice means that a rigid regulatory structure neither can nor should be perpetuated. It would not be sensible for the Government to try to lay down a detailed blueprint for the future. The Government should not try to pick winners. It should enable, not dictate, choice. A new enabling framework must be flexible enough to allow for technological change. As new services emerge and subscription develops viewer choice, rather than regulatory imposition, can and should increasingly be relied upon to secure the programmes which viewers want. Rules will still be needed to safeguard programme standards on such matters as good taste and decency and to ensure that the unique power of the broadcast media is not abused.

2.6 The principles underlying the Government's approach are these.

- Broadcasting services must remain independent of Government editorially and, to the greatest extent possible, in economic and regulatory terms.
- Because of broadcasting's power, immediacy and influence, there should be continued provisions, through both the law and regulatory oversight, governing programme standards, including the portrayal of violence and sex.
- There are significant differences between radio and television as broadcasting media which need to be reflected in their respective regulatory arrangements.
- There should be opportunities for new services to develop, as the market demands, and Government should not attempt to determine artificially the relative success of different technologies.

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- There should be no unnecessary constraints on increasing the range, variety and quality of programmes from which viewers and listeners can choose.
- There should be increasing opportunities for direct payment for television programme services through subscription, whether on a pay per channel or pay per programme basis.
- There should be vigilance against uncompetitive practices and market distortions. Partly for this reason, and to limit barriers to the entry of new operators in the market, there should be a greater separation between the various functions which make up broadcasting and have in the past been carried out by one organisation. These include programme production, channel packaging and retailing, and transmission or delivery.
- The emergence of a production sector which is independent in that it neither controls nor has guaranteed access to a delivery system fits this objective and should be further encouraged.
- Broadcasting companies and organisations of all kinds should be briskly and efficiently run. They should give value for money to the viewer and listener and compete effectively with each other and abroad. The present duopoly can no longer be insulated from the disciplines necessary to bring this about.
- Through greater competition, downward pressure should be exerted on the costs to UK industry of television airtime.
- Wherever possible the Government's approach to broadcasting should be consistent with its overall

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deregulation policy. This is that the Government should help enterprises to set up, develop and meet the needs of consumers by removing unnecessary regulatory barriers. This implies both less regulation (removing restrictions which are outmoded or unnecessary) and better regulation (lighter, more flexible, more efficiently administered).

2.7 The Government's specific proposals are set out in the following chapters.

It also makes a major contribution to the operation of

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the Open University and the Open College: the Government does not envisage that the proposals in this Chapter should lead to any diminution in this.

III. THE BBC

Introduction

3.1 This Chapter is concerned primarily with the BBC's television services. Chapter VIII explains the role envisaged for the BBC in providing public service radio broadcasting.

3.2 The BBC has a special role. It will continue to be expected to provide high quality programming across the full range of public tastes and interests, including both programmes of popular appeal and programmes of minority interest, and to offer education, information and cultural material as well as entertainment. It is well placed, because of the income at present guaranteed by the licence fee, to provide demanding programmes of the kind which, as the Peacock Report acknowledged (Chapter 12.2-12.3), even a fully developed broadcasting market might fail to do. The Government agrees with the Home Affairs Committee that the BBC "is still, and will remain for the foreseeable future, the cornerstone of British broadcasting" (paragraph 150). This does not mean that the BBC has to involve itself in every aspect of broadcasting, or that it should be insulated from change.

The pursuit of efficiency and accountability

3.3 The Peacock Committee believed that both the BBC and the ITV system had suffered from cost and efficiency problems arising from what it called "the comfortable duopoly" (Chapters 4 and 11). The Government's proposals for the independent television sector - set out in Chapter VI - will mean that the BBC will face much greater competition. Over the past months the BBC itself has striven for increased efficiency and has also sought to be more open and responsive and accountable to viewers about the way in which it works. The Corporation has started on a process of tightening its management structure and shifting resources into programme

improvements through savings elsewhere. There is scope for further progress. The BBC's pursuit of efficiency has been reinforced by the Government's decision, described in Chapter X, to refer possible restrictive labour practices in television and film production to the Monopolies and Mergers Commission.

3.4 The Government has noted the recommendation of the Home Affairs Committee that "the Home Office and the BBC should review the structure of the BBC's advisory councils and committees with a view to reducing the amount of administrative and management work and the expenses involved" (paragraph 151). The provisions in the Royal Charter requiring the appointment of a General Advisory Council and empowering them to appoint other persons or committees to advise them reflected the view that the BBC should be open to advice from a wide range of community interests. The Government is aware that the BBC is itself reviewing the nature and scope of the current arrangements. It will consider the case for any changes in the light of the outcome of the BBC's work on this subject.

Commercial enterprise

3.5 Consistent with its Charter the BBC is also taking a more enterprising approach to commercial opportunities in order to finance programme developments. BBC Enterprises Ltd - the world's largest exporter of television programmes and also responsible for co-productions, magazines and consumer products - is being developed as a competitive commercial company.

The licence fee settlement

3.6 The Government welcomes these developments. It had already provided a powerful incentive for them by making clear, having accepted the Peacock recommendation that the BBC should not in the present environment be financed through advertising (paragraph

6.15), that the licence fee would be indexed to the RPI, at least for the three years from 1988 to 1991. In effect the Government has applied a double squeeze. Inflation in the broadcasting industry has generally run ahead of RPI and the notional base figure on which the 1988 licence fee was calculated represented less than the actual level of spending for which the BBC had budgeted. This squeeze has encouraged the BBC to target its activities more effectively. It no longer tries to get involved in every new broadcasting development.

3.7 The Peacock Committee recommended that the BBC should become responsible for administering the collection of the licence fee (paragraph 628). The Government and the BBC agree. The BBC clearly has the most direct incentive to maximise the efficiency of licence fee collection. The Government proposes to make the necessary legislative changes. The Government is considering further the Home Affairs Committee's recommendation that non-payment of the licence fee should be treated as a civil debt rather than a criminal offence (paragraph 152).

Subscription, the licence fee and night hours

3.8 The BBC has a role in the Government's desire to enable subscription to develop. Subscription for BBC programmes cannot be considered in isolation from the future of the licence fee and the use made of the night hours. The Government has been greatly helped by the Peacock and Home Affairs Committee reports and by the study "Subscription Television" (May 1987), which the Government commissioned from Communications Studies and Planning International Limited (CSP) - later incorporated into Booz Allen and Hamilton - and by the comments which the study prompted.

3.9 The Government's consultants advised against the wholesale immediate switch of existing services to subscription, mainly because this would result in a loss of consumer welfare since some

viewers would not subscribe to services now available to them. But they went on to note that subscription already plays an important role on new services provided by cable and satellite, and also recommended the gradual, incremental introduction of subscription on existing terrestrial services. They suggested that the downloading of services in encrypted form during unused night hours would be a natural starting point. Our consultants had in mind that subscription offers a means of establishing a direct relationship between the viewer and the provider of the television service, and that it could finance additional programme material.

3.10 As new television services proliferate the system of financing the BBC television and radio services by a compulsory licence fee alone will become harder to sustain. Though the Government accepts the advice of its consultants that a sudden, wholesale switch to subscription would be undesirable and damaging, there should be a greater role for subscription. The Government looks forward to the eventual replacement of the licence fee. The timing will depend on experience gained of the impetus and effects of BBC and other new subscription services. The Government intends to encourage the progressive introduction of subscription on the BBC's television services. Account will need to be taken in due course of the implications for financing BBC radio services.

3.11 The Government accordingly proposes to authorise the BBC to encrypt its services so that it can raise money through subscription. The extent and pace of the move towards subscription will be for the BBC to judge in the first instance. But the BBC will have in mind the objective of replacing the licence fee. To provide a financial incentive, the Government intends after April 1991 to agree licence fee increases of less than the RPI increase in a way which takes account of the BBC's capacity to generate income from subscription. If subscription

goes well it may be possible to freeze or even reduce the licence fee. The Government has informed the BBC of these decisions and will be discussing the details further before firm targets are set.

3.12 As our consultants noted, a natural starting place for subscription would be during the night hours. The BBC has already started a downloaded night hours service, in conjunction with a commercial partner, British Direct Television, providing information for the medical profession. It plans to run other similar services, and also to move into entertainment services, catering for particular tastes and interests, drawing on its programme archives. It will be for the BBC in this area, as more generally, to decide the best mix of programme services within the framework of financial incentives laid down. The Peacock Committee proposed that the night hours (which it defined as lasting from 1 am to 6 am) should be removed from the BBC and other broadcasting authorities and sold for use to provide new services by the highest bidder (paragraph 652). There is, however, scope for new services to be provided in other ways. If the BBC lost both its night channels they would find it hard to introduce subscription without running the risk of depriving viewers of valued programming which they think of as being free. It would also hamper the BBC's plans for building substantially on its initial downloading experiment in a way which offered the prospect of substantially widening viewer choice and establishing a firm base for subscription technology. But the Government accepts the case for removing the night hours from one of the BBC's channels, and assigning them to the ITC (see Chapter VI, paragraph 6.22). They could revert to the BBC if testing the market in this way did not prove successful. The Government proposes to allow the BBC to retain the night hours of one of its channels, on the basis that it uses them as fully as possible for developing subscription services.

3.13 The introduction of subscription will reduce one particular drawback of the licence fee, namely its insulation of the BBC from its customers and from market disciplines. The proposal, described in paragraph 3.7, that the BBC should assume responsibility for collecting and enforcing the licence fee, will also give it more direct experience of the impact this has on those supporting its services. The BBC, with the pressure of indexation and with its new Board and management team, is grasping the need to make the best use of its assets to meet some of its programming costs.

3.14 The Government's proposals on subscription in relation to the independent television sector are set out in Chapter VI.

3.15 This paragraph deals with subscription-related points which apply to both BBC and independent sector services. It is clearly in the interests of viewers that the subscription systems used by different operators should be compatible. The Government therefore hopes that industry will work to develop at least minimum standards, to ensure an adequate degree of compatibility. It does not at present plan to prescribe minimum standards itself, but it will keep the position under review. Both the Peacock and the Home Affairs Committee reports recommended (paragraphs 611 and 90 respectively) that it should be made a mandatory requirement for all new television sets to be fitted with a peritelevision socket, in the interests of easing the path to subscription. The Government agrees that the fitting of some kind of baseband connection (of which the peritelevision socket is an example) to all television sets and ancillary equipment is highly desirable. While it is possible to connect ancillary equipment (such as decoders and videocassette recorders) to television sets via the UHF aerial socket, this will not always produce satisfactory results, particularly if more than one item is to be connected. The Government is not, however, convinced at this stage that the right course is to make the fitting of peritelevision sockets

mandatory. There are several ways in which an appropriate connection might be provided. The Government would expect industry increasingly to fit suitable connectors as standard equipment without the need for compulsion; but it will keep the question of a mandatory requirement under review.

BBC TV programmes

3.16 A further stimulus for change at the BBC has been the Corporation's acceptance of the Government's independent production targets (as explained in Chapter X). This will both add to the talent at the BBC's - and its audience's - service and promote the pursuit of efficiency.

3.17 On the question of programme standards, it should be noted that BBC programmes, like others, are within the terms of reference of the Broadcasting Standards Council and, if Parliament agrees, will be brought within the scope of the obscenity legislation. These matters are more fully discussed in Chapter VII.

Sponsorship

3.18 The Home Affairs Committee supported the responsible introduction of sponsorship of BBC programmes in the field of the arts and sport (paragraph 161). The Government shares the BBC's view that any relaxation of current sponsorship restrictions should not be at the expense of editorial independence or transparency for the viewer. But there is force in the Home Affairs Committee's argument. After discussions with the BBC on this subject, agreement has been reached on less restrictive arrangements for the broadcast coverage of sponsored events, such as arts and sports events.

Review of the BBC's role

3.19 It will be necessary to review the role of the BBC when the present Charter expires at the end of 1996. It would be premature for the Government to express a view in this White Paper on the Peacock Committee's suggestion that in the longer term a Public Service Broadcasting Council should be responsible for commissioning public service programmes which even a fully developed consumer market in broadcasting would not otherwise deliver (paragraphs 682-689). Experience needs to be gained first of the progress and impact of the reforms set out in this Chapter and elsewhere in this White Paper.

IV: THE INDEPENDENT TELEVISION SECTOR: THE RECENT BACKGROUND

Introduction

4.1 The Government agrees with the Peacock Committee (Chapter 12) that we should move away from a highly regulated television duopoly towards a more competitive future, for the benefit of the viewer. This must be achieved without detriment to the variety, range and quality of programme services, and without debasing the content of programmes.

4.2 New programme services offer the prospect of wider choice of programmes for the viewer, additional outlets for TV advertising, business opportunities for the growing programme production sector, and a wider trial of subscription. The Government proposes that forthcoming legislation should create a liberalised enabling framework for the development of new services, subject to the necessary consumer protection requirements.

4.3 As has already been said, Government should not try to pick winners. There is no question of betting with public money on any of the opportunities now opening up. But the timing of change is important. As Peacock recognised (Chapter 12), an orderly transition is needed to a genuinely competitive consumer market.

4.4 This and the following two chapters are concerned with the development of the independent television sector and the scope for further, additional programme services. This Chapter briefly recapitulates the development of the independent television sector thus far. British broadcasting is already on the move away from a highly integrated duopoly. The next Chapter summarises the results of technical studies which the Government has had carried out into additional television delivery mechanisms, and describes the respective characteristics of these systems. Chapter VI sets out the Government's proposals for the management of change, and in particular for a new enabling framework for the independent television sector.

The ITV system

4.5 Under the Broadcasting Act 1981 the Independent Broadcasting Authority (IBA) is required to provide public service broadcasting. This function has been discharged through programme contractors, nearly all of which are publicly quoted companies with obligations to their shareholders. The selection of programme contractors has been a matter for the IBA. The Broadcasting Act 1987 provided for the extension of the present contracts until the end of 1992. The system has many achievements to its credit, but is now too restrictive.

4.6 The contractors' main source of revenue is the sale of advertising time on ITV and Channel 4 in their area of operation. At present there is little direct competition in the sale of TV advertising time. (The existence of different contracts in the same area for different times of the day or week provides only limited competition.) As well as meeting the costs of their public service contractual obligations, the ITV companies pay rentals to the IBA to finance the Authority's network of television transmitters and supervisory services, and a subscription to finance the Fourth Channel and the Welsh Fourth Channel (S4C). Companies making sufficient profits pay a levy.

4.7 Channel 4 and the Welsh Fourth Channel Authority (which provides Sianel Pedwar Cymru - S4C) are primarily commissioning, purchasing and editing bodies rather than programme-making organisations. The Channel 4 Television Company is a subsidiary of the IBA, and the Welsh Fourth Channel Authority is a statutory body in its own right. Both organisations are funded out of subscriptions raised from the ITV companies. Channel 4 has a statutory remit to cater for tastes and interests not properly served elsewhere on ITV, to encourage innovation and experiment in programming, and to devote a suitable proportion of its airtime to

educational programming. S4C provides a mixture of Welsh language programmes and Channel 4 material in Wales. The Home Affairs Committee rightly referred to the success of Channel 4 and S4C in carrying out their remits (paragraph 34).

4.8 The Peacock Committee made a number of recommendations bearing specifically on the ITV system. For example, a majority proposed that ITV contracts should be put out to competitive tender (paragraph 655). The Committee also proposed that Channel 4 should be given the option of selling its own advertising time. It would then no longer be funded by a subscription from the ITV companies (paragraph 660).

4.9 There has been growing concern on the part of advertising at the cost of television advertising and at the absence of effective competition in the sale of airtime. There has also been concern that the income of ITV, which reflects its monopoly control of a limited resource under conditions of strengthening demand, has been deployed in part to fund inefficiency. This highlights the disparity, noted by the Peacock Committee, between ITV and BBC television's revenue. It seems clear that the finance is available to sustain additional programme services, so that the viewer has more choice. The introduction of such services will bring desirable competitive pressure on ITV and may ease the pressure on the price of air-time. The beneficial effect on the price of airtime should not be overstated. If new services did no more than fragment the existing ITV/C4 audience the effect on price paid by the advertiser for airtime per viewer might be little affected. But in practice new services are likely to provide some relief by capturing viewers from the BBC and, perhaps, by increasing overall viewing time. Another way of increasing the commercial viewership would be to increase the minutage allowed for advertisements, although this has to be balanced against viewer enjoyment and the impact of the advertisements.

4.10 The Government has considered the future regulation of the ITV system against the background of the Peacock Committee's recommendations. The IBA and the ITV companies have been making efforts to bring greater efficiency and competition into the system, including greater use of independent producers. The Government believes that a more radical approach is needed. This reflects no criticism of the IBA or its contractors. But it no longer makes sense to look at the ITV system in isolation from prospective additional programme services and from the independent television sector as a whole. The Government's proposals are set out in Chapter VI.

Cable

4.11 The use of cable as a television delivery system dates back originally to the 1950's, when it was used to provide television to parts of the country where off-air reception was poor. The cable systems built in this period were so-called 'narrowband' systems, capable of carrying only the terrestrial television channels, perhaps together with one or two sound channels. They were thus simply an adjunct to the terrestrial transmission system. Several of these older systems are still operating, together with more recent Satellite Master Antenna TV (SMATV) systems, in which programme material is received from satellite and delivered to a limited number of users by cable.

4.12 Advances in cable technology have, however, enabled it to play a more significant, independent role in the broadcasting environment. The development of coaxial and fibre optic cable and sophisticated electronic switches has given the new 'broadband' systems the capacity to carry a large number of television and sound channels, as well as other text and data services. Equally importantly, they can carry 'return' signals from the home. This opens up the possibility of 'interactive' services, such as home-

shopping and home-banking. In the longer term, broadband cable systems have the technical potential to offer the full range of telecommunications services.

4.13 The Government has been keen to facilitate the development of broadband cable, at a pace determined by the market, as a way of providing additional programme services, developing new interactive services and also, in the longer term, as a possible route to increasing competition in telecommunications. The present regulatory framework for cable was proposed in the White Paper 'The Development of Cable Systems and Services' (Cmnd 8866. HMSO 1983), and enacted in the Cable and Broadcasting Act 1984. The 1984 Act established the Cable Authority, and gave it the dual role of promoting the development of broadband cable, and of supervising the content of programme services carried on cable systems.

4.14 There is evidence that viewers in cabled areas have welcomed the choice provided by broadband cable systems. But the growth of new cable systems has been slow, though it is now picking up. One reason for this slow growth has been hesitation on the part of potential investors faced by the high capital costs of installing a cable system and the absence of any significant revenue in the early years.

Direct broadcasting by satellite (DBS)

4.15 The development of satellite technology has opened up new ways of delivering television and radio services to the home. A satellite positioned in a geostationary orbit can transmit a signal in a pattern (or 'foot-print') sufficient to cover a very large area. A single frequency can therefore be used to broadcast a service to a large number of homes. So satellite technology can offer its own distinctive and attractive way out of spectrum scarcity - by enabling spectrum to be used efficiently and economically.

4.16 These attractions have been recognised for some time. In 1977 the World Administrative Radio Conference allocated frequencies for Direct Broadcasting by Satellite (DBS). The United Kingdom, in common with other countries, was allocated an orbital position for a direct broadcasting satellite (or satellites) together with frequencies in the 12 Ghz band sufficient for providing five television channels as well as a number of associated sound and data channels.

4.17 Originally the Government envisaged that the BBC and the IBA might provide separate, competing DBS services. Because of the high risks and costs involved it was later decided that the development of DBS might be facilitated by enabling a service to be provided by a co-operative joint venture of existing broadcasters and other interests. This venture was to have operated under a new broadcasting authority, the Satellite Broadcasting Board, whose members would have been drawn from the governing bodies of the BBC and the IBA. Provision for this was made by Parliament in the Cable and Broadcasting Act 1984. But in June 1985 a shadow consortium established for this purpose decided not to proceed with the project. The 1984 Act had, however, separately given the IBA power to award franchises for the provision of a DBS service. The Government invited the IBA in 1986 to advertise programme contracts for three DBS channels through this separate statutory route. British Satellite Broadcasting Limited (BSB) applied for the franchise in competition with others and were awarded it in December 1986. BSB plans to start its services in the Autumn of next year.

4.18 The 1984 Act envisaged that the regulatory regime to be exercised by the IBA over DBS would be a modified form of public service broadcasting. (Thus formally it is the IBA which is to provide the DBS service through its contractor.) UK DBS would be subject in most respects to the same standards as the IBA's

terrestrial services, except that it would not be required to provide a wide and balanced range of subject matter. In recognition of the high costs of satellite technology, Parliament decided that DBS should have a 15 year contract period, rather than the 8 year franchises awarded to terrestrial contractors. BSB plan to provide a news and events service; a general entertainment service, which will share a channel with childrens' programmes; and a film service. BSB's services will be financed by a combination of advertising and subscription.

4.19 The Government's basic approach has been that the market should decide how far and how fast DBS is to develop in the United Kingdom. It has not tried to pick a winner and then back it with taxpayers' money. Rather, it has enacted the necessary legislative framework to create the opportunity for private enterprise to provide a commercial DBS service.

4.20 The Government was concerned that BSB should have a fair opportunity to establish itself. DBS is a challenging commercial proposition. It involves heavy up-front investment and requires the operator to gain a significant audience against competition from well established broadcasters. Accordingly, the Government accepted that BSB should be protected from direct competition from other DBS operators in its early years. To this end, it indicated that it would not allocate the additional two DBS channels until BSB had been operational for at least three years. BSB have, however, recently indicated that they would be willing to see this moratorium lifted. Paragraph 6.29 explains the arrangements envisaged for allocating the UK's fourth and fifth DBS channels.

4.21 DBS can be used to deliver separate sound and data services as well as for broadcasting television channels. The Government believes that it should be for DBS operators to decide what use should be made of their spare capacity, subject to their contractual or other obligations. As explained in Chapter VIII,

any DBS radio services which may be developed will be regulated by the new Radio Authority.

4.22 There is a growing demand for the transmission of data for commercial purposes, and satellite technology (including DBS) provides a new method of meeting this demand. It is especially well suited to the transmission of data from a single source to a large number of different points (so-called 'point-to-multipoint links'). An example would be the distribution of pricing information by a retailer from its headquarters to each of many retail outlets. Such data is generally intended only for reception by a restricted group of recipients; indeed, it may be encrypted to prevent unauthorised persons gaining access to it. Data services addressed to closed user groups are one step removed from traditional broadcasting, since they are by definition not intended for general reception. They are therefore considered in law as telecommunications services, and require a licence under the Telecommunications Act 1984. The Government set out its policy on the provision of telecommunication services over fixed links (which includes satellite links) in a Ministerial statement made in November 1983. This made it clear that for a period of at least seven years the Government did not intend to license operators other than British Telecom and Mercury Communications to run such links. But an exception to this policy was made in the case of specialised services provided by satellite, where the position was to be kept under review. The Government announced last month the names of the further six operators it would license to provide point to multipoint satellite services in the UK. These services can include the transmission of data (to open and closed user groups), voice and vision services. The use of reception dishes for satellite signals of all kinds, whether these originated in the UK or abroad, is also to be liberalised completely.

Low and medium powered satellite services

4.23 Low and medium powered satellite services employ capacity on telecommunications satellites using frequencies and facilities which are the same as those used for international telephone and data links. Up until recently they have not been operated primarily as direct broadcast services, but have been designed to be received at the head-ends of cable systems, from where they are redistributed to individual subscribers.

4.24 Most (though not all) of the services available have concentrated on offering specialised entertainment programmes with low production costs. Services now being uplinked from the United Kingdom cover feature films, pop music videos, sports, children's programmes, light entertainment and the arts. Although these channels originate in the United Kingdom, they are also transmitted to other European countries, and much of the material which they carry has been of American origin. In addition there are a number of other services available in the UK from other countries.

4.25 The commercial providers of these services may finance their operations in various ways. They may make a direct charge to cable operators who take their services. They may also insert advertising in their services and, depending on contractual arrangements and the advertising regulations in force in his country, the cable operator may show this advertising or may choose to insert his own advertisements in the gaps. Thirdly, they may also seek to sell their services to individual subscribers who are equipped with the necessary receiving equipment.

4.26 This last possibility was opened up when in May 1985 the Government announced that it was prepared to permit individuals who wished to do so to receive television signals from

telecommunications satellites, assuming that they were able to obtain planning consent for the receiving dish. Hotels are a major new market for film channels, and a number of pubs and clubs take pop music television services. A Luxembourg company, SES, plans shortly to launch a medium-powered satellite called 'Astra' with a capacity for 16 channels which will be capable of direct reception by UK viewers. Most of these channels are likely to be aimed specifically at the UK audience. A further medium-powered satellite, Eutelsat II, is due to be launched in 1990.

4.27 The Government's proposals for regulating the content of those satellite services which are at present unregulated are set out in Chapter VII.

V: THE INDEPENDENT TELEVISION SECTOR: TECHNICAL OPTIONS FOR
ADDITIONAL PROGRAMME SERVICES

Introduction

5.1 Chapter IV described the recent development of cable and satellite technologies, which are able to deliver additional broadcast programme services.

5.2 Because it wishes to see greater diversity of choice for the viewer, the Government has examined the scope for introducing additional television services on UHF and VHF, including through use of frequencies not now assigned for broadcasting use within the UK. This possibility was mentioned in our consultants' report on "Subscription Television" (see paragraph 3.10 above), following which the Government put in hand work to assess the technical feasibility and potential population coverage of such services.

5.3 In parallel the Government also commissioned a feasibility study into Multipoint Video Distribution Systems (MVDS - also known as MMDS). MVDS is a technology which uses the microwave frequencies above 1 GHz to transmit television and sound channels from terrestrial transmitters to aerials on individual buildings. It has been in use for some time in the United States, originally as a means of distributing programmes, and more recently as a system for the delivery of multi-channel television services direct to the viewer.

5.4 In considering the scope for additional services of whatever sort the Government has kept in mind the possible impact on existing terrestrial, cable and satellite services and on planned services such as DBS, and also the advantages of increased competition and viewer choice.

5.5 The results of the two studies were published in July and [October] 1988, with the aim of enabling commercial operators and

technical experts to analyse the outcome and indicate to Government the extent of commercial interest. This Chapter summarises the key findings of the two technical studies, and sets out some of the respective characteristics of the various possible means of delivering additional programme services to the viewer.

Further terrestrial channels

5.6 The Government has concluded (as indicated in a Lords Written Answer on 28 July 1988) that a national network, or a series of regional networks, covering 65-70% of the population, could be made available at Ultra High Frequency (UHF) from the beginning of 1993, with perhaps some limited coverage earlier. The new service would make use of Channels 35 and 37. These can be received by existing TV receivers, although most viewers would need a new or additional aerial. Both channels are at present used for a variety of non-broadcasting purposes. These users would be moved to other frequencies. The Government is satisfied that aeronautical radar - one of the current non-broadcasting users - could be moved without risk to aircraft safety. Most video cassette recorders and some home computers would need to be retuned in areas in which this new fifth channel was receivable irrespective of whether their owners chose to receive the new service.

5.7 In the longer term, a sixth network at UHF covering up to 50% of the population might be feasible. But this has not yet been studied in detail, and the cost and interference implications could be significant. Further study is also needed of the implications for existing users of the spectrum involved. The Government has put these studies in hand.

5.8 For completeness the Government has also studied the technical feasibility of providing additional television services on VHF frequencies but (as indicated in a Written Answer on

20 April 1988) has concluded that this possibility should not be pursued in view of its major technical disadvantages.

Multipoint Video Distribution Systems (MVDS)

5.9 The feasibility study into MVDS was carried out by Touche Ross Management Consultants. They advised that MVDS systems would be feasible in both the 2.5 GHz and the 12 GHz bands. In time systems at even higher frequencies might be viable. The number of channels provided and the coverage achieved would depend on the amount of spectrum which could be made available for the service. Within each coverage area a substantial minority of households (perhaps up to 30%) would not be able to receive a signal. Aerials would need to be placed at or above roof-top level. At 2.5 GHz either lattice or dish aerials could be used; at higher frequencies a dish would be needed. The study indicated that reception equipment for 2.5 GHz could be bought off the shelf from the United States at around £250. Equipment for a 12 GHz service might, the study suggested, initially cost about double that amount. Many of the components in a 12 GHz MVDS receiver could be common to components used in DBS receivers (as DBS also operates in the 12 GHz band). There are signs that, as DBS receiver technology develops and moves into mass production, the cost of 12 GHz MVDS receivers may fall significantly.

Satellite services

5.10 There are two remaining Direct Broadcasting by Satellite (DBS) channels from the five allocated to the UK at the World Administrative Radio Conference in 1977. There have recently been suggestions from some of our neighbouring states that the existing DBS plan should be redrawn. The Government will examine any proposals carefully. It intends to safeguard absolutely any services, whether existing or committed, in the five channels at present allocated to the UK, including the three to be used by

BSB, while considering any reasonable options which offer the prospect of an increase in the number of DBS channels with UK coverage.

5.11 Receiving antennae for low powered satellite services are at present large (around a metre in diameter) and more expensive than those envisaged for DBS. As paragraph 4.26 noted, a medium powered satellite, Astra, is due to be launched later this year; and a further medium powered satellite, Eutelsat II, is due to follow in 1990. The operators of these proposed services say that most viewers in the UK will be able to receive an acceptable signal with a considerably smaller dish than those now needed for low powered satellite services.

Cable

5.12 The development of cable services was outlined in the previous chapter. Most broadband systems offer 16 or more television channels in addition to the four BBC and IBA channels, and also text and data services and the capability to carry return signals from the home. In comparison with MVDS, broadband cable offers greater channel capacity, interactivity without the use of the Public Switched Telephone Network (PSTN), and possibly better future picture and sound quality, but the capital costs of setting up an MVDS system are potentially lower.

Comparative features

5.13 MVDS, cable and satellite services would all cost the viewer more money than further terrestrial channels for the equipment needed to receive them. But, for this money, MVDS, cable and satellite services would all provide several television channels, and potentially other services, rather than one or two. All the delivery methods, except cable, also have costs in spectrum terms. Satellite broadcasting uses spectrum most efficiently because a

single transmitter in space, using a single frequency, can achieve national or indeed international coverage, when a comparable service transmitted from the ground would need a number of frequencies and many transmitters.

Delivery of BBC 2 and Channel 4 by satellite

5.14 The Government earlier this year held exploratory discussions to examine the possibility of arranging for BBC 2 and Channel 4 to be transmitted by satellite. As explained in the previous paragraph, a satellite transmission system is particularly well suited to the delivery of a channel on a national basis. The UHF frequencies presently used to transmit BBC 2 and Channel 4 would have been released for a number of additional terrestrial channels, which might have been either regional or national. As well as providing scope for additional channels, this approach would have encouraged the acquisition of receivers capable of receiving services transmitted in the sophisticated MAC standard, which offers better picture quality and an evolutionary route to High Definition Television, and would thus have provided an early opportunity for the BBC and Channel 4 to take advantage of these new technical possibilities. These discussions indicated that, while this approach held a number of attractions, some of the practical and other difficulties would be likely to prove intractable in the short to medium term. The Government has accordingly decided that for the present this approach to the provision of additional television services should not be pursued.

VI: THE INDEPENDENT TELEVISION SECTOR: THE WAY FORWARD

Introduction

6.1 As explained in Chapter V, there is likely to be scope for at least one further terrestrial channel, with 65-70% coverage, at UHF, and for the development of MVDS systems offering a number of further channels. Cable offers a route to a multiplicity of programme services and is one example of the convergence of broadcasting with a wide range of other one way and interactive services. Satellite services may increasingly develop for direct reception as well as for programme provision to cable and other operators. The Government is clear (for the reasons explained in Chapter IV, paragraph 4.10) that it would be wrong to consider ITV in isolation from other existing and prospective parts of the independent television sector. Transmission arrangements and telecommunications policy are further important - and interrelated - parameters.

6.2 As already stated the Government does not seek to lay down a blueprint. It seeks to create a flexible framework allowing entrepreneurs and viewers, subject to the minimum necessary regulation, to decide in the market place which technologies should play the most significant roles. Apart from the need for continued consumer protection, in which the Broadcasting Standards Council will have a reinforcing and overarching role to play, the main purpose of the regulatory framework should be to ensure fairness and propriety in the allocation of franchises, and that players are operating on a fair and competitive playing field. But in some cases further programming obligations are justified.

Structure of chapter

6.3 This chapter is organised as follows. The Government's proposals for a new regulatory body for all independent television services, the Independent Television Commission (ITC), are set out

in paragraphs 6.5-6.8 and Annex A. Paragraphs 6.9-6.27 deal with the proposed regime for Channels 3-5 and any further UHF TV services. For convenience, those parts of the proposed regime which are common to Channels 3-5 are set out in the initial section on Channel 3 (paragraphs 6.9-6.20). The section on Channel 4 and S4C (paragraphs 6.23-6.27) also explains the special role envisaged for those services in reinforcing quality in the independent television sector. Paragraphs 6.28-6.31 are concerned with DBS and other satellite services. The Government's proposals for local services (delivered primarily by cable and MVDS) are contained in paragraphs 6.32-6.41).

6.4 The remainder of the chapter is concerned with those of the Government's proposals (apart from establishing the ITC) which have implications ranging across the whole of the independent television sector. (In some cases there are also implications for the BBC.) Paragraphs 6.42-6.45 deal with telecommunications issues; paragraphs 6.46-6.47 with financing; and paragraphs 6.48-6.53 with ownership. Transmission arrangements are covered separately in Chapter IX. Table 2 gives a simplified summary of the proposed programme content requirements.

Independent Television Commission (ITC)

6.5 The Government thinks it right - as the Home Affairs Committee recommended (paragraph 105) - that all independent sector television services should be brought within the ambit of a single agency which can look across the board, rather than being limited, as the IBA and Cable Authority now necessarily are, to particular delivery technologies. The Government therefore proposes that there should be an Independent Television Commission (ITC). The ITC would apply lighter, more objective programme requirements. The way in which the Commission enforced them could be tested in the courts. The ITC would therefore adopt a less heavy handed and discretionary approach than the IBA necessarily

does at present. The main functions which the Government envisages for the ITC are summarised in Annex A.

6.6 It would not be sensible for the ITC to take on the Cable Authority's duty to promote cable. The Government envisages that this will be displaced by a general duty to ensure fair competition across the independent television sector.

6.7 The Government proposes that the ITC should be a licensing body rather than a broadcasting authority. This means that it will supervise, but not itself provide, programme services, applying broadly the same light touch regulation across the board.

6.8 There will need to be carefully worked out transitional arrangements for the handover from the IBA and the Cable Authority to the ITC, and the Government will pursue this in consultation with interested parties. The ITC will need to assume at least some of its functions as soon as enabling legislation has been enacted. The Government is considering whether it should be set up on a shadow basis after the Second Reading of the proposed Broadcasting Bill.

Regime for Channels 3-5

(i) Channel 3

6.9 As the UK moves towards a more competitive multi-channel broadcasting market, the existing regime for ITV would become increasingly hard to sustain. It would be even less sustainable to try to make all new services conform to the present requirements of the ITV system. Many of these were laid down by Parliament because of the absence of competing alternative services. As viewers exercise greater choice there is no longer the same need for quality of service to be prescribed by legislation or regulatory fiat. The point is crucial and can be

simply put. When there was only one television channel it was natural and right for the BBC to take great care about the balance between different types of programmes on that channel. When there are 10 or more channels within the reach of the average viewer he and she can increasingly sort this out for themselves provided that the choice before them is sufficiently varied. The development of payment by subscription, drawing on a new source of funding, will help to ensure that it is. That freedom of choice from a varied output of programmes is the Government's aim. The Government believes that the time is now right to make major changes to the regime for what might henceforth be called Channel 3. If Parliament agrees, these changes will take effect from 1 January 1993 when the present ITV contracts, as extended, come to an end.

6.10 There should be no relaxation of the requirements not to show material which is inherently unacceptable. The following "consumer protection" requirements will therefore apply to Channel 3, and to all independent sector television services¹ including the new local services discussed in paragraphs 6.32-6.41:

- news should be impartial and accurate;
- nothing should be included in the programmes which offends against taste and decency or encourages crime or disorder or is offensive to public feeling;
- programmes should omit all expressions of the views and opinions of the persons providing the service on religious matters or on matters which are of political or industrial controversy or relate to current public policy;

¹ the BBC also accepts similar obligations

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- due impartiality should be preserved in dealing with such matters; and
- the content of advertisements should be subject to the same requirements, where they are relevant.

Any Channel 3 licensee who fails to meet these minimum standards will be liable to the penalties set out in paragraph 6.19.

6.11 In addition to these consumer protection requirements the Government proposes that Channel 3 should be subject to the following positive programme requirements. They are not, and need not be, as extensive as those now governing ITV. But the Peacock Committee warned against a policy which they termed commercial laissez faire (paragraphs 571-573), under which there would be no constraints on the ability of broadcasters to sell audiences to advertisers, leading to a curtailment of the range and diversity of programmes provided. With these considerations in mind each Channel 3 station will be required:

- to show regional programming, including programmes produced in the region. The Government envisages that this should become, for the first time, an express statutory requirement;
- to show high quality news and current affairs dealing with national and international matters, and to include news coverage (and possibly also current affairs) in main viewing periods;
- to provide a diverse programme service calculated to appeal to a variety of tastes and interests;
- to ensure that a minimum of 25% of original programming comes from independent producers; and

- to ensure that a proper proportion of programme material is of EC origin.

6.12 Taken together these requirements will ensure that Channel 3 helps forward the main objective of enlarging viewer choice. The first reflects the Government's agreement with the Home Affairs Committee (paragraph 171 of their report) that the regional basis of what will become Channel 3 is crucial. The third will ensure - on the same basis as for national commercial radio services - that Channel 3 is not monopolised by programmes of appeal to only a single target audience. The fourth and fifth requirements will help to ensure a competitive and flourishing UK programme production market. It will be open to Channel 3 licensees to contract out all their programme making if they find it efficient to do so. In addition, the Government considers that schools broadcasts should not be provided by the BBC alone. It proposes that the ITC should have a duty to plan for adequate provision of such programming by the independent television sector, and should be able to include the necessary requirements in the licences of whichever of its UHF licensees it considers appropriate.

6.13 The second requirement, concerning news, would in itself do much to ensure that the public does not lack opportunities to keep itself informed. However, the Government believes it necessary to go further, in the case of Channel 3 alone, to ensure that there is adequate competition to the BBC and to guarantee the continued availability of a high quality news service of the kind which ITN has provided throughout the existence of the ITV system. ITN has its existence by virtue of section 22 of the Broadcasting Act 1981, which requires there to be at least one news organisation in which each ITV contractor must be given opportunities to invest. The Government intends to retain this provision in modified form: it proposes to impose a duty on the ITC to ensure that there is at least one body effectively equipped

and financed to provide news on its Channel 3 service. Channel 3 licensees would be required to finance the organisation and in exchange would have the opportunity to own shares in it. However, whereas at present all ITN shares are held by ITV contractors, under the new provision some shares would be held externally, by bodies without licences on any television channel. Eventually a majority of shares might be held by non-licensees. The detailed arrangements need further study and consultation, but one approach would be as follows. Initially the Channel 3 licensees might hold the majority, or all, of the shares in the news organisation or organisations. The supply of news to Channel 3 would be governed by a service contract which would, unlike the funding for ITN at present, include a profit element to establish the organisations's commercial value. The ITC would be under a duty, at the right time, to ensure that some, perhaps the majority, of shares were sold to non-licensees. No external investor should hold more than 5% of the shares.

6.14 Although not having general control of scheduling, the ITC would have powers to ensure that the news service provided by one or more of the news organisations was shown by Channel 3 stations and, as already indicated, that this should include exposure during peak viewing times. As a necessary safeguard, the ITC would have power to withdraw, after adequate notice, its approval of a news organisation established under the arrangements discussed in the previous paragraph which failed to deliver an acceptable service.

6.15 The Government envisages that the Channel 3 programme service should be provided with the same universal coverage as at present, but by the companies rather than being provided, as now, by a broadcasting authority. It follows from this that, subject to what is said above about news coverage, the ITC 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 what to show and when to show it, subject to the general law and the regulatory requirements described in paragraphs 6.10-6.11. It would also be their responsibility to decide on commercial grounds on any arrangements for networking or syndicating programmes among themselves. This means that much of the detailed supervisory work now done by the IBA would come to an end. The operators will also be free to decide their own mix between advertising and subscription.

6.16 In order to create more opportunities for entry to the broadcasting market and competition within it the Government proposes that there should be a separate night hours licence, or licences, for Channel 3. It will be for the ITC to determine the exact boundaries, and to decide on possible additional licences covering other times of day - eg for a breakfast time service. The ITC will also be responsible for the geographical division of Channel 3 into regions, whose particular interests licensees will need to cater for, as envisaged in paragraph 6.11 above. The Government envisages that the extent to which the regional and any schools programming obligations apply to any night time or breakfast time licensees would be determined by the ITC taking account of the basis on which the Channel 3 licences were being divided up.

6.17 The present arrangements for awarding ITV contracts have been conscientiously applied, and in some respects reformed, by the IBA. But they have been widely criticised as arbitrary and opaque. The Home Affairs Committee saw advantage in introducing a more commercial element into the allocation of ITV franchises, and recommended that a suitably regulated tendering process should be introduced (paragraph 134). The Government agrees and proposes that the ITC should operate a two-stage procedure. In the first stage applicants for licences would have to pass a quality threshold. They would have to satisfy the ITC that they would meet the programming requirements set out in paragraphs 6.10 and

6.11 above - in other words that they were qualified to take on a Channel 3 licence. They would also have to meet whatever ownership tests are eventually imposed: this subject is discussed in paragraphs 6.48-6.53. All applicants passing this threshold would go on to the second stage in which they would offer financial tenders for the licence. The ITC would be required to select the applicant for each licence who had submitted the highest tender. Both stages of the procedure will be open to public scrutiny. This two stage procedure will provide a more objective method of licence allocation which will be fairer to all applicants, and will at the same time secure a proper return for the taxpayer for the use of a public resource. In order to ensure that the tender procedure meets the latter objective and that there is a fair sharing of risks between Channel 3 operators the Government envisages that each licensee will also be required to pay levy in the form of a percentage of advertising revenue at progressive rates, the initial level of which will be prescribed when licences are advertised. This will replace the present ITV levy.

6.18 The ITC will not have or need the IBA's present powers to block takeovers, which reflect the discretionary nature of the present contract allocation process. But those buying into companies will have to satisfy the proposed programming tests and the ownership rules discussed in paragraphs 6.48-6.53 below. Subject to these tests and rules, takeovers can be a useful way of bringing new ideas and talent into television and re-inforcing pressures for efficiency.

6.19 The quality tests set out in paragraphs 6.10 and 6.11, which would be reflected in licence conditions, would not cease to apply when operators had been selected. They would continue throughout the licence period. The ITC would be responsible for monitoring performance and following up complaints by the public. The ITC would undertake formal reviews of the performance of licensees at

intervals or as needed. As recommended by Peacock (paragraph 657), the ITC will have power, after a review, to issue a formal warning (a yellow card) and to remove a licensee (a red card) one year later if performance remains unsatisfactory - for example in failing to deliver a sufficiently diverse programme service. The Government is considering whether, as an additional sanction, the ITC should be able to impose financial penalties. This enforcement machinery will be designed for effective use if necessary.

6.20 The Government has carefully considered the arguments for and against fixed term or unlimited licences for UHF independent television services. It could be argued that the new flexibility as regards takeovers (paragraph 6.18 above) will ensure against the inefficiency or rigidity which an indefinite licence might otherwise produce, and that an indefinite licence would avoid the risk of falling interest or involvement towards the end of a fixed term. Against this, under an entirely open-ended system competitive tender would benefit the Exchequer only once. It might also be difficult for the ITC to secure agreement to any necessary future structural changes either in licence conditions or in the system more widely, such as changes to the geographical framework of Channel 3. Taking account of these considerations, the Government proposes that the licences for UHF independent television services should be for a fixed term of ten years (as recommended in paragraph 658 of the Peacock Report), but that it should be open to licensees, during the final years (perhaps the last four) of their licences, to apply for licence renewal for further 10 year terms. The licensee would have to satisfy the ITC that he was continuing to meet his programming obligations and otherwise sustaining a satisfactory performance, and the ITC would retain the ability to make structural changes in the system. The licensee would also have to pay a licence renewal fee to the ITC, which would be calculated on a formula based on the licensee's historical advertising, subscription and sponsorship revenue.

Where the ITC was not satisfied that the licence should be renewed it would be open to it to proceed to competitive tender on the basis proposed in paragraph 6.17, or else to invite the licensee to re-apply for renewal after a further period during the currency of the existing licence.

(ii) Channels 5 and 6

6.21 The Government proposes that, subject to what is said below, the same regulatory regime (although without the regional programming obligations) and the same licence allocation and review arrangements should apply equally to Channel 5. The Government proposes that Channel 5 should come on stream from the beginning of 1993, when the new Channel 3 licences will start. It will enlarge the choice of a majority of viewers in the UK, and should bring significant relief to the advertising market (see Chapter IV, paragraph 4.9), though Channel 5 operators will be free to determine their own mix between advertising and subscription. Channel 5 will not be able to achieve universal coverage (see paragraph 5.6), but it will be expected to achieve sufficient coverage of those areas where it can be received to justify the allocation of scarce frequencies. Paragraph 5.6 noted that certain costs would be incurred as a result of the freeing of frequencies for Channel 5. The Government envisages that arrangements will need to be made for Channel 5 licensees to meet unavoidable costs of this kind. Bearing in mind that Channel 3 will be regionally based, and that there will be new opportunities for localised television services (discussed later in this Chapter), the Government believes that Channel 5 licences should be national in scope. Although it sees no need to impose the additional burdens inherent in a regional structure on Channel 5, the Government envisages that the Channel could be split up by time into two or more different licences covering different parts of the day and night. The Government sees a good case for such segmentation, which will promote competition and enhance

diversity. It will be for the ITC to decide how large these segments should be. Channel 5 licensees will, like those on Channel 3, be required to include accurate, impartial and high quality news and current affairs at suitable times in their schedules, on the basis explained in paragraphs 6.10 and 6.11.

6.22 Should Channel 6 prove to be feasible, it would be subject to broadly the same regulatory regime and oversight as Channel 5, as would be the night hours which the ITC would allocate by competitive tender following release from the BBC (see paragraph 3.12.)

(iii) Reinforcing quality: Channel 4 and S4C

6.23 The programming remits of Channel 4 and S4C have been a striking success. These remits must be fully sustained. They are needed to reinforce the quality, range and diversity of programming provided by the independent sector. The Government does not accept that in future only the BBC need concern itself with the range and quality of programmes traditionally associated with public service broadcasting. By this means the independent sector will continue to cater for minority interests and provide educational programming (in a wider sense than schools broadcasts, for which see paragraph 6.12). The Government accordingly proposes that Channel 4 should be required to cater for tastes and interests not served, or underrepresented, by other parts of the independent television sector²; to encourage innovation and experiment in the form and content of programmes; to devote a suitable proportion of its airtime to educational programming; to devote a suitable proportion of its airtime to high quality news and current affairs programmes including during main viewing

² the precise formulation of this element will depend in part on the future structure of Channel 4 and its relationship with other parts of the independent television sector.

periods; and to maintain a distinctive character of its own. Channel 4 would also be expected to maintain universal coverage, to show a proper proportion of programme material of EC origin, and to observe the consumer protection requirements set out in paragraph 6.10. The Government also envisages that Channel 4 would still be expected to operate on a publishing house model, commissioning much of its programming from the independent production sector.

6.24 It does not follow that the present structural arrangements for Channel 4 should remain unchanged. It is now clear that under the present arrangements the revenue from Channel 4's air time could sustain its service. There is a strong case that it should be directly funded from this source. Greater competition between those selling television air time - a pressing demand from those whose expenditure on advertising has paid for the independent television system - is essential. The Government's wider proposals for a more competitive independent television sector mean that the place for Channel 4 within such an integrated ITV system will no longer be available. Structural change is accordingly unavoidable.

6.25 The Government believes that Channel 4's special role is best fulfilled by an independent organisation subject to ITC oversight, but without direct financial or structural links to the Channel 3 licensees. The ITC would be responsible for arranging the transmission of the service, as explained in Chapter IX. Advertising will be sold separately from the advertising on Channel 3 or other channels; while this is probably best made the responsibility of Channel 4 it might in practice choose to contract this out. There are a number of different constitutional models which might meet these objectives, and the Government would welcome comment on the best way forward. The following list of options is intended to be illustrative rather than exclusive:

- The service on the Fourth Channel could be provided by a private sector company licensed by the ITC in much the same way as services on Channel 3. On this approach the programme remit would need to be clearly expressed in the form of licence conditions which the ITC would need to enforce rigorously. The licence could then be awarded by competitive tender, as described in paragraph 6.17. In particular it would be necessary to ensure that the Channel should continue to provide a service which, as well as being innovative and experimental, addressed a wide range of minority tastes. However, an express requirement that it should be different from all services licensed by the ITC could not sensibly be laid down as a licence condition. The Channel would be given the freedom to recover the costs of fulfilling its programming remit by its own efforts in selling air time, charging subscription or raising funds through sponsorship.

- Channel 4 could remain as a non-profit making body, in the form of a subsidiary of the ITC, and given freedom to raise funds through advertising, subscription and sponsorship. However, to avoid Channel 4 being wholly dependent on these sources, a minimum level of income could be guaranteed. This would provide a safeguard against any erosion of the remit which might otherwise arise as the competition for advertising and subscription revenue intensifies. Various mechanisms could be devised to achieve this outcome. For example, the ITC could predetermine, subject to Government approval, a baseline, whether expressed in cash terms or, as now, as a percentage of the advertising revenue of the independent television system, to which Channel 4's income would if necessary be made up. For this purpose the ITC would draw on the proceeds of competitive tender and the levy.

- A further possibility would be to establish some kind of link between Channels 4 and 5, with the former pursuing the special remit and the latter being subject to the more commercial regime already described. Such linkage would enable the operators of the two Channels to plan their schedules on a complementary basis, thereby strengthening their competitive challenge to the other established channels, which enjoy a stronger position: Channel 3 because it is already in place, though in a different form, and is universally available; and BBC because of its ability to cross-schedule two national channels.

There are competing considerations: a fully privatised Channel 4 would have greater incentives to efficiency and the Government believes this approach would be practicable. But there are fears that if Channel 4 were operated by a private company anxious to maximise profits, it might be tempted to weaken the remit and thus run into difficulties with the ITC. On the other hand, if Channel 4 remains in the public sector, and particularly if it does so under an arrangement which, like the present system, guarantees its income and accordingly insulates it from any market disciplines, then the incentive to efficiency will be diminished and, in programming matters, it may be vulnerable to sterile elitism or precious self-indulgence. The Government would welcome views on these and other possible arrangements from the industry, other interested parties and viewers. By whichever means, it regards the upholding of the remit as an essential part of the new pattern of television broadcasting.

6.26 The Welsh Fourth Channel has also fulfilled expectations. It is operated by a separate broadcasting authority - the Welsh Fourth Channel Authority - though it is transmitted by the IBA. It is funded by a subscription levied on all ITV companies at a level fixed between the IBA and the Welsh Fourth Channel Authority. The Channel receives substantial subsidy from the BBC

in the form of ten hours a week of Welsh language programming provided without charge. It also commissions - in general following competition - original programmes from ITV (in practice the contractor in Wales) and from independent producers. The Channel has worked to bring into being within Wales an independent production capability, operating in the Welsh language, together with the necessary supporting facility infrastructure. There is, unlike Channel 4, no realistic prospect of its advertising revenue covering its programming and transmission costs, although the Government considers that S4C should become responsible for the sale of its airtime, which may of course be contracted out as is also possible in the case of Channel 4.

6.27 The Government believes that the independent television services operating in the UK should continue to finance the cost of the Welsh Fourth Channel (net of its own advertising revenue). In future the ITC should fix, after consultation with the Welsh Fourth Channel Authority, the level of the Authority's revenue and arrange for this to be paid through subscriptions levied on the licensees operating UHF services, including Channel 5, any Channel 6 and Channel 4, if it is a licensee. The subscription should be expressed as a percentage of the advertising and subscription income of each licensee, though the rates may be different for advertising and subscription revenue respectively. They should be determined before the companies competing for the licence in question enter their bids, though the subscriptions required might in the event be reduced by any contribution to S4C's costs from a surplus on Channel 4, if this is a non-profit making subsidiary of the ITC.

Direct broadcasting by satellite (DBS)

6.28 BSB plans to provide three channels nationwide. One channel will introduce subscription, but the service as a whole will provide important relief to the television advertising market.

BSB plans substantial commitment to original programming, which it will largely commission from the independent production sector. BSB has gone ahead (without funding from the Government) to an extent not paralleled in other countries.

6.29 The Government gave BSB an undertaking last year that the UK's fourth and fifth DBS channels would not be allocated until BSB's service had been in operation for at least three years. BSB have, however, recently indicated that they would be willing to see this moratorium lifted. The Government has therefore decided to make these channels available for allocation as soon as possible. The IBA expect to advertise the contracts for the use of these channels in January next year. This could mean awarding the franchise as early as June, with a view to the service starting in mid-1990. This will account for all the DBS channels now allocated to the UK. But it would be sensible to make legislative provision for the possibility that the UK is allocated any additional DBS channels in future. The ITC will allocate licences for any future DBS services. These services will be subject to the viewer protection requirements described in paragraph 6.10. They will also be required to meet the positive requirements on independent production and on EC material described in paragraph 6.11. The Government does not believe it right to impose the diversity requirement, and clearly the regional programming requirement would not be apt. The Government is inclined not to require any future DBS services to show news and current affairs, though it would consider carefully any contrary views.

6.30 In the light of these proposals the Government will be ready to consider, in consultation with the IBA, any suggestions BSB might wish to make for modifications to the present programming and other obligations applying to DBS services under the 1984 Act.

Other satellite services

6.31 The Government proposes to leave the further development of other satellite services to the market. But it does propose to put in place consumer protection regulation by the ITC of the content of such services. Chapter VII outlines the Government's proposals for doing so.

Local services: cable and MVDS

6.32 Chapter IV (paragraph 4.13) described how Parliament has provided a statutory framework for the provision of programme services locally by cable. The last chapter (paragraph 5.9) outlined the results of the study commissioned by the Government into MVDS, a technology which is also well suited to the delivery of services at the local level. This section sketches a new enabling framework which the Government is proposing in order to facilitate the use of cable and MVDS for the local delivery of services. The details are bound to be complicated. In preparing broadcasting legislation, the Government will take account of comments received on the proposals set out in the following paragraphs. The Government does not want those investing or considering investing in local services to experience a period of extended uncertainty about the Government's approach. It therefore aims to make clear its firm intentions for legislation not more than two months after the end of the consultation period (ie by the end of April 1989).

6.33 The Government has decided against creating a specific new regulatory structure for MVDS, to sit alongside the existing arrangements for cable. Rather it proposes to provide a new enabling framework, which will leave operators free to decide upon the best mix of technologies. In practice this will at present mean a choice between, or a combination of, cable and MVDS; but the framework will be sufficiently flexible to leave the way open

for new technologies which may emerge. The Government expects that cable will continue to play a significant part under the new arrangements. It offers greater channel capacity than other delivery mechanisms, and can carry interactive services. But the extent to which it is used will be left to the commercial judgement of operators. Similarly, the present high technical requirements imposed on cable, which were designed to stimulate the growth of cable as a competing, interactive telecommunications medium, will be considerably relaxed. Subject to minimal technical requirements, including those related to the Wireless Telegraphy Act 1949, operators will be free to build to the standards they choose. The extent to which they lay down cable facilities physically capable of functioning as a fully interactive telecommunications network will be a matter for their judgement; not one for Government or regulators.

6.34 These new arrangements will be based on fifteen year local franchises awarded by the ITC. The ITC will be assigned suitable frequencies for local services, and will be responsible for advertising franchises. It will be for the ITC to decide on the size of each area for which a franchise will be awarded, taking account of a combination of frequency availability and market demand. The Government would not seek to lay down the pattern which will ultimately emerge. The Government does not propose to impose specific coverage obligations on local franchise holders to offer the delivery of services to a specified percentage of households in the area, given that there will be opportunities for takeovers. Applicants for franchises will first have to satisfy a number of criteria (eg as to their financial soundness, and technical competence), and the franchises will thereafter be awarded by competitive tender. Successful applicants will also have to comply with any relevant Telecommunications Act and Wireless Telegraphy Act licensing requirements. The Government envisages that initially only one franchise is likely to be awarded in any one area. But the ITC will have an obligation to

consider at an early point in the franchise period whether a further franchise or franchises should be awarded for the area. While they remain local monopolies delivery operators will be liable to levy.

6.35 These franchises will be for the local delivery of services in a particular area, whether by conveying the service through cable, by transmitting it, or by a mixture of the two. The franchisee will thus undertake, for a carriage fee, to deliver a service on behalf of others. Delivery can be conceptually distinguished from retailing (ie arranging for channels, either singly or in bundles, to be offered to viewers, in return for some financial reward, either directly from viewers in the form of subscription payments or from advertisers), and also from service provision (ie making or acquiring programmes and packaging them into channels).

6.36 The arrangements for cable in the Cable and Broadcasting Act 1984 effectively gave broadband cable operators local monopoly rights over both the delivery and retailing of services. (It is also open to them to engage in service provision, though in practice almost all television programme services on cable have been originated and packaged by others.) This degree of integration was considered necessary in the case of cable because of the heavy initial investment requirement. For the new framework, however, the Government sees advantage in separating delivery from retailing so far as possible, so that local monopoly at the level of delivery does not preclude the development of competition in the retailing of services. The ITC will therefore be under a general duty, subject to the qualification mentioned below, to ensure that local franchise holders are confined to service delivery and do not themselves retail programme services; as mentioned, in the main they will deliver services on behalf of other operators in return for a carriage fee. However, the Government recognises that franchise holders may need the prospect

of revenue from the retailing of some services in order to invest in the delivery network, particularly where MVDS is to be supplemented with cable. The ITC will therefore be given discretion to allow franchise holders to retail some services where satisfied that the system necessary to deliver services on behalf of other retailers would not otherwise be built. The Government is giving further thought to the extent and formulation of this discretion. The Government envisages that the planning of the new local services will begin at the earliest opportunity, and that it might be possible for some such services to be available to viewers before 1993.

6.37 To ensure acceptable programme standards, a local delivery franchise holder will not be allowed to carry any independent service which does not have a licence from the ITC. In practice, some of the programme services carried will be licensed under arrangements described earlier; for instance, a franchisee might carry DBS services, or Channel 5 in parts of the country to which the UHF coverage does not extend. Any other services will be licensed under the consumer protection regime set out in paragraph 6.10 above. Any service which undertakes to comply with these requirements will be licensed, provided that it does not fall foul of the ownership restrictions described in paragraphs 6.48-6.53, but failure to maintain the requirements would lead to loss of the licence. Entry to the market will not otherwise be limited. The Government envisages that retailers of programme services will not need to be licensed except to the extent that they are also service providers or delivery operators, or themselves insert advertising. It is likely that, as with cable, most of the services will be nationally available channels. But the new delivery franchise holders will provide a route through which more locally-oriented programme services can reach an audience, if there is a market for them. This means that there will be exciting market opportunities for small scale television at the city and inner-city levels. There will also be

opportunities for groups who do not think that their interests are satisfactorily catered for at present. In particular, the way will be open for services aimed at ethnic minorities. There may also be potential for services in Scotland with programmes in Gaelic.

6.38 Although it is envisaged that the delivery of television programme services will, to begin with at least, represent the main part of a franchise holder's business, they will not be limited to such services. They will also be permitted to deliver sound-only services. In addition they would be able, subject to what is permissible under current telecommunications policy, to deliver telecommunications services; and, provided they made their facilities equally available to others, also to retail them. They would in practice only be able to deliver one-way services unless the area was cabled; and under the prevailing telecommunications duopoly policy, a review of which is due to begin in November 1990 (see paragraph 6.42 below), these would be limited to services for general reception. But, depending on the outcome of the duopoly policy review, the Government envisages that these franchise holders might later be enabled to carry a full range of telecommunications services.

6.39 The Government has not yet taken firm decisions about which frequencies should be assigned to the ITC for local services. The band chosen must provide enough spectrum to allow the delivery of a wide range of services and be available for a number of years ahead. The 2.5 GHz band is one possibility which has been widely canvassed. But the spectrum that might be made available in that band is generally very limited and is likely to be needed for other uses in the early to mid 1990s as the spectrum needs of mobile radio expand. The 12 GHz band offers the prospect of compatibility with DBS technology, but there are still considerable uncertainties, at a national and international level, as to possible competing uses for it. Trials are taking place to

confirm the suitability of these frequencies for MVDS. Much larger amounts of spectrum are potentially available at higher frequencies, for example 27-29 GHz or 38-42 GHz. Such frequencies appear to provide the right longer term solution but doubts have been expressed about the availability of equipment at commercially acceptable cost in the shorter term.

6.40 The Government will be consulting the Cable Authority, the Director General of Telecommunications and the cable industry about the position of the broadband cable industry, and how it will be affected by these proposed arrangements. The Government considers that broadband operators already awarded franchises should be offered a choice. Either they could retain their existing rights (ie to retail as well as deliver cable services in their area) and obligations (ie to install cable) for the remainder of their licence period; or they would be able to transform into technology-neutral delivery operators for their franchise areas. If they chose the latter option they would lose their present effective local monopoly over the retailing of services, but at the ITC's discretion they would still be permitted to retail a number of services provided they made their system available to other retailers as well. The Government is considering further whether such a choice should be extended to the eventually successful applicants for any advertised franchises for which applications have to be submitted by the date of publication of this White Paper. Again, it will make clear its firm intentions for legislation two months after the end of the consultation period.

6.41 A number of cable operators have been asking to be allowed to use MVDS straightaway to deliver services to the home, in advance of legislation. They have been seeking to use frequencies in the 2.5 GHz band, as this is the area at which they consider domestic reception equipment to be readily available today at a reasonable price. As explained above, however, there would be

severe difficulties in finding any more than a limited amount of spectrum for this purpose. It would also be inconsistent with the general principle suggested above that cable operators who decided to use MVDS should accept restrictions on retailing under the proposed new framework, rather than retaining all their existing monopoly privileges. There has also been interest from one or two operators in using microwave frequencies to distribute services to a limited number of points within their franchise area, from which they would be delivered to individual households by cable. The Government will be prepared to consider proposals of this nature on their merits, subject to the availability of spectrum.

Telecommunications issues

6.42 The Government's proposals for the independent television sector are relevant in various respects to its general telecommunications policy, which is to promote wide and effective competition in the supply of equipment, the provision of services and the running of networks. The present duopoly, which is intended to allow Mercury time to establish its competing national network and to give BT time to adjust to its new status, is due to be reviewed in November 1990.

6.43 In their Recommendation 15 (paragraph 665) the Peacock Committee proposed that the national telecommunications systems (ie BT, 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. The Committee also recommended that, as a quid pro quo, such common carriers should divest themselves of their cable operations and should not themselves provide services over these networks. The Home Affairs Committee did not find a universally favourable reaction from its witnesses (including the operators concerned) to this suggestion, but recommended that the advantages of optical fibre as a means of transmission of entertainment as well as

telephony and data should be taken into account in the context of the duopoly review (paragraph 38). The Government believes that implementation of Recommendation 15 in its original form would be impracticable and could inhibit the growth of competition in telecommunications networks. But it, too, sees attraction in the underlying idea as a route towards additional competition in the programme services market. The Government therefore proposes to examine it further at the time of the review of the telecommunications duopoly policy.

6.44 The Government has considered the case for relaxing the present constraints on provision by the broadcasters of data transfer services in addition to those, such as teletext, which are permitted at present. The Government does not wish to preempt the outcome of the review of the BT/Mercury duopoly, and recognises that whatever is decided the broadcasters, like any other provider of telecommunications networks and services, would need to obtain a licence under the Telecommunications Act to provide any service not intended for general reception. It therefore proposes to put in place a contingent provision which would permit these services to be offered, without prejudice to the decisions of the review, and to be activated only in the light of its outcome and any subsequent decision on licensing.

6.45 Teletext itself has been highly successful in the UK. It has provided the opportunity for the development of information services which are valued by viewers. And it has also been ingeniously used to provide subtitles for the deaf. BSB's DBS service will also include teletext, which it will be permitted to provide on a subscription basis. With the prospect of additional channels the Government sees scope for the further development of teletext. It will provide a regulatory structure designed to facilitate the development of new services.

Financing of independent sector programme services

6.46 The Government proposes to allow all independent sector TV operators the freedom to decide their own mix between advertising and subscription. Aspects of subscription which are relevant to the independent sector are discussed in Chapter III (paragraphs 3.9 and 3.15.)

6.47 The Government envisages that the ITC will have a duty to draw up and enforce a code or codes on advertising and sponsorship. This should allow more flexible regulation of advertising and sponsorship than is now possible under the Broadcasting Act 1981. The Government in particular favours liberalising the restrictions deriving from the 1981 Act on sponsorship, provided adequate safeguards are built in for editorial independence and transparency for the viewer. The Government proposes that any maximum limits on advertising minutage should be subject to Government approval, and that the Government itself should take power to adjust this limit, after consultation with the ITC, in case this should prove necessary in order to allow relief to be brought to the advertising market, or for other reasons.

Ownership

6.48 With the greater choice and variety that lies ahead, the Government is determined that ownership in the independent sector should be, and remain, widely spread. The existing controls on takeovers will be removed. The underlying thrust will be that the ITC's regulation should bite on performance rather than through an extensive and rigid set of disqualifications, although some disqualifications will be necessary. But clear rules will also be needed which impose limits on concentration of ownership and on excessive cross-media ownership, in order to keep the market open for newcomers and to prevent any tendency towards editorial

uniformity or domination by a few groups. The Government proposes to make the greatest possible use of subordinate legislation for such rules in order to ensure maximum flexibility in catering quickly for changing circumstances. The Government would welcome comments on the scope and formulation of such rules.

6.49 The Government envisages that local authorities and bodies whose objects are wholly or mainly of a religious or political nature (and also bodies which are affiliated to or controlled by such bodies) will be disqualified from holding any ITC licence.

6.50 The Government believes that the present position that ITV and DBS franchises may not be controlled by non-EC companies should be maintained for DBS and applied to Channels 3, 4 (if provided by a separate licensee) and 5, and any further UHF services. It will consider further the question of whether this restriction should apply also to local technology-neutral delivery operators.

6.51 In the case of licences to provide Channel 3, 4 (if provided by a separate licensee) 5 or any further UHF services the following further restrictions will apply

- no group may control or have an interest in more than two such licences
- no group may control or have an interest in more than one such licence if they cover the same area
- no group holding a licence with cross regional coverage may hold or have an interest in any other licence covered in this paragraph.

6.52 In the case of licences to deliver locally delivered services, the Government envisages in broad outline that the ITC

will have duties to enforce separation between the delivery and retailing of services (subject to the discretion referred to in paragraph 6.34 above), to prevent any one group or interest from achieving a dominant position, and where feasible to promote competition in the delivery of locally delivered services.

6.53 The Government is considering what further rules additional to current competition legislation are needed to restrict concentrations of ownership. The Government would welcome comments on the implications of basing these rules on the following general principles:

- no licence holder for a particular area should control other broadcast media for that area
- no licence holder for a service with national coverage using UK broadcasting frequencies should have an interest in any other services or broadcast media with such coverage (subject to the preservation of the position of the shareholders in BSB for the duration of its franchise)
- ownership of services not using UK broadcasting frequencies, but receivable in the UK should, as the Home Affairs Committee recommended (paragraph 43), be capable of being taken into account by the ITC in operating its controls
- at least in the short term, no designated national public telecommunications operator should be allowed to hold an ITC licence for Channel 3, 4 (if provided by a separate licensee), 5, any further UHF channels, DBS or a local delivery franchise
- national newspaper interests in national services using UK broadcasting frequencies (and vice versa) should be

limited; and a similar principle should apply in the case of local services and the local press. One possibility would be to follow the reciprocal 20% limit already proposed in the case of radio interests in newspapers, and vice-versa.

TABLE 2

PROPOSED PROGRAMME OBLIGATIONS FOR INDEPENDENT SECTOR TELEVISION SERVICES

Requirement	Channel 3	Fourth Channel	Channel 5 ¹	Future DBS Services	Other Sat Svces	Local Services ²
Consumer protection	Yes	Yes	Yes	Yes	Yes	Yes
News and current affairs	Yes	Yes	Yes	No	No	No
Diverse ³ programme service	Yes	Yes ³	Yes	No	No	No
Regional programming	Yes ⁴	No	No	No	No	No
Educational ⁵ programming	No	Yes	No	No	No	No
Minimum of 25% of original programming from independent producers	Yes	Yes ³	Yes	Yes	No	No
Proper proportion of programme material of EC origin	Yes	Yes	Yes	Yes	No	No

1. Broadly similar requirements will apply to Channel 6 should that prove feasible.

2. Where franchisees carry services subject to more extensive requirements (eg Channel 5) those requirements will remain in force for those services.

3. Channel 4 requirements go further. See paragraph 6.23.

4. May not apply to night hours and any breakfast time licences.

5. In addition, the ITC will have a duty to plan and arrange for provision of schools programmes by independent TV.

VII: PROGRAMME STANDARDS

Consumer protection obligations

7.1 In developing broadcasting policy the Government has attached central importance to programme standards. This chapter, with its focus on the response to public concern about the portrayal of violence and sex on television, necessarily concentrates on what are sometimes called the consumer protection aspects of programme standards. That does not imply that the Government views the matter only in negative terms. In other chapters the emphasis is on positive aspects of programme standards such as quality, range and diversity. The Government has sought to open up and strengthen the UK's programme production sector. More generally, as Chapter II explained, the greater strength of the viewer in broadcasting should promote programme quality as well as increased diversity of choice.

7.2 The BBC, the IBA and the Cable Authority, as regulators of programme standards, have all accepted similar consumer protection obligations. (In the cases of the IBA and the Cable Authority these are statutory obligations reflecting Parliament's wishes.) Programmes should not offend against good taste or decency, or be likely to encourage or incite to crime or lead to disorder, or be offensive to public feeling. Special care should be exercised at times when young children may be expected to be viewing. The Government believes that it is essential that all forms of broadcasting in the UK should continue to be subject to such obligations. The unique power of the broadcasting media to shape perceptions, and their influence over attitudes and actions, are widely recognized. The consumer protection obligations need to be properly enforced so that the quality of programming is maintained and the power of television and radio is not abused.

7.3 Recently there has been much public concern about the portrayal of violence and sex in broadcast programmes, especially on television. The Government recognizes that concern, as do the broadcasters. The Government has no wish to undermine the regulatory bodies in carrying out the often difficult and delicate task of enforcing consumer protection obligations. It nevertheless believes that further steps are needed to meet public concern.

Exemption from Obscene Publications Act 1959

7.4 The Government sees no case for continuing the current exemption of broadcasting from the Obscene Publications Act 1959, and proposes that it should be removed at the earliest opportunity. This does not imply any relaxation of the stricter consumer protection standards which broadcasters have long been required to observe throughout the hours of broadcasting. But there is no justification for not applying the obscenity law to broadcast programmes, particularly since it already applies to cable programmes. The Government envisages that prosecutions for any offences will require the consent of the Director of Public Prosecutions, as is now the case with cable programmes. It will be a defence for a person to show that he or she did not know and had no reason to suspect that the broadcast would render him or her liable to be convicted. It will also be a defence to prove that the broadcast was justified as being for the public good.

The Broadcasting Standards Council

7.5 As a further measure, the Government has sought to strengthen standards and reinforce the work of the individual regulatory bodies by establishing a Broadcasting Standards Council (BSC), initially on a non-statutory basis. The Government announced on 16 May 1988 that Lord Rees-Mogg would be the first chairman of the BSC.

7.6 During the pre-statutory phase the Council's role is to:

- draw up, in consultation with the broadcasting authorities and the other responsible bodies in the broadcasting, cable and video fields, a code on the portrayal of sex and violence and standards of taste and decency;
- monitor and report on the portrayal of violence and sex, and standards of taste and decency, in television and radio programmes received in the UK and in video works;
- receive, consider and make findings on complaints and comments from individuals and organisations on matters within its competence and ensure that such findings are effectively publicised;
- undertake research on matters such as the nature and effects on attitudes and behaviour of the portrayal of violence and sex in television and radio programmes and in video works;
- prepare an annual report, which the Home Secretary will lay before Parliament and publish.

7.7 In addition, the Council is consulted by the Government on the implications, for the matters within its remit, of the negotiations under way in Europe for the regulation of transfrontier broadcasting, and on the implementation of the result of those negotiations.

7.8 The Home Affairs Committee particularly welcomed the inclusion of research in the BSC's remit, and recommended that the BSC should base its role in a changing broadcasting environment on

properly researched findings (paragraph 117). Both the Government and the BSC recognize the importance of this aspect of its work.

7.9 Since his appointment Lord Rees-Mogg has, among other things, been discussing with the relevant bodies the adequacy of arrangements for enforcing proper standards in relation to imported fictional material; and how best they should publicise the Council's views on programmes and programme standards. The Government will frame its proposals for the statutory powers of the BSC in the light of these discussions, and experience of the working of the Council.

7.10 It would be possible to provide in the legislation for the Broadcasting Standards Council to be combined with the Broadcasting Complaints Commission (BCC), which deals with complaints of unfair treatment and invasion of privacy. It would arguably be more rational and less confusing to the viewer and listener to bring the current functions of the BSC and the BCC together under a single body. This need not preclude the operation of separate panels for the two distinct functions. The Government is also considering whether the BCC's current powers to require the broadcasters to publish its findings and to help it in its consideration of complaints should be extended to the work now undertaken by the BSC. The Government will reach conclusions on these matters in the light of experience of the working of the BSC, and after consulting both the BSC and the BCC.

Regulation of satellite services

7.11 Another area in which the Government sees a need for further action is that of satellite programme services other than high power direct broadcasting by satellite (DBS) services. The latter are already covered by the Cable and Broadcasting Act 1984. Other satellite services fall to be regulated by the Cable Authority if they are taken by UK cable systems - as nearly all of them at

present are. But since 1985 direct reception of low and medium power satellite services has been permitted in the UK. Such services, if not taken by cable, are not now subject to UK regulation. The Government proposes to close this regulatory gap. It is not causing problems at present. But the Government thinks it right to put in place safeguards against the possible future development of unacceptable satellite services. The Government proposes to tackle the matter in three ways.

7.12 First, the consumer protection regulation of programme content by the proposed new Independent Television Commission (for which see Chapter VI and Annex A) will be extended to cover all satellite services uplinked from this country but received direct, whether in the UK or abroad.

7.13 Secondly, the UK has taken a leading role in the work towards the proposed Council of Europe Convention on Transfrontier Broadcasting. The Convention is described in Chapter XI. Its significance in the context of programme standards is that parties will be able to have recourse to its enforcement procedures against any satellite service, uplinked from a country which is a party to the Convention, which falls short of the programme standard obligations in the Convention. Agreement on the content of the Convention has yet to be reached.

7.14 Thirdly, the Government proposes that satellite services uplinked from abroad should be monitored here either by the new Independent Television Commission or by the Broadcasting Standards Council. If it is believed that programmes on such services are obscene or grossly offensive the monitoring body will be able to warn them and, if need be, notify the UK Government. The Government will if necessary seek recourse under any appropriate international instrument, or make representations to the Government of the uplinking country. In some cases this could lead to the conclusion of a bilateral agreement. But as a further

sanction, the Government is considering the creation of an offence of advertising on, or providing goods and services to sustain, a satellite service which the Government had previously identified in a Statutory Instrument - after notification by the monitoring body - as having consistently failed to observe the necessary minimum programme standards. It would also be an offence to procure in the UK these things to be done outside the UK, and to advertise, market, or provide decryption equipment in the UK for such a service.

Powers of direction

7.15 It was partly with the power and impact of television and radio in mind that the Government decided in October 1988 to direct the BBC and the IBA not to broadcast direct statements by representatives of terrorist organisations, or their apologists, connected with Northern Ireland. Such appearances had caused offence to many viewers and listeners, and had also provided a public platform to propagate terrorism. It was right that this should be ended. The national interest requires that such powers should be provided to the Government and for this reason it is proposed that they should be continued in any future broadcasting legislation. Such arrangements are compatible with the proposals to introduce a less regulated framework for broadcasting.

VIII. RADIO

8.1 Radio is a valued part of the lives of many people. It has a lively character and importance all of its own. It now faces great opportunities for development and expansion. Spectrum for many additional services will become available between now and 1995; decisions were needed on how the spectrum was to be used. The case for substantial deregulation of independent local radio is compelling. There is much evidence of demand and potential for additional services. It is feasible and healthy to expose the BBC to competition in the provision of national radio services.

8.2 Against this background the Government published in February 1987 its Green Paper "Radio: Choices and Opportunities" (Cmnd 92). At the national level the Green Paper saw a continuing need for public service radio broadcasting provided by the BBC, but proposed that side by side there should be additional national radio services provided on commercial lines to introduce diversity and the stimulus of competition. At the local level it proposed that the BBC should be able, subject to the overall resources available to the Corporation, to complete its chain of local stations (as it is now proposing to do), but that local independent stations, including new community radio services, should operate under broadly the same much lighter regulatory regime as envisaged for the new national services. At both levels broadcasting should increasingly take place without unnecessary simulcasting (ie where the same service is broadcast at the same time on more than one frequency).

8.3 There were over 500 responses to the Green Paper. They confirmed the view that the time was now right for major change. The Government therefore announced on 19 January 1988 (Hansard, Cols 647-649) that it intended to bring before Parliament legislative proposals based with some modifications on the Green Paper.

CONFIDENTIAL

8.4 In outline the Government's proposals are as follows. There will be scope for at least three new national commercial services operating alongside the BBC. A new VHF frequency will be available for one of these services. The BBC's existing Radio 1 and Radio 3 MF frequencies will be reassigned for the other two. The BBC will retain sufficient frequencies to broadcast its national services, whose editorial content it is seeking to strengthen. The new national services and independent local services will be subject to a lighter regulatory regime. They will not be required to comprise education, information and entertainment, although they may follow a public service pattern if they wish. Programme operators will be responsible for their own services, subject to requirements (set out in full in paragraph 7.7 of the Green Paper) of taste and decency and of avoiding editorialising and giving undue prominence to views on religious matters or matters of political or industrial controversy. At the local level licensing criteria will include financial viability, local audience demands and the extent to which the proposed services would enhance the range of programming and the diversity of listener choice. National services will be expected to provide a diverse programme service calculated to appeal to a variety of tastes and interests and not limited to a single narrow format. The proposed competitive tender procedure for national services will be subject to this test. National and local services will have to keep their promises of performance in order to retain their licences. In the interests of preserving a competitive radio broadcasting market, no group will be able to control more than one national service and more than six local services. There will be a 20% limit on radio interests in newspapers, and vice-versa. The Government will seek flexibility by setting these limits in subordinate legislation. There will be transitional arrangements striking a balance between the legitimate interests of existing stations and the importance of not delaying bringing new stations onto the air.

8.5 A new slim Radio Authority will be responsible for assigning frequencies and issuing licences to, and supervising the performance of, all independent stations. Advertising and sponsorship will be more flexibly supervised: stations will not generally be able to receive public authority funding, but there will be certain clearly defined exceptions. Stations will be responsible for their own transmission arrangements, and will be expected to broadcast on single frequencies unless there are good reasons to the contrary. The number and scale of local services will depend on local demand and wishes. The Government's proposals will create an environment in which community radio, based on a combination of local identity and cultural diversity, will be able to fulfil its potential.

8.6 The Government also proposes to provide for any satellite radio services for direct reception to be regulated by the Radio Authority under its light regulatory regime. In the case of satellite programming delivered to stations, Radio Authority regulation will bite on the stations taking the service. The Authority will also license miscellaneous radio broadcasting services, such as special event and university radio.

8.7 There is scope for a considerable expansion of radio services and a much wider range of listener choice. The Government proposes to help these developments by deregulation and the provision of a new enabling framework. At the same time, the consumer protection requirements which safeguard minimum standards will be retained. Public service radio broadcasting will continue under the aegis of the BBC. The longer term future of the licence fee was discussed in Chapter III: subject to the reforms proposed there, BBC radio services will continue to be funded from the licence fee for some years to come. But BBC radio services will be subject to a much stronger stimulus of competition. The Government's proposals will create the conditions for an expansion

CONFIDENTIAL

of radio which should benefit broadcasters, advertisers and listeners alike. In the meantime the Government, as a step towards the new radio arrangements, has endorsed in a modified form proposals by the IBA for a limited number of additional stations operating under present legislation.

8.8 In May 1988 the House of Commons Home Affairs Committee published a report on "The Government's plans for radio broadcasting" (Second Report, Session 1987-88). The Government's White Paper response (Cmnd 411, June 1988) noted the Committee's approval of the proposal to establish a new Radio Authority and agreed with the Committee's recommendation that the new Radio Authority should be funded and staffed sufficiently to enable it to enable it to carry out its functions effectively. The Government also welcomed the Committee's comment that the proposals that the new national stations should offer a diverse (but not necessarily general or untargeted) programme service, and that these should be allocated by competitive tender, struck a proper balance.

IX: TRANSMISSION

The UHF Network

9.1 The UHF transmission networks run by the BBC and the IBA give a highly effective service to the public. They reach 99.4 per cent of the households in the UK, providing them with a reliable, high quality signal. This is a considerable engineering achievement, and it is highly regarded internationally. As broadcasting enters a more competitive phase, the Government intends to see that high technical standards are maintained, while moving the UHF transmission system progressively into the private sector, and separating transmission (ie service delivery) from service provision.

9.2 The Government considers that the best arrangement in due course would be a competitive, regionally based, privatised transmission system with certain common carrier obligations. The route towards this objective is complicated at present by the way in which the IBA's system is entwined with that of the BBC, and by the fact that the BBC's transmission responsibilities are rooted in its Charter which lasts until the end of 1996. The Government proposes to discuss with the BBC, the IBA and others how the objective of moving towards a privatised transmission system might best be taken forward. It will also be considering how, given its inherent monopolistic characteristics arising in part from topography, any necessary regulatory oversight should be arranged.

9.3 Until such a system is in place the BBC will continue to have responsibility for transmitting its television and radio services. The Government hopes that the BBC will, during this transitional period, test the market for the operation of its own transmission system by commercial contractors on a regional basis. This would be consistent with the steps which the BBC has already taken to test the market for a range of support services, as part of its general policy of devoting as great a proportion as possible of

CONFIDENTIAL

its resources to programme making. This would be a useful step in itself, and would also prepare the way for privatisation in due course. The advent of new services - such as the new national commercial radio services - will open up new commercial transmission opportunities. The Government also envisages that the BBC might, in the transitional period while it retains a transmission role, be able to arrange for its contractors to offer a transmission service to new entrants.

9.4 As far as the transmission of independent television services is concerned, the Government envisages that the ITC should have a supervisory role. Overall responsibility for spectrum management must remain with Government; the ITC will have responsibility for ensuring that the arrangements made for the transmission of all national or quasi-national services - ie Channels 3, 4, 5 (and 6 if feasible) - and the proposed service using the night hours reallocated from one of the BBC's channels - for which see paragraph 3.14 - make proper use of the frequencies available. This will involve the ITC satisfying itself, among other things, that the use of the frequencies is planned as efficiently as possible. The Government does not, however, envisage that the ITC should itself discharge the responsibility for transmitting these services. In due course this responsibility would devolve to the privatised transmission system. In advance of the setting up of such a system the Government proposes that the ITC should take over the IBA's transmission infrastructure but should be required to arrange for the operation of the transmission system to be carried out by private sector contractors. It would appoint a number of different contractors, each operating in a particular part of the country, with the aim of fostering a competitive transmission industry, and preparing the ground for full privatisation. During this transitional period the main role of the ITC would be to appoint the contractors and monitor their performance.

CONFIDENTIAL

DBS

9.5 Under the existing arrangements the IBA owns and operates the uplink for its DBS contractors. The Government believes that DBS licensees should in future be responsible for the uplink themselves along with the rest of their transmission system (ie the satellite). The IBA is presently constructing the uplink for British Satellite Broadcasting and will operate it while the law remains as it is. The Government will discuss the transitional arrangements with the parties concerned.

Local services

9.6 The holders of local delivery franchises will be responsible for making their own transmission arrangements though they will be subject to ITC oversight, especially since it will be responsible for planning the use of the frequencies allocated to it for this purpose, and for providing advice to Government on coordination and international clearance for the use of the frequencies. It will be open to the operators to have an in-house transmission operation. If they choose not to undertake this themselves they may make arrangements with a separate private sector company, including those companies undertaking UHF transmission work under the arrangements described earlier in this Chapter.

X: PROGRAMME PRODUCTION

10.1 The Government's enabling framework approach will enlarge not only choice for the viewer but also opportunities for service providers, including technicians and engineers, producers, writers, film makers and those with the entrepreneurial skill to bring projects to fruition.

The independent productions initiative

10.2 Traditionally, broadcasters in the UK have themselves made the television programmes they have not acquired from abroad. Channel 4 broke this mould. The results have exceeded all expectations. Independent producers constitute an important source of originality and talent which must be exploited, and have brought new pressures for efficiency and flexibility in production procedures.

10.3 The Government has already set the BBC and the ITV companies the target of commissioning 25% of original material from independent producers as quickly as possible. Both the BBC and the ITV companies are committed to achieving this target by the end of 1992, subject to satisfaction on cost and quality. Good progress has already been made. A framework for the business arrangements for commissioning programmes has been agreed.

10.4 The Government has welcomed these developments, and the willingness of the BBC, IBA and ITV companies to embrace change. Under the arrangements proposed in Chapter VI, the Government envisages that independent producers will continue to play a greater part in programme making in the UK. So far as the position after 1992 is concerned, the Government's proposals for the independent television sector in any event envisage that no licensee should be required by the ITC to maintain any in-house production capacity as a condition of obtaining a licence.

CONFIDENTIAL

Reference to Monopolies and Mergers Commission

10.5 In March 1988 the Government referred to the Monopolies and Mergers Commission certain questions as to possible restrictive labour practices in television and film production. The Government believes that this reference - the first to be made under the provisions of Section 79 of the Fair Trading Act 1973 - will help the efforts being made within the industry - including the independent production sector - to improve working practices. The MMC hopes to be able to make its report by the end of the year. The Government will take account of its conclusions in preparing legislation and hopes that the report will help the industry to face up to an increasingly competitive environment and succeed in international markets.

10.6 The developments outlined in this chapter are an important part of a more general feature of the Government's approach, as exemplified by the proposals in this White Paper: namely, to counter the excessive degree of vertical integration which has characterised broadcasting in the UK as an industry. A greater separation of the different economic activities making up broadcasting will help to promote competition and efficiency.

CONFIDENTIAL

XI: THE INTERNATIONAL DIMENSION

11.1 Broadcasting in the UK has a high international reputation. The Home Affairs Committee commented (paragraph 18) that "from our international discussions we have come to appreciate that, whatever criticisms of programmes are made legitimately at home, abroad British television is seen to be amongst the best, if not to be the best, in the world". The quality of UK programming has led to a steady and continuing flow of international awards. The UK is second only to the United States of America as an exporter of television and cinema works. Over 80% of all European television and cinema exports come from the UK. The UK television and cinema industries regularly produce overseas net earnings, with a total of £114 million in 1987.

11.2 Until recently, the international trade of audiovisual works has been conducted on the basis of purchases or exchanges between national markets. Broadcasting in all countries has been a national industry, aimed predominantly at domestic audiences. But television will become an increasingly international medium as satellite broadcasting makes national frontiers less impermeable than before. Transnational broadcasting will allow television to play a unique role in international trade: it will become possible to have international trade in ideas, cultures and experiences with a degree of immediacy unachievable by any other means.

11.3 Television as an international medium thus offers exciting opportunities for the future. The Government welcomes the increasing readiness of UK broadcasters to seize these opportunities.

11.4 Just as all countries have developed means of regulating their domestic broadcasting services, these new technological developments make it desirable that there should also be a measure of international regulation. European countries have been

CONFIDENTIAL

considering for some time the need for such regulation. Two major concerns have been evident in this context. First, there is a need to ensure that programmes meet certain fundamental standards, particularly on matters such as taste and decency. Secondly, if harmonisation of these fundamental standards can be achieved, many countries recognise the complementary need to avoid unnecessary restrictions on the reception of foreign television programmes and thus to ensure that the free flow of information is maintained.

11.5 The Government has played an active part in these moves towards international regulation. It wishes to achieve a system which facilitates the development of an open market for television services in Europe and removes the existing obstacles to the flow of television programmes across frontiers. At the same time, the Government wishes to ensure that standards of programming within the UK are maintained and are not undermined by services received here directly from other countries. Work on the development of international instruments has proceeded on two fronts: in the Council of Europe on a draft Convention on Transfrontier Broadcasting; and in the European Community on a EC draft Directive on Broadcasting.

11.6 Through its mass media committees, on which the UK is represented, the Council of Europe has been considering the problems of the international regulation of broadcasting. At the first Council of Europe Conference of Broadcasting Ministers, held in Vienna in December 1986, and in which the UK played a leading role, it was decided that the Council of Europe should prepare a European Convention on Broadcasting with binding effect. The purpose of the Convention will be to facilitate the transfrontier transmission and re-transmission of television programme services which comply with certain prescribed minimum standards covering both programme content and advertising. The minimum standards will be enforced through a procedure enabling receiving States to take action against countries which transmit offending services.

CONFIDENTIAL

Parties to the Convention will guarantee freedom of transmission and will agree not to restrict re-transmission in their territories of all services which comply with the prescribed minimum rules. Transmitting States will for their part be obliged to ensure that programme services transmitted within their jurisdiction comply with the Convention.

11.7 Work on the preparation of the Convention is not yet complete, and final agreement has not yet been reached on the proposed code of standards. The Government is seeking to ensure that the code is compatible with the UK's national standards on taste and decency and does not impose unnecessary restrictions on the length and content of television advertising. A second Council of Europe Conference of Broadcasting Ministers is due to be held shortly in Stockholm.

11.8 The Government has also played a full part in the work taking place in parallel in the European Community on the draft Directive on Broadcasting which was introduced by the European Commission in May 1986 and subsequently revised in March 1988 following discussion in the European Parliament. The Government supports the aim of the draft Directive of assisting the television industry in Europe, including the UK, by eliminating obstacles to the free flow of television services. The draft Directive is intended to provide a limited harmonisation of Member States' laws on advertising, the protection of children, and copyright in the broadcasting field in order to break down the existing barriers to the free movement of broadcasting services throughout the Community. The draft Directive is being discussed in a Working Group of the EC Council of Ministers on which the UK is represented. It is not at this stage clear when the Council will be invited to take a final position on the draft.

11.9 These international instruments, if concluded, will contribute to the maintenance of programme standards throughout

CONFIDENTIAL

Europe, while removing the barriers which have hitherto inhibited the free flow of broadcasting services. They are consistent with the approach of the Government towards domestic broadcasting services in establishing an enabling regulatory framework to allow increased opportunities for broadcasters and viewers, while ensuring the maintenance of programme standards regarding taste and decency. Both instruments will require primary legislation to bring them into force in the UK. If their preparation can be concluded in a way which is satisfactory from the viewpoint of UK interests, the Government will seek the necessary provisions in the proposed broadcasting legislation.

11.10 If, however, it is not possible to achieve agreement in either forum - and to reach a European consensus or such matters is inevitably far from easy - the UK will still have other measures available (see the proposals in Chapter VII) to provide safeguards against unacceptable services receivable in the UK. There should be no question of UK broadcasting interests being denied access to other European markets because of any absence of agreement on international regulation: the quality of programmes and services produced in the UK makes it highly likely that they will continue to be demanded by other European and other overseas audiences. There are also increasing opportunities for co-operative ventures in programme making with broadcasters in other European countries, and the Government hopes that these will develop further.

CONFIDENTIAL

ANNEX A: FUNCTIONS OF THE INDEPENDENT TELEVISION COMMISSION (ITC)

The Independent Television Commission

1. Since, as Chapter VI explained, the Government does not believe the present federal ITV system, provided by a broadcasting authority by means of contracts with programme providers, could or should be sustained, it is necessary to consider new supervisory arrangements. In a rapidly changing broadcasting world, the main requirements for a regulatory body are flexibility; the ability to look at the television system as a whole to ensure that the various enterprises are able to compete on equal terms; and the powers to enforce statutory requirements on programme services, (in particular on the observance of consumer protection requirements on such matters as taste, decency and appropriate advertising content).

2. The Government believes that these needs are best met by a new regulatory agency: the Independent Television Commission (ITC). The ITC will replace both the Cable Authority and the IBA; but there remains a continuing need for the Welsh Fourth Channel Authority to provide the Fourth Channel in Wales. The principal functions of the ITC will be:

(i) To decide, within the statutory framework, the geographical structure of Channel 3, which will remain a regionally based service. It will stipulate both the geographical areas and the hours of the day to be covered by licences, which will be allocated by competitive tender.

(ii) Similarly to determine, within the statutory framework, the hours and nature of the franchises available on Channel 5. This will operate on a national basis. The ITC will allocate these licences by competitive tender.

CONFIDENTIAL

(iii) To deal on a similar basis with any new programme services which are subsequently introduced and also with new services using the night hours which the Government proposes to reallocate from one of the BBC's channels. The legislation will create a flexible framework for this, with the necessary powers being activated by subordinate legislation.

(iv) To provide for Channel 4, whether as its own subsidiary or as a licensee, and to ensure that its special remit is adhered to.

(v) To allocate, by competitive tender, any future DBS licences and to supervise DBS programme services.

(vi) To license satellite programme services uplinked from the UK. These licences will contain conditions enabling the ITC to exercise consumer protection oversight of such services, and to enforce their conformity with any international obligations accepted by Government.

(vii) To determine, subject to the statutory framework, the nature and pattern of franchises for local television programme services, whether delivered by cable, MVDS or both; to allocate local delivery licences by competitive tender; and to license service providers.

(viii) To supervise the transmission arrangements for independent services, in order to ensure conformity with international obligations and the observance of technical specifications designed to limit interference. In the transitional period before the establishment of a privatised transmission system the ITC will also be responsible for appointing, and monitoring the performance of, transmission contractors. It is envisaged that Channels 3 and 4 should

CONFIDENTIAL

remain universally available, while the other Channels should achieve sufficient coverage to justify the allocation of scarce frequencies.

(ix) To collect tender and levy revenue for the Exchequer.

(x) To settle with the Welsh Fourth Channel Authority, subject to arbitration by Government in the event of dispute, the subscription to be levied from operators of off air terrestrial services to fund the Fourth Channel in Wales.

3. While the IBA's DBS contractors (at present only British Satellite Broadcasting) remain in being as such the ITC will need to fulfil its predecessor's contractual obligations.

4. The ITC will assume the powers and duties of the Cable Authority in relation to any licences it has issued.

5. The ITC will have general responsibility for oversight of advertising and programme content. It will issue a code governing advertising and sponsorship. The Commission will have a duty to plan for and arrange adequate provision of schools broadcasts by the independent television sector. It will also have a duty to ensure that there is at least one body effectively equipped and financed to provide news on Channel 3. The ITC will also be responsible, in association with the Broadcasting Standards Council, for establishing a code governing the portrayal of violence and on acceptable standards of decency. It will be responsible, through its licence conditions, and the period reviews proposed for the operators of services on Channels 3, 4 and 5, for enforcing both these and the positive programming obligations, such as the requirement of diversity on Channels 3 and 5. It will have at its disposal sanctions ranging from warnings to licence withdrawal. The Government is considering further whether it should also be able to impose financial penalties.

6. The Government envisages continued controls on ownership, including concentration of ownership. The ITC will be responsible for enforcing these rules, both at the stage of initial allocation of licences and in subsequent changes in share ownership.

7. The ITC will be responsible for collecting from its licensees finance for the functions at present carried out by the Broadcasting Complaints Commission. It will itself be financed from licence fees, to be paid in instalments during the currency of the respective licences, in accordance with a formula determined in advance, so that those competing for licences are aware of the extent of this liability. The fees must also meet the costs of any work undertaken for the ITC by the Radiocommunications Division of the Department of Trade and Industry, together with the ITC's share of the costs of the Government's domestic and international radio regulatory activities. It will be possible for the ITC to apply differentiated scales of fees but the formula adopted should not provide for disproportionate contributions by the more successful licensees. The ITC will also charge its licensees rental for their transmission facilities, while these remain its direct responsibility.