

CCB/UP  
RG

PRIME MINISTER

## BROADCASTING LEGISLATION: MISC 128(87)10

## CONCLUSIONS

You will wish the Group to reach a decision, for working purposes, on

\_\_\_\_\_

a. whether there should be two broadcasting Bills in the present Parliament; and \_\_\_\_\_

b. whether the main provisions on the ITV system and Channel 4 should be in the first Bill, or postponed to a Bill in the 1989/90 session.

2. In the light of the decision on the timing of legislation, you will wish the Group to decide on the timing of a White Paper. If the ITV provisions are to be enacted next session, then there will have to be a White Paper around Easter next year. But if the ITV issues are held over to a second Bill, then it would be an option to postpone a White Paper until next Autumn or later.

3. A White Paper next Easter would probably involve MISC 128 meetings at something like the rate of one a month between now and then. If the Home Secretary presses for this option - as he probably will - you may wish to probe the immediate workload that this would make for you and other colleagues. One way of keeping up the momentum without requiring a rapid succession of firm decisions might be a Green Paper.

## BACKGROUND

4. The current review of broadcasting policy took the Peacock Report as its starting point and has generally followed the lines that Peacock indicated. This has involved decisions on radio

deregulation, BBC financing and ITV financing. In order to pursue the Peacock recommendations on financing by subscription, the Group commissioned a study by consultants on which the Home Secretary will be able to make proposals at the November meeting. When decisions are taken on that, the bulk of the original Peacock agenda will be completed.

5. In the meantime, however, it has become increasingly clear that policy is being developed against a very rapidly changing technological background. Peacock's assumptions about the development of cable, in particular, have come to look more and more fragile since the report was made. The rapid expansion of satellite broadcasting now looks much more realistic with DBS broadcasting looking a particularly concrete proposition in the form of the BSB consortium. Most importantly, MMDS broadcasting (on which a preliminary study has now been put in hand) has emerged in the last few months as a plausible, and revolutionary, development, albeit with considerable implications for telecommunications policy. And interest has surged in a possible fifth UHF channel.

6. Against all that background you felt after the last MISC 128 meeting that it might be a mistake to drive flat-out towards a major broadcasting Bill next session. On the one hand, that might require a heavy programme of MISC 128 meetings considering complex issues over the winter. And, on the other hand, there could be advantage in holding over the major legislation until the ferment of technological development presented a clearer picture. You therefore commissioned the present paper by the Home Secretary and the Trade and Industry Secretary setting out the options for legislation.

#### MAIN ISSUES

7. Some of the Group's major decisions (eg on the BBC licence fee) do not need primary legislation. Equally, some of the topics for legislation set out in paragraph 2 of MISC 128(87)10 are second-order points that you need not trouble about at this stage.



The main blocks of topics on which legislation will certainly be needed during this Parliament are as follows

- Standards*
- i. Statutory establishment of the Broadcasting Standards Council (plus other measures of programme regulation, including implementation of a Council of Europe convention if that is concluded satisfactorily).
- Radio*
- ii. Reorganisation of radio (on which only a few minor points now remain to be finalised).
- Levy*
- iii. Reform of the ITV system (including action on the levy and franchise arrangements) plus reform of Channel 4.

In addition, provisions on subscription will probably be needed. The Group has yet to take decisions on this, but it is very likely that the only legislative action needed will be fairly simple enabling powers. All these topics could be ready for a Bill from next session onwards.

8. As well as the topics mentioned above there is the likelihood of legislation being needed to regulate MMDS broadcasting and/or the establishment of a fifth UHF channel. But this legislation could not be ready before the 1989-90 session even if decisions in principle are taken early next year.

#### OPTIONS OF TIMING

9. The one fixed point in all this is that there must be legislation on the ITV issues before the end of the 1989-90 session, so that the new provisions bite on the franchise periods running from 1 January 1993. All other options are open to you, subject only to your manifesto commitment. What the manifesto promised was "A major new broadcasting Bill in the new parliament. It will enable the broadcasters to take full advantage of the opportunities presented by technological advances and to broaden the choice of viewing and listening." The manifesto also promised action to ensure 25% use of independent producers by ITV and the



BBC; stronger and more effective arrangements to enforce broadcasting standards, especially on sex and violence; and the removal of the exemption under the Obscene Publications Act.

10. The paper by the two Secretaries of State assumes that there will need to be two Bills and that the options for them look like this

Option 1

1988-89 Bill

Programme Standards  
Radio  
ITV issues, Channel 4 etc

Option 2

1988-89 Bill

Programme Standards  
Radio

1989-90 Bill

MMDS/5th Channel

1989-90 Bill

ITV issues, Channel 4 etc  
MMDS/5th Channel

There is, perhaps, a further 'Option 3' under which there would only be a Bill on programme standards next Session, with everything else being taken in a large Bill in the 1989-90 Session. That is conceptually quite a good model, since the programme standards issues are of a different character from everything else under consideration, as well as being politically urgent. But it would leave the Home Secretary with a very thin Bill next Session.

#### MMDS AND INTERACTION WITH TELECOMMUNICATIONS POLICY

11. You will remember that Peacock made a casual recommendation that the present regime for the national telecommunications systems (BT and Mercury) should be revised, so that they could carry television services on a common carrier basis. This necessarily has similarly fundamental implications for the regime applying to cable operators. In the light of the Peacock recommendation future telecommunications policy was put under review by the official MISC 131 group reporting to the Ministerial Committee E(TP). A study by consultants was commissioned through



that machinery, and it is hoped that broad recommendations about the long term future for telecommunications should be before Ministers during February next year.

12. There is clearly a problem in keeping the development of broadcasting and telecommunications policy in step against a rapidly evolving technological background. If no action is taken on either front until all the possible implications are teased out in detail, then there is a risk of taking no action at all. There is, for example, a potentially complicated argument about the reorganisation of television transmission arrangements, which has not yet begun to run but which could well develop into a fairly major exercise.

13. You will doubtless wish to be satisfied, on the other hand, that key broadcasting decisions are not taken so early that they pre-empt the room for manoeuvre in developing telecommunications policy. The basic question that the telecommunications review will have to address is whether the Government should intervene to foster a national broad band network or whether the development of telecommunications should essentially be left to market forces. No question in this field is likely to have as important an impact on cable as the decision whether or not to authorise MMDS broadcasting.

14. The decision in principle on MMDS, however, cannot be allowed to drift very far into next year because of its importance for DBS broadcasting, as well as for the cable industry. The BSB consortium has attracted considerable private investment and will need more if it is to start DBS broadcasting, as planned, in 1989. It will expect to know as soon as possible whether the Government will encourage a scenario of greater competition and wider range of programme services, through MMDS and/or a fifth UHF channel.

15. It would appear, therefore, that the key decisions on MMDS and/or a fifth UHF channel will need to be taken in a fairly narrow window around next Spring, when the technical reports on these possibilities are available and when the first presentation



on the long-term future for telecommunications will also have been made. The Trade and Industry Secretary is presumably content that an early White Paper would not clash unmanageably with the review of telecommunications policy since he has agreed to this option being displayed in MISC 128(87)10, but you will doubtless wish to probe this with him.

#### THE BALANCE OF ARGUMENT

16. There are basically two reasons for delaying the ITV provisions to the 1989-90 Session. First, this would allow more time to take account of the results of the review of telecommunications policy (even if, as suggested above, the main decision here - that on MMDS - will have to be taken fairly early next year in any event). Second, it would be conceptually more complete to present Parliament with the provisions that will govern the ITV contractors during the 1990s alongside proposals for other aspects of the broadcasting environment. The Trade and Industry Secretary will probably argue for this slower timetable.

17. The Home Secretary, on the other hand, will press for taking as much as possible of the legislation in the earlier Session. He is likely to argue that technical developments in broadcasting will continue to evolve rapidly and that one has to draw a line across the page at some point. He will say that the Government has stimulated expectations of major policy changes, that a coherent package of broadcasting policies is now almost within his grasp and that if these are allowed to moulder on the shelf for another 2 years the Government will lose all the initiative. Even if it is decided to hold over the ITV legislation to the 1989-90 session, at the very least the Home Secretary is likely to press for a comprehensive White Paper next Easter (and it is the timing of a White Paper, rather than legislation, that will dictate the weight of forthcoming MISC 128 business). You may wish to explore whether a Green Paper around next Easter would be enough to meet the Home Secretary's worries.

18. The business managers are unlikely to have any major worries about broadcasting Bills in both the second and third Sessions of the Parliament, and they would certainly not want to argue that policy should be steered by their preferences about the distribution of weight between the two Bills. Other things being equal, however, they would probably like to see a substantial Bill heading towards the third Session of the Parliament, when business may be thinning out.

## HANDLING

19. You will wish to ask the HOME SECRETARY and the TRADE AND INDUSTRY SECRETARY to introduce their paper. You may particularly wish to ask the Trade and Industry Secretary about the interaction with telecommunications policy, and in particular when a decision may be taken on MMDS.

20. You may then wish to ask the LORD PRESIDENT to comment on the various options, from the point of view of the business managers.

21. The CHANCELLOR OF THE EXCHEQUER may have views.

22. If a White Paper, or Green Paper, around next Easter attracts general support, you may wish to ask the HOME SECRETARY how much more work he will need to bring to MISC 128 in order to meet that target.

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A J LANGDON

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