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David Norgrove Esq  
Private Secretary  
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NBRN.

Dear David

My Secretary of State had a follow-up discussion with John Jackson following the Prime Minister's seminar on 21 September. Mr Jackson has since sent in a paper summarising his views, which he intends to use as the basis of an address to the Cable Television Association later this month.

Lord Young thought the Prime Minister and MISC 128 colleagues would be interested to see a copy of this paper, and one is enclosed.

I am sending copies of this letter and its enclosure to the Private Secretaries to other members of MISC 128 and to Sir Robert Armstrong.

Yours

Jeremy Godfrey

JEREMY GODFREY  
Private Secretary

JG7ABY

UK TELEVISION BROADCASTING

A FRAMEWORK FOR THE NEXT TWENTY YEARS

1. We have an opportunity in the UK to accelerate the development of a vigorous and successful broadcasting industry which will employ people, move out into world markets and provide greater individual choice for the public. The opportunity lies in both hardware\* and software/programmes\*\*.

2. The opportunity is there because of:-

A growing and exciting enterprise culture in the country as a whole which is releasing a flood of previously frustrated creative energy.

and

New technological developments which make possible new and additional ways of creating, transmitting and storing visual images.

and

A substantial acceleration in the growth of expendible income devoted to leisure and entertainment.

All these will encourage broadcasters to adopt the new technologies and compete in an expanding market place, if they are permitted to do so.

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\* studio and production equipment, transmission equipment, encryption equipment, reception equipment (including satellite and MMDS reception equipment and decoders) and hardware connected with subscription management systems

\*\* all material on tape or film suitable for showing on TV or for recording including, in particular, new forms of programming made possible by advances in the technology of creating computer generated images as well as management software connected with subscription and pay per view.

3. For the opportunity to be taken to the greatest possible extent, a framework is needed which will permit vigorous competition and stimulate a continuing dialogue between technological advance and commercial possibilities.

To a considerable extent, broadcasters will always use a limited national resource - e.g. the radio spectrum or the right to dig up roads in Birmingham. So there are public interest aspects in addition to those raised by the public service broadcasting question and the need to protect the public in the areas of violence, obscenity etc. The framework must reflect these aspects also in a way which admits open public accountability.

The competition which is needed will take place between broadcasters using competing transmission and storage systems, for two different sources of income (advertising/sponsorship and subscription/pay per view) and by offering choice to the consumer.

It is essential that the framework allows this interplay between market forces and technological advance to work unhindered. It must not assume in advance that one technology will dominate others or that the public will necessarily prefer "free" television over that available on a subscription or pay per view basis.

The technologies which are available make possible competition between broadcasters using UHF terrestrial broadcasting, direct broadcasting by satellite, cable systems linked by and with MMDS (which will be fed increasingly by low/medium power satellites as well as by locally produced programming) and storage systems such as video tape and video disc. All these have distinct advantages and disadvantages for the consumer and would find their own level in the market.

4. There has been much comment on the question of spectrum scarcity in relation to UHF terrestrial television. We have got ourselves into a position in the UK in which, in marked contrast to other countries, we only have four terrestrial TV channels. This is partly because of the policy of "universality" but it is partly because of a conspiracy of silence. The conspiracy has been there because we have no profit making enterprises having to make their way in the world by exploiting the radio spectrum for TV purposes directly or indirectly by doing business with people who want to operate in that spectrum. The IBA establishment at Crawley Court with its mown lawns and elegant fountains, taken by itself or together with the matching BBC establishments, certainly does not constitute an entrepreneurial organisation.

In considering the framework needed, a clear case can be made for removing from the BBC and IBA responsibility for investing in and providing TV transmission facilities. We could have instead a new corporation, which could be "privatised", with the task of making transmission facilities available to broadcasters on a commercial basis, e.g. by making a leasing charge - possibly linked to income or profit. This corporation would have a starting position in UHF terrestrial broadcasting but could be expanded to embrace the new transmission technologies. Such a corporation could purchase BSB's satellites from it and lease back three transponders. That would go a long way to unlock the future position on the two DBS frequencies still unallocated. It could invest in cable and MMDS systems and lease them to broadcasters. This might assist the growth of cable/MMDS significantly. The corporation might also be able to negotiate access to BT's conduits. BT is using a priceless national resource. Should it be allowed to sit on all the eggs in a mindless monopolistic way or should it be forced to share with others the advantage it has inherited as a matter of historical accident? Of course, DBS and cable/MMDS broadcasters could invest in their own transmission systems if they wished or lease them from others. The transmission corporation would probably have to be based on an initial monopoly of UHF terrestrial transmission capability, but that monopoly need not last

for ever. Talking of monopolies, why should BT and Mercury have an exclusive position in relation to satellite up linking etc? One can also envisage the transmission corporation competing or enabling competition with BT and Mercury in other areas concerned with the transfer of video information and it could also stimulate competition with them in the general field of telephony and information transfer.

5. The two sources of income that broadcasters will be competing for are advertising/sponsorship and subscription/per pay view - leaving aside straight sale to consumers of stored images, (video tape and video discs). Another reason we are sitting with a stunted broadcasting industry now is that there has been a monopoly of access to the advertising market. It is essential that this monopoly is broken and that no similar monopoly is created in the case of subscription/pay per view. Pay per view may become a very important activity in future in view of probable demographic change and the continuing associated decline in cinema audiences. A monopoly of access to the subscription market would extend automatically to pay per view and could lead in turn to the denial of access for other broadcasters to certain material, eg. feature films, sporting events etc. As competition and choice increases there seems to be no reason to deny the ITV

companies and their successors, as well as the BBC, access to the subscription market.

6. It is important that broadcasters using different transmitting systems be enabled to compete fairly and freely for access to programming material. This is one of the reasons that the "must carry" rule should be abolished in its totality and that no one, including the BBC, should be allowed to purchase national events such as the Cup Final or the Derby on an exclusive basis. The purchase of particular rights, e.g. cable rights in addition to broadcasting rights with the intention of withdrawing them from the market is an obnoxious practice, particularly when used by a monopolist. "A tyrant is a giant who uses a giant's strength."

Moreover, in order to stimulate the development of the programme making industry, there must be competition between programme makers for the custom of the broadcasters and limitations placed on the ability of large individual broadcasters to lock up access to the screen by producing too much material for themselves or on a swap basis with other broadcasters. The bigger the "franchise" the broadcaster has, the more easy it is for him to create (and justify) his own vertical monopoly. In the case of the BBC, this can be dealt with by legislation but there is also a case for avoiding this by

increasing significantly the number of commercial franchises available and, thereby, reducing the individual size of those franchises. Cable/MMDS presents no problem in this respect - indeed it should thrive on a multiplicity of local systems - and there is likely to be external competition in the case of direct broadcasting by satellite. It is in the case of terrestrial UHF systems that action could be taken and the number of franchises increased substantially both by geographical division and also by time division. There seems to be no reason, for example, why the franchise area presently occupied by my old friends at Central, should not be divided between both East and West Midlands and by weekday, weekend and night time. Some will say that such an approach would destroy a national ITV service on a networked basis. It is not clear why that should be the case - networking would have to be organised in a different and more transparent way. Channel 4 has demonstrated one way to run a national service with access to a multiplicity of production facilities. The creation of a common strand to be used by a large number of regional broadcasters should not present too serious an organisational problem and normal market mechanisms would take care of the question of price - the larger his potential audience and its value the more a broadcaster would pay for programme material. Householders in small "poor" areas would not be deprived of material to the benefit of householders in large "rich" areas. The funding of a national news service like ITN does not



depend on having a few large shareholders/customers - many small shareholders/customers will do as well. And so far as regional programming is concerned, the small ITV companies seem to put up a good show and independent producers will be happy to compete in this field also if the demand is there.

7. There is the question of public service broadcasting, whatever the agreed meaning of that may be from time to time. At the moment we have in the BBC two national (or virtually national) television channels, massively funded by the licence fee. It is possible that the generally accepted boundaries of public service broadcasting will narrow over time as technology and competition increases the choice available to the public. And the willingness of the public to pay large sums of money on a taxation basis for a shrinking service may decrease. However, these things will happen slowly and now that the question of the level of the licence fee has been settled for the time being, no harm can come of allowing the BBC time to adapt to the changes which will develop over a considerable period. Indeed a heavily funded BBC conscious of "public service" and competing for audience attention should be an important part of the answer to fears about a decline in standards as more competition is permitted. Not enough is made of this. People who point gloomily to the US and Italy should remember the role the BBC could and should play.

The case of Channel 4 is different. Its present remit is defined in terms, broadly speaking, of what others do not do. It is not possible to "privatise" directly or indirectly a body with such a remit and it is questionable whether any broadcaster with such a remit can last for long with any form of "natural" life. This must be a matter of public policy. If it is desired to maintain Channel 4 in its present form, in the context of public service broadcasting, in addition to two BBC channels, then that can probably only be achieved by maintaining Channel 4 in some way as it is now, i.e. as an artificial adjunct to regional broadcasters using the UHF terrestrial system. In that case, should there be a fifth terrestrial channel to compete for advertising and subscription income? If such a situation was not seen as desirable - and one can ask what BBC2 should be doing - then Channel 4 could become the basis of a commercial national service in full competition with everyone else and subject to the full rigours of competition. It would then have to adopt a positive remit and judge for itself whether or not to go for a niche market. In that case, perhaps a fifth terrestrial channel would be unnecessary.

8. In any industry competition is encouraged by making it as easy as possible for new entrants to come in and, of course, existing participants to move out. Of course, public policy demands that limited national resources are made available in a fair way which reflects the general

interest, but there seems to be no sensible argument against awarding franchises on the basis of competitive tender. Tendering would obviate the need for the levy and the distorting evils which go with it. The price tendered would, of course, reflect any rent payable to the transmitting corporation. Tenderers would have to produce evidence of their financial strength and there could be rules dealing with the question of the nationality of broadcasters and the extent of permitted involvement in broadcasting. The regulating body (see post) could have power to disenfranchise and declare persons and corporations ineligible for involvement in broadcasting. These safeguards should remove objections to the direct or indirect acquisition of franchises from franchisees.

9. There remains the question of regulation. At present we have positive (thou shalt) regulation. This is the justification for maintaining the legislative fiction of the IBA as "broadcaster". A competitive environment only admits of negative (thou shalt not) regulation. "Thou shalt" must be looked after by the publicly funded BBC with its public service remit and, perhaps, also by that artificial corporation Channel 4. Negative self regulation is likely to work imperfectly for a number of reasons. The lack of adequate sanctions is one of them. There seems little alternative therefore to self regulation underpinned by a regulatory body separate from the broadcasters and with the power to impose sanctions

in the case of the broadcasting of obscene material or other material which is generally agreed to be unacceptable in terms of public policy. The sanctions could be penal and, as already indicated, could include suitable measures to disqualify people or companies from future involvement in broadcasting. All broadcasters, including the BBC, would be treated alike for this purpose and would be subject to exactly the same rules. So far as material coming from overseas is concerned, probably delivered by satellite, there is no problem with prevention in the case of re-broadcasting by cable/MMDS or by UHF terrestrial systems. In the case of DBS reception, if the overseas material imported is illegal, then no subscription would be collectable in practical terms and, if it was financed by advertising, it could be made an offense for an advertiser to purchase and use air time on a channel carrying noxious material. This regulatory body could also underpin a system of self regulation with regard to advertisements and their content.

10. Sketched out above is a framework which rests on three bodies. A commercially oriented profit making transmission company, a non-profit making franchising body, (with, perhaps, some grip over minimum technical standards) operating openly, publicly accountable and

selling franchises by tender and a regulatory body underpinning a system of self regulation whose remit could also cover stored material, video tape, video discs and advertisements. Within this framework all broadcasters, including the BBC, to a considerable degree, would operate in competition with one another. The proposal involves an immediate removal of the BBC's transmitting role (and a gradual but significant change in its role as a broadcaster), the immediate abolition of the IBA and of the Cable Authority and a re-allocation of those of their activities which are still useful. The franchising body looks very like a re-born and enlarged Cable Authority.

These changes could be brought about relatively easily. There are two factors which would assist in this. The broadcasting industry could be a rapidly expanding industry and expanding industries easily accommodate change. Secondly, it is an industry in which many of the people employed are very "mobile". It might be necessary to have an "implementing" commission which organised the change from the present situation to the new system within a timescale laid down by Parliament.

J.B.H. JACKSON

28 October 1987