



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

15 January 1988 (DT)

GA
ccBG

note

Comesh follow
the discussion
with B. Griffiths
and A. McDonald

PRB

**HOUSE OF COMMONS HOME AFFAIRS COMMITTEE:
MEMORANDUM BY THE HOME OFFICE ON BROADCASTING**

Thank you for your further letters of 14 and 15 January providing revised drafts of the Home Office Memorandum. As I mentioned on the telephone the only remaining comments on the latest draft are:

- (i) in paragraph 1 to change the present tense to the past tense in all the sentences other than the third.
- (ii) amend the last sentence of paragraph 7 to read - "It intends to strengthen the oversight of programmes without removing the obligation of the broadcasting authorities to maintain standards."

(PAUL GRAY)

Colin Miller, Esq.,
Home Office.

070
From: THE PRIVATE SECRETARY

CBG ✓



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

January 15 1987

Dear Paul,

Attached is a further version of the Home Office Memorandum incorporating some final amendments the Home Secretary has made to paragraphs 41 - 44, with a view to strengthening the tone of the draft.

I have not copied this to members of MISC 128 as yet, until we have an agreed version.

Yours ever,

Colin

Paul Gray Esq.

15/1/88

HOUSE OF COMMONS HOME AFFAIRS COMMITTEE

INQUIRY INTO THE IMPLICATIONS OF DIRECT BROADCASTING BY
SATELLITE AND CABLE TELEVISION; THE FUTURE OF PUBLIC SERVICE
BROADCASTING; AND THE POTENTIAL OF SUBSCRIPTION

MEMORANDUM BY THE HOME OFFICE

THE REGULATORY BACKGROUND

1. Broadcasting ^{has} presents ^{ed} problems of regulation and control which are quite different from other forms of publication. The radio frequency spectrum ^{has been} is limited, and access to the airwaves ~~has to be controlled~~ to prevent interference between nearby broadcasting stations. In addition, broadcasting is a medium of great power and intimacy. It is capable of addressing a mass audience in the privacy of their homes, and those with access to the airwaves therefore have ^{ed} a specially privileged position. The two issues of spectrum scarcity and the power of broadcasting have been central to the regulatory arrangements which have been adopted in the past.

2. However, recent technological developments, and particularly the use of satellites and cable for delivering television services, have shown how one of these central issues, the problem of spectrum scarcity, may in due course be to a large extent overcome. They could well also open up significant new opportunities for the UK in the international market place. The implications for the regulation of broadcasting, including the growing internationalisation of broadcasting, are an important element in the development of Government policy. These matters are discussed in this paper.

The Public Service Principle

3. The Government is considering a number of wide-ranging reforms to the existing regulatory mechanisms in the interests of creating a more competitive broadcasting environment. In order to understand the background to this review of policy it is first necessary to outline the principle which has historically underpinned broadcasting policy in the UK: the public service principle. Different countries have adopted

various approaches to the regulation of broadcasting ranging from full state control on the one hand to little more than control of the allocation of frequencies on the other. In the United Kingdom, following the recommendation of the Crawford Committee of 1926, a system of public service broadcasting was established, the central principles of which continue to apply to services regulated by the BBC and Independent Broadcasting Authority. These are that:

(a) broadcasting is a national asset which should be used for the national good rather than for the benefit of particular interest groups;

(b) responsibility for broadcasting should therefore lie with one or more broadcasting authorities, appointed as the 'trustees for the national interest' in broadcasting;

(c) viewers (or listeners) in all parts of the country who pay the same licence fee should be able to receive all public service channels: the concept of universality;

(d) the broadcasting authorities should be free of Government intervention in their day to day affairs and in the content of their programmes.

Programme Standards

4. Because the broadcasters are granted a semi monopoly position in providing broadcasting services, and in recognition of the power of broadcasting, they are required to meet obligations as to the standard and content of their programmes which are not applied to other forms of publication. In the case of the Independent Broadcasting Authority these have been given statutory form in successive broadcasting Acts, the latest of which

is the Broadcasting Act 1981. Although not spelled out, broadly similar standards are expected of the BBC.

5. It is convenient to identify two separate groups of obligations:

(a) Public Service Obligations. These require that:

(i) The service should inform and educate as well as entertain;

(ii) High standards should be observed both in technical and in other matters;

(iii) Programmes should cover a wide and balanced range of subject matter in order to meet all interests in the population (ie pop music as well as classical; opera as well as soap opera);

(iv) There should be a wide distribution for programmes of merit;

(v) A proper proportion of the programmes should of British (now EC) origin and performance;

(vi) That a suitable proportion of material should be calculated to appeal specially to the tastes and outlook of the persons served by the station including in languages other than English (ie ethnic minority or Gaelic or Welsh communities);

(vii) Local sound broadcasts in the same area should not consist of identical or similar material;

(b) Consumer Protection Obligations. These require that:

(i) Programmes should not offend against good taste or decency, encourage or incite crime, lead to disorder, or be offensive to public feeling;

(ii) Special rules should apply with regard to depictions of violence and other matters at times when large numbers of young children may be in the audience;

(iii) Sufficient time should be given to news and news features, and all news presented with due accuracy and impartiality;

(iv) Due impartiality should be preserved on the part of the persons providing the programmes as respects matters of political or industrial controversy, or relating to current public policy, taking a series of programmes as a whole;

(v) A variety of other minor provisions are observed including ones to prevent the broadcasting authorities expressing their own opinions on controversial matters (except broadcasting matters), to prevent subliminal advertising, to control the value of gifts offered in programmes, and to regulate religious programming;

(vi) Detailed requirements are observed as to advertising;

These obligations are set out in sections 2, 4, 5 and Schedule 2 of the Broadcasting Act 1981.

6. In the case of the terrestrial television and radio services provided by the BBC and the IBA, all the obligations outlined above apply. Direct broadcasting by satellite (DBS) is also treated by the Cable and Broadcasting Act 1984 as a form of public service broadcasting, though some of the requirements are relaxed. The same Act creates a new regime, with a lighter touch, for cable, partly in recognition of the fact that spectrum scarcity considerations are less relevant: cable television is not provided by a broadcasting authority: it is, by contrast, supervised by a regulatory agency, the Cable Authority, on broadly consumer protection grounds. A table setting out the obligations applying to the different media is at Annex A, and the implications are discussed more fully below.

The portrayal of sex and violence

7. Recently there has been much public concern about the broadcast portrayal of violence and sex, particularly on television. The broadcasting authorities have recognized this concern and have taken steps to enhance the enforcement of programme standards. The Government welcomes the action taken, but believes that further measures are needed to meet public concern. It does not, however, believe that the answer lies in taking away the broadcasting authorities' enforcement responsibilities. It intends to strengthen the oversight of programme standards in a way which re-inforces rather than ~~undermines the rôle~~ ^{what he should} of the broadcasting authorities. ^{to raise} ^{standards}

8. Accordingly the Government is in the process of establishing an independent Broadcasting Standards Council (BSC) to monitor the portrayal of violence and sex on television, radio and video. This positive step to re-inforce the oversight of programme standards has attracted a considerable volume of favourable public comment. The BSC will not be a regulatory body. Its job will be to act

as a focus of public concern - both generally and, where it considers it necessary, in relation to individual programmes - and to comment on patterns and trends which may range across the areas for which the individual regulatory bodies are responsible. The BSC will also be able to stimulate studies and research on such matters as the nature and effects of the portrayal of violence and sex on television, radio and video. The BSC is being established in advance of legislation but will be put on a statutory footing at the earliest opportunity.

9. The Government has also indicated that it sees no case for retaining the current exemption of broadcasting from the Obscene Publications Act 1959, and proposes to remove it. This does not imply any relaxation of the stricter consumer protection standards which broadcasters have been required to observe. But the Government considers it to be wrong in principle that broadcasters should continue to be above the law in this respect. Cable programmes are already subject to the 1959 Act.

NEW TECHNOLOGICAL INNOVATIONS

10. The past 5 years have seen several technical developments which are leading to a significant re-evaluation of broadcasting policies. For the most part their importance lies in the fact that they offer the opportunity of a vastly greater number of television and radio channels than those available through existing means of transmission. In the case of satellite transmissions, there is also the capability for cross-frontier broadcasting. These technological developments have played a part in stimulating the Government's current review of policy. They raise a number of questions about how new channels should be employed and how they should relate to the established pattern of broadcasting. This section discusses some of these developments and their implications. However, it should be borne in mind that

these technologies are very new and it is very difficult to anticipate the ultimate direction and likely timetable of developments and what, if any, further changes in regulation may be necessary.

Cable

11. The transmission of television broadcasts by cable goes back to the 1950's and 60's where it provided commercial opportunities for bringing television to areas where off-air reception was poor. These early cable systems had a very limited capacity: they could usually carry the four off-air channels and one or two additional channels which were often used for sound radio, and in a few cases for a locally based television service. These systems, many of which still exist, are known as 'narrow-band' systems.

12. Recent innovations (largely concerned with the use of coaxial and fibre optic cable and electronic switches) now enable new 'wideband' cable systems to carry a very much higher number of television channels as well as other information in the form of data or text. These channels can also carry 'return' signals from the subscriber and hence have the capability for interactive services. A fully developed national network of local cable systems capable of offering a full range of telecommunications services is considered by many to be an important part of our future telecommunications infrastructure.

13. The current regulatory framework is intended to encourage private enterprise to develop any such network. It is a light and flexible framework, designed to safeguard telecommunications and broadcasting policy, but tailored to what is practical and economic. Returns on investment will come from selling services via the cable system, and from rental payments, subscriptions, advertising and sponsorship. It is recognised that in the

early years the bulk of income will come from the sale of entertainment-based television services, and from advertising carried within these services.

14. The framework for cable is set down in the Government's White Paper 'The Development of Cable Systems and Services' (Cmnd 8866, HMSO 1983) and in the Cable and Broadcasting Act 1984. This establishes a Cable Authority with a dual responsibility both to promote the development of wideband cable and to supervise the content of television programmes carried on cable systems. In its first capacity the Cable Authority is empowered to award franchises to cable operators which give them the exclusive right to provide cable services within a defined geographical area (usually around 100,000 homes) for a period up to 15 years. In return the cable operator must adopt specified technical standards for the system and must meet agreed timetables for the completion of the network within his area. The arrangements are intended to prevent the 'cherry-picking' of lucrative areas. The precise regulatory arrangements are shared between the Department of Trade and Industry, OFTEL and the Cable Authority.

15. In its second capacity the Cable Authority has some similarities to the BBC and the IBA in its regulatory responsibilities for programme content. The 1984 Act deliberately did not however place on the Cable Authority many of the positive public service responsibilities of the broadcasting authorities. It is not required, for example, to see that cable programmes inform and educate as well as entertain; nor to see that they cover a wide range of subject matter. Equally important, with a large number of cable services in operation each offering possibly 20 or more television channels, the Cable Authority is not expected to operate a close supervision on everything that is disseminated. It does not itself

make the 'broadcasts' and its regulatory role is more generalised and reactive.

16. The growth of new cable systems has been slow because of hesitancy on the part of financial backers at the high capital costs of installing the cable network. At present ten wideband cable systems are operating and about 50 narrowband, with a total number of subscribers of about 220,000 (out of a total of about 1.28 million homes passed by cable). Cable subscriptions range from £6-£28 per month, depending upon the number of channels a subscriber wishes to take. At present most wideband systems offer about 16 channels in addition to the four existing BBC and IBA services. A typical programme schedule is at Annex B.

Satellite services

17. Because of the curvature of the earth, the obstruction of hills, and so on, (as well as international limitations on the permitted power of transmitters) a network of over 1,000 transmitters and relays is currently required to broadcast each of our four terrestrial television channels throughout the United Kingdom. On the other hand a satellite positioned in geostationary orbit can transmit a signal in a pattern (or 'foot-print') sufficient to cover a very large area; each satellite can carry a number of television and sound channels.

18. Satellite technology, and especially its use by television providers, is still in its early stages. It is not yet clear how it will develop in the long term, nor how it will affect the established pattern of broadcasting. At the present time for historical and technical reasons two distinct forms of satellite service are in the course of developing. Both are the same in technical principle: a signal carrying the television programmes is beamed up to the satellite, where it is amplified and re-transmitted towards earth. The

difference between the two services lies in the power with which the satellite re-transmits the signal, the frequencies it uses and the means by which it reaches individual subscribers.

Low and medium powered satellite services

19. These services employ capacity on telecommunications satellites using frequencies and facilities which are the same as those used for international telephone and data links. So far they have not been operated as direct broadcast services, but have been primarily designed to be received at the head-ends of cable systems from where they are re-distributed to individual subscribers.

20. Most of the services currently available are commercial operations offering specialised entertainment programmes with a minimum of production costs. There are now eight such services originating from the United Kingdom covering feature films, pop music videos, sports, children's programmes and 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 is of American origin. In addition there are a number of other services currently available in the UK from other European countries, and it is also possible to receive Russian language services.

21. The commercial providers of these services may finance their operations in three ways: they may make a direct charge to cable operators who take their services; secondly, 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 he may choose to insert his own advertisements in the gaps; finally, they may also seek to sell their services to individual

subscribers who are equipped with the necessary receiving equipment. This is a relatively new development and is discussed further below.

Direct reception of low and medium powered satellite services

22. There is no technical barrier to prevent anyone within the area of a satellite's foot-print from receiving its signals. The only inhibitions are practical: the receiving dishes are at present large (at least a metre in diameter) and expensive (£700 to £2,000 or more), and would require planning consent to erect. In some countries it is unlawful to 'eavesdrop' on what are technically private telecommunications signals, but in the United Kingdom the Government announced in May 1985 that it was prepared to permit individuals who wished to do so to receive television signals from telecommunications satellites, on payment of a once only charge of £10 for a television receive only (TVRO) licence and assuming that they were able to obtain planning consent for the receiving dish. Over 4,000 TRVO licences have been issued. It is not yet clear how the direct reception of low and medium powered satellite television services will develop. 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, has announced that it will launch later this year a medium-powered satellite called 'Astra' with a capacity for 16 channels which will be capable of direct reception by individuals with relatively cheap, small (60-85 cm) dishes. It is understood that British Telecom International will be operating the uplink (ie transmitting the signal from earth to the satellite) for 11 of the 16 channels: in that event they will be transmitted from the UK, though the programme material would not necessarily be British in origin.

23. At present the primary purpose of low-powered satellite services is to feed cable systems, and the services provided by this means in the UK fall under the supervision of the Cable Authority as to matters of content, advertising standards etc. The Government is considering introducing further controls to catch non-DBS satellite services not received by cable systems. If uplinked from the UK such services could be brought within the Cable Authority's regulatory regime. The UK has taken a leading role in work towards the proposed new Council of Europe Convention on Transfrontier Broadcasting: the UK would be able to have recourse under its enforcement procedures against any satellite service uplinked from a country which was a party to the Convention, which fell short of the programme standard requirements in the Convention. The Government is also considering giving the Cable Authority a monitoring role in relation to non-DBS satellite services received here and uplinked from countries outside the ambit of the Convention. The possibility of sanctions to back up this role is also under consideration.

Direct broadcasting by satellite (DBS)

24. DBS systems are satellite systems of sufficient power that they can be used to broadcast directly to very small (30-45 cm) receiving dishes in or on people's homes. DBS has been the subject of extensive international coordination in Europe. Frequencies and orbital positions have been allocated which would allow each country to broadcast five television channels, and a number of sound and data channels. In many cases each country's DBS services will be available well beyond their boundaries (although reception may be less reliable in countries well beyond the intended reception area) and there is an EC Directive which lays a duty upon member states to use a compatible family of transmission standards.

25. The Government believes that DBS should be established on fully commercial principles with revenue raised either by subscription, advertising, or both. In the Cable and Broadcasting Act 1984 it enacted the necessary legislative framework to create the opportunity for private enterprise to provide a commercial DBS service. This opportunity has been grasped by British Satellite Broadcasting Limited, who last year signed a contract with the IBA to provide a 3 channel DBS service to the United Kingdom which is to start in 1989. BSB plan to provide a news and events channel; a general entertainment channel; and a subscription film service, which will share a channel with childrens' programmes. This service will be subject in most respects to the same standards as the IBA's terrestrial services, except that it will not be required to provide a wide and balanced range of subject matter, and it will have a 15 year, rather than an 8 year, contract period. The Government will consider making available the two remaining DBS channels allocated to the United Kingdom after the service has been in operation for at least 3 years.

THE PEACOCK REPORT

26. The report of the enquiry under Professor Peacock into the financing of the BBC (Cmnd 9824, July 1986) argued that the new technologies of cable and satellite offered the possibility for removing many of the artificial constraints imposed on broadcasting because of spectrum scarcity. The Committee believed that the guiding principle of future broadcasting policy should be to work towards arrangements where the sovereignty of the consumer prevailed. (The Committee distinguished consumer sovereignty from what they called 'commercial laissez-faire'. The Committee believed that in order to achieve this aim it would be necessary to create a genuinely competitive broadcasting market which met three essential pre-conditions:

(i) Viewers must be able to register their preferences directly by 'pay-per-view';

(ii) There must be freedom of entry for programme makers;

(iii) Transmission facilities must be operated on a common-carrier basis.

27. The Committee recognised that these were ideal conditions and that the technology did not yet exist to implement all of them. The Committee emphasised that broadcasting services financed by advertising did not fulfil condition (i) in its fullest sense.

28. The Committee acknowledged that while spectrum scarcity prevailed and there was no direct means of consumer payment for programmes, the present system of public service broadcasting was probably the best means of maximising consumer welfare through the provision of a wide range of programmes of popularity and merit. In

particular it concluded that the public service system had mimicked the effects of a true consumer market better than any purely laissez-faire system financed by advertising could have done under conditions of spectrum shortage. Nonetheless, the Committee believed that the present system had the natural imperfections of any regulated duopoly and should not be perpetuated once a better alternative was available.

29. The Committee therefore charted a course in three stages. Stage 1 was seen as a preparatory stage lasting about ten years in which the current structure of broadcasting would remain, but with a number of detailed modifications partly in order to prepare for Stage 2. Under Stage 2 BBC services would be paid for by subscription, and other broadcasting services on cable and satellite would be allowed to proliferate, using whatever payment system was appropriate. The long term goal would be Stage 3, where the full broadcasting market is achieved by means of an indefinite number of channels paid for by pay-per-programme or pay-per-channel. One way of achieving this would be through a national wideband fibre optic grid throughout the country. In both Stages 2 and 3 public service broadcasting would be preserved, but based upon a narrower definition than that now applying to the BBC and the IBA, and limited to programmes - such as documentaries, serious music, and other more demanding programmes - which would not be produced by a free market. The Peacock Committee proposed that these programmes would be supported by a subsidy disbursed by a new body, the Public Service Broadcasting Council.

The Government's response to the Peacock Report

30. The Government has already reached a view on some of the detailed recommendations put forward by Peacock, including the indexation of the BBC licence fee to the retail price index and the provision of at least 25% of

programmes broadcast on both BBC and ITV by independent producers within four to five years. On the general thrust of the Peacock Report the Government regards it as a radical and stimulating picture of what form a competitive broadcasting market might take and its advantages in terms of consumer choice. This overall picture has been an important influence on Government thinking in its review of broadcasting policy. Specifically, it has said that it sees attractions in increasing the operation of market forces in the interests both of greater efficiency and broadening consumer choice, and these principles are in line with the Government's attitude towards encouraging the new technologies. The Committee's proposal for a national wideband cable grid has implications for the Government's telecommunications and cable policies, and these questions are being looked at further.

SUBSCRIPTION

31. As noted in paragraph 29 above, the Peacock Committee saw an important role for subscription in the financing of broadcasting. The Government is also attracted to the principle of subscription for two reasons. First, it forges a direct link between the viewer and the provider of a programme service. It enables the viewer to register directly the intensity of his preferences for different kinds of programme, in a way that neither the licence fee nor advertising does. Secondly, it may provide an extra source of finance for additional programme services.

32. In order to gain a better understanding of the technical and economic implications of subscription the Government commissioned a study by Communications Studies and Planning International Limited (CSP). CSP examined the technical feasibility of introducing subscription for terrestrial services and also estimated the costs (equipment and administration) of doing so. They also

undertook research to assess the willingness of consumers to pay for existing and possible new television services by subscription. Finally, they carried out an economic cost-benefit analysis of the value of introducing subscription. A summary of their findings is attached in Annex C. Their main conclusions were that:

(i) putting some or all of the existing services onto a subscription basis would be technically feasible;

(ii) if subscription were to be introduced, it should be on a gradual and progressive basis;

(iii) there is a substantial unmet demand for additional 'premium' programming (eg first-run feature films and major sporting events), which could be satisfied by new subscription-financed services;

(iv) a sudden switch of the four existing terrestrial channels to a subscription basis would lead to administrative chaos, and a large loss of consumer welfare. The two BBC channels would not be financially viable if put on a subscription basis on their own (and nor would ITV and Channel 4);

(v) the demand for additional 'premium' programming could be met by a new subscription service, operating on the night hours of the BBC 2 or Channel 4 frequencies, or on new over-the-air services; and

(vi) the Government should set national standards for conditional access systems (ie the systems which ensure that only viewers who have paid subscriptions receive a service); and there should also be a common payment system, ideally operated by a single agency under a Government franchise.

33. The Government published this report in July and invited comments. It is now considering how to take forward policy on subscription in the light of the report and the comments received.

34. It is, however, worth noting that developments already in train is likely anyway to lead subscription to play an important and increasing role in the financing of broadcasting. Households which take cable pay a basic subscription to be connected to the system at all, and pay additional sums for selected services. British Satellite Broadcasting's DBS service will include a subscription-financed film channel. The directly receivable satellite services carried by Astra may also include subscription channels. And other satellite subscription services may emerge. In addition, the hire and purchase of pre-recorded video cassettes constitute what is in effect a subscription market of around £500m per annum.

POSSIBLE FUTURE DEVELOPMENTS

35. The Government is keen to explore the available means of providing additional competing programme services. To this end it has recently set up a number of studies to establish whether additional services could be provided by using parts of the radio frequency spectrum not presently allocated to broadcasting, or by using some frequencies which are allocated for this purpose more intensively.

MVDS

36. In October the Department of Trade and Industry and the Home Office jointly commissioned Touche Ross to carry out a feasibility study into Multipoint Video Distribution Services (MVDS - also known as MMDS). MVDS is a technology which uses the microwave frequencies to broadcast a number of channels from a local transmitter to aerials on individual buildings. It has been in limited

use for some time in the United States. The purpose of the study was to provide an authoritative assessment of the technical options. It will be completed shortly. No decision has been taken to authorise or make spectrum available for MVDS, and the Government has made it clear that it would not reach any such decisions without first considering the possible impact on existing and prospective services, including the terrestrial services, DBS and cable.

UHF AND VHF

37. The CSP study on subscription suggested that possibilities existed for the introduction of additional television services on UHF and VHF frequencies either through more intensive use of the UHF frequencies already assigned to the BBC and IBA for television broadcasting or on UHF and VHF frequencies not currently assigned for broadcasting use within the UK. The report noted that detailed work would be needed to assess where such services could be provided. Work to assess the technical feasibility and the potential population coverage of such services on UHF frequencies has now been undertaken. Work on the VHF frequencies is still in progress. As with MVDS, the Government would not decide to introduce additional terrestrial television services on UHF or VHF frequencies, without considering the impact on existing and prospective services.

INTERNATIONAL REGULATION

38. With the development of the new cable and satellite technologies, in association with cable, television has effectively become an international medium for the first time. As a result, European countries in recent years have been considering the need for some form of transnational regulation of television programmes. In this context, two major concerns have been evident: first, that programmes should meet certain fundamental

standards, particularly on matters such as taste and decency; and second, that if some degree of harmonisation of rules can be agreed, albeit in very general terms, countries can undertake not to restrict the reception of foreign television programmes on their territory and thus ensure that the internationally held principles of free flow of information can be upheld. Discussions on an appropriate framework for international regulation are proceeding at the present time in both the European Communities (EC) and the Council of Europe.

39. In the EC, the European Commission introduced in May 1986 a draft Directive which is intended to provide a limited harmonisation of member states' law on advertising, the protection of children, and copyright in the broadcasting field with the aim of breaking down existing barriers to the free movement of broadcasting services throughout the Community. In addition, the draft contains proposals for stimulating the production of television programmes within the Community and programmes made by independent producers. The draft Directive follows from an earlier Green Paper 'Television Without Frontiers' published by the Commission in June 1984. The Government has indicated its doubts about the competence of the Community in relation to some of these proposals and has made it clear that it does not believe a case for Community legislation along these lines has been made out. A detailed account of the Commission's proposals and the reactions of the Government and other interests to them are set out in two Reports from the House of Lords Select Committee on the European Communities - 'Television Without Frontiers' (HL 43) of 17 December 1985 and 'European Broadcasting' (HL 67) of 10 February 1987.

40. The present position is that the draft Directive remains under discussion in Brussels in an ad hoc Council Working Group which has met on several occasions during

recent months to consider the text in detail. The draft Directive has also been considered, in parallel, by the Legal Affairs Committee of the European Parliament, which has itself proposed various amendments. The next step will be for the Commission to prepare a new text, taking account of the views of the Working Group and of the European Parliament, which should be available in the spring, and will form the basis for further consideration in the Council.

41. For some years the Council of Europe, through its mass media committees, has considered problems of the international regulation of broadcasting and produced a number of worthwhile recommendations. At the first Council of Europe Conference of Broadcasting Ministers, held in Vienna in December 1986, it was decided that the Council of Europe should prepare a European Convention on Broadcasting with binding effects. The Government favours the Council of Europe as the most appropriate forum for these matters because of its more flexible approach and its wider geographical coverage. The drafting of the Convention is now well advanced, and although a number of difficult issues remain unresolved (in relation for example to the insertion of advertising, the European origin of programming and an effective control mechanism), it remains the hope that a final text can be agreed in the course of 1988, with a view to the Convention being approved for signature at the second Conference of Broadcasting Ministers which is due to be held in Stockholm at the end of the year.

THE FUTURE OF PUBLIC SERVICE BROADCASTING

42. One of the main aims of the Government's broadcasting policy has been to create the framework for a more competitive broadcasting market. It is for this reason that it has opened up opportunities for competing programme services through cable and DBS, and is now

examining the possibility of authorising additional services. This is also why it is taking a close interest in subscription as a method of financing programme services. With strong Government encouragement a more competitive environment is now emerging. But in the interests of quality and consumer protection we need to retain and where necessary update the regulatory principles which have historically formed the basis of public service broadcasting.

43. As noted in paragraph 1, these principles have been underpinned by two factors: spectrum scarcity; and the power, authority and intimacy of broadcasting as a medium. The former can be regarded as the basis of the positive public service obligations (eg that programmes should inform and educate as well as entertain), and the latter as the basis of the consumer protection obligations (eg that programmes should not offend against good taste and decency). With the development of new services the force of the argument from spectrum scarcity diminishes (especially as cable offers a way out of scarcity altogether), and the case for laying the positive obligations upon service providers correspondingly weakens. Hence the light regulatory regime for cable in the Cable and Broadcasting Act 1984. But the argument from the power of the medium remains valid. Television retains its power and intimacy no matter how services are delivered to the home. The Government therefore believes that new services should be subject to the consumer protection obligations. These obligations are laid upon cable by the 1984 Act, and can be expected to be part of the regulatory regime for any new services.

44. The positive public service obligations will also have a continuing part to play. The existence of these obligations has led to the broadcasting of programmes which are widely valued, and which might not otherwise

have been produced. The BBC, ITV and Channel 4, acting in accordance with their public service obligations, broadcast a considerable amount of the types of informative, educational, cultural and innovative programmes which the Peacock Committee had in mind. The Government envisages that they will continue to do so. The position of the existing broadcasters in a more open market, facing competition from new entrants not subject to all the same duties, will require careful thought. But in our view it will be possible to reconcile greater competition between broadcasters and wider choice for the public on the one hand and on the other the maintenance of the traditional quality of our broadcasting. That will be the aim of this Government.

<wk>JS/HComms/HAC/KEEP

Table 2.1: Broadcasting Obligation

IBA [and BBC]	DBS	Cable
High quality	Yes	No
information education and entertainment	Yes*	No (but section 7(2)(d) provides some encouragement to educational interest
high general standard	Yes	No
proper balance and wide range in subject matter	No	No (but section 7(2)(a) provides some encouragement to "range and diversity"
secure a wide showing for programmes of merit	No	No
nothing which offends against good taste and decency	Yes	Yes
or encourages crime or is offensive to public feeling	Yes	Yes
sufficient time for the news	No	No
news impartial and accurate	Yes	Yes (for UK news)
proper proportion of British (includes EC) material	Yes	Yes
suitable proportion of material to appeal to taste and languages of persons served by a particular station	No	Section 7(2)(d) provides some encouragement.
impartiality on matters of political or industrial controversy or relating to current public policy	Yes	Section 11(3)(a) provides a diluted version of this requirement.

*The provisions envisage that DBS will be part of its television service providing information, education and entertainment, but it would be open to the Authority to confine its DBS service to, say, entertainment on the grounds that its terrestrial services adequately provided information and education.

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From: THE PRIVATE SECRETARY

Not seen by
PM.



Prime Minister

The amended
passages are
highlighted.
Content?

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

1266
15/1

January 14 1987

Dear Paul,

1266 14/1

HOME AFFAIRS SELECT COMMITTEE: INQUIRY INTO
BROADCASTING.

I enclose a copy of the Home Office Memorandum, revised to take account of the Prime Minister's comments on the version circulated with my letter of 6 January. As you know, we must submit the memorandum to the Committee tomorrow at the latest.

I am copying this letter to Private Secretaries to Members of MISC 128, and to Trevor Woolley.

Yours ever,

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Paul Gray Esq.

HOUSE OF COMMONS HOME AFFAIRS COMMITTEE

INQUIRY INTO THE IMPLICATIONS OF DIRECT BROADCASTING BY
SATELLITE AND CABLE TELEVISION; THE FUTURE OF PUBLIC SERVICE
BROADCASTING; AND THE POTENTIAL OF SUBSCRIPTION

MEMORANDUM BY THE HOME OFFICE

THE REGULATORY BACKGROUND

1. Broadcasting ^{has} presents ^d problems of regulation and control which are quite different from other forms of publication. The radio frequency spectrum ^{has been} ~~is~~ limited, and access to the airwaves ^{has been} ~~to be~~ controlled to prevent interference between nearby broadcasting stations. In addition, broadcasting is a medium of great power and intimacy. It is capable of addressing a mass audience in the privacy of their homes, and those with access to the airwaves therefore have a specially privileged position. The two issues of spectrum scarcity and the power of broadcasting have been central to the regulatory arrangements which have been adopted in the past.

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2. However, recent technological developments, and particularly the use of satellites and cable for delivering television services, have shown how one of these central issues, the problem of spectrum scarcity, may in due course be to a large extent overcome. They could well also open up significant new opportunities for the UK in the international market place. The implications for the regulation of broadcasting, including the growing internationalisation of broadcasting, are an important element in the development of Government policy. These matters are discussed in this paper.

The Public Service Principle

3. The Government is considering a number of wide-ranging reforms to the existing regulatory mechanisms in the interests of creating a more competitive broadcasting environment. In order to understand the background to this review of policy it is first necessary to outline the principle which has historically underpinned broadcasting policy in the UK: the public service principle. Different countries have adopted

various approaches to the regulation of broadcasting ranging from full state control on the one hand to little more than control of the allocation of frequencies on the other. In the United Kingdom, following the recommendation of the Crawford Committee of 1926, a system of public service broadcasting was established, the central principles of which continue to apply to services regulated by the BBC and Independent Broadcasting Authority. These are that:

(a) broadcasting is a national asset which should be used for the national good rather than for the benefit of particular interest groups;

(b) responsibility for broadcasting should therefore lie with one or more broadcasting authorities, appointed as the 'trustees for the national interest' in broadcasting;

(c) viewers (or listeners) in all parts of the country who pay the same licence fee should be able to receive all public service channels: the concept of universality;

(d) the broadcasting authorities should be free of Government intervention in their day to day affairs and in the content of their programmes.

Programme Standards

4. Because the broadcasters are granted a semi monopoly position in providing broadcasting services, and in recognition of the power of broadcasting, they are required to meet obligations as to the standard and content of their programmes which are not applied to other forms of publication. In the case of the Independent Broadcasting Authority these have been given statutory form in successive broadcasting Acts, the latest of which

is the Broadcasting Act 1981. Although not spelled out, broadly similar standards are expected of the BBC.

5. It is convenient to identify two separate groups of obligations:

(a) Public Service Obligations. These require that:

(i) The service should inform and educate as well as entertain;

(ii) High standards should be observed both in technical and in other matters;

(iii) Programmes should cover a wide and balanced range of subject matter in order to meet all interests in the population (ie pop music as well as classical; opera as well as soap opera);

(iv) There should be a wide distribution for programmes of merit;

(v) A proper proportion of the programmes should of British (now EC) origin and performance;

(vi) That a suitable proportion of material should be calculated to appeal specially to the tastes and outlook of the persons served by the station including in languages other than English (ie ethnic minority or Gaelic or Welsh communities);

(vii) Local sound broadcasts in the same area should not consist of identical or similar material;

(b) Consumer Protection Obligations. These require that:

(i) Programmes should not offend against good taste or decency, encourage or incite crime, lead to disorder, or be offensive to public feeling;

(ii) Special rules should apply with regard to depictions of violence and other matters at times when large numbers of young children may be in the audience;

(iii) Sufficient time should be given to news and news features, and all news presented with due accuracy and impartiality;

(iv) Due impartiality should be preserved on the part of the persons providing the programmes as respects matters of political or industrial controversy, or relating to current public policy, taking a series of programmes as a whole;

(v) A variety of other minor provisions are observed including ones to prevent the broadcasting authorities expressing their own opinions on controversial matters (except broadcasting matters), to prevent subliminal advertising, to control the value of gifts offered in programmes, and to regulate religious programming;

(vi) Detailed requirements are observed as to advertising;

These obligations are set out in sections 2, 4, 5 and Schedule 2 of the Broadcasting Act 1981.

6. In the case of the terrestrial television and radio services provided by the BBC and the IBA, all the obligations outlined above apply. Direct broadcasting by satellite (DBS) is also treated by the Cable and Broadcasting Act 1984 as a form of public service broadcasting, though some of the requirements are relaxed. The same Act creates a new regime, with a lighter touch, for cable, partly in recognition of the fact that spectrum scarcity considerations are less relevant: cable television is not provided by a broadcasting authority: it is, by contrast, supervised by a regulatory agency, the Cable Authority, on broadly consumer protection grounds. A table setting out the obligations applying to the different media is at Annex A, and the implications are discussed more fully below.

The portrayal of sex and violence

7. Recently there has been much public concern about the broadcast portrayal of violence and sex, particularly on television. The broadcasting authorities have recognized this concern and have taken steps to enhance the enforcement of programme standards. The Government welcomes the action taken, but believes that further measures are needed to meet public concern. It does not, however, believe that the answer lies in taking away the broadcasting authorities' enforcement responsibilities. It intends to strengthen the oversight of programme standards in a way which (re-)reinforces rather than) *does not* *undermine* *the* *role* *of* *the* *broadcasting* *authorities*.
removing obligation for standards for

8. Accordingly the Government is in the process of establishing an independent Broadcasting Standards Council (BSC) to monitor the portrayal of violence and sex on television, radio and video. This positive step to re-inforce the oversight of programme standards has attracted a considerable volume of favourable public comment. The BSC will not be a regulatory body. Its job will be to act

as a focus of public concern - both generally and, where it considers it necessary, in relation to individual programmes - and to comment on patterns and trends which may range across the areas for which the individual regulatory bodies are responsible. The BSC will also be able to stimulate studies and research on such matters as the nature and effects of the portrayal of violence and sex on television, radio and video. The BSC is being established in advance of legislation but will be put on a statutory footing at the earliest opportunity.

9. The Government has also indicated that it sees no case for retaining the current exemption of broadcasting from the Obscene Publications Act 1959, and proposes to remove it. This does not imply any relaxation of the stricter consumer protection standards which broadcasters have been required to observe. But the Government considers it to be wrong in principle that broadcasters should continue to be above the law in this respect. Cable programmes are already subject to the 1959 Act.

NEW TECHNOLOGICAL INNOVATIONS

10. The past 5 years have seen several technical developments which are leading to a significant re-evaluation of broadcasting policies. For the most part their importance lies in the fact that they offer the opportunity of a vastly greater number of television and radio channels than those available through existing means of transmission. In the case of satellite transmissions, there is also the capability for cross-frontier broadcasting. These technological developments have played a part in stimulating the Government's current review of policy. They raise a number of questions about how new channels should be employed and how they should relate to the established pattern of broadcasting. This section discusses some of these developments and their implications. However, it should be borne in mind that

these technologies are very new and it is very difficult to anticipate the ultimate direction and likely timetable of developments and what, if any, further changes in regulation may be necessary.

Cable

11. The transmission of television broadcasts by cable goes back to the 1950's and 60's where it provided commercial opportunities for bringing television to areas where off-air reception was poor. These early cable systems had a very limited capacity: they could usually carry the four off-air channels and one or two additional channels which were often used for sound radio, and in a few cases for a locally based television service. These systems, many of which still exist, are known as 'narrow-band' systems.

12. Recent innovations (largely concerned with the use of coaxial and fibre optic cable and electronic switches) now enable new 'wideband' cable systems to carry a very much higher number of television channels as well as other information in the form of data or text. These channels can also carry 'return' signals from the subscriber and hence have the capability for interactive services. A fully developed national network of local cable systems capable of offering a full range of telecommunications services is considered by many to be an important part of our future telecommunications infrastructure.

13. The current regulatory framework is intended to encourage private enterprise to develop any such network. It is a light and flexible framework, designed to safeguard telecommunications and broadcasting policy, but tailored to what is practical and economic. Returns on investment will come from selling services via the cable system, and from rental payments, subscriptions, advertising and sponsorship. It is recognised that in the

early years the bulk of income will come from the sale of entertainment-based television services, and from advertising carried within these services.

14. The framework for cable is set down in the Government's White Paper 'The Development of Cable Systems and Services' (Cmd 8866, HMSO 1983) and in the Cable and Broadcasting Act 1984. This establishes a Cable Authority with a dual responsibility both to promote the development of wideband cable and to supervise the content of television programmes carried on cable systems. In its first capacity the Cable Authority is empowered to award franchises to cable operators which give them the exclusive right to provide cable services within a defined geographical area (usually around 100,000 homes) for a period up to 15 years. In return the cable operator must adopt specified technical standards for the system and must meet agreed timetables for the completion of the network within his area. The arrangements are intended to prevent the 'cherry-picking' of lucrative areas. The precise regulatory arrangements are shared between the Department of Trade and Industry, OFTEL and the Cable Authority.

15. In its second capacity the Cable Authority has some similarities to the BBC and the IBA in its regulatory responsibilities for programme content. The 1984 Act deliberately did not however place on the Cable Authority many of the positive public service responsibilities of the broadcasting authorities. It is not required, for example, to see that cable programmes inform and educate as well as entertain; nor to see that they cover a wide range of subject matter. Equally important, with a large number of cable services in operation each offering possibly 20 or more television channels, the Cable Authority is not expected to operate a close supervision on everything that is disseminated. It does not itself

make the 'broadcasts' and its regulatory role is more generalised and reactive.

16. The growth of new cable systems has been slow because of hesitancy on the part of financial backers at the high capital costs of installing the cable network. At present ten wideband cable systems are operating and about 50 narrowband, with a total number of subscribers of about 220,000 (out of a total of about 1.28 million homes passed by cable). Cable subscriptions range from £6-£28 per month, depending upon the number of channels a subscriber wishes to take. At present most wideband systems offer about 16 channels in addition to the four existing BBC and IBA services. A typical programme schedule is at Annex B.

Satellite services

17. Because of the curvature of the earth, the obstruction of hills, and so on, (as well as international limitations on the permitted power of transmitters) a network of over 1,000 transmitters and relays is currently required to broadcast each of our four terrestrial television channels throughout the United Kingdom. On the other hand a satellite positioned in geostationary orbit can transmit a signal in a pattern (or 'foot-print') sufficient to cover a very large area; each satellite can carry a number of television and sound channels.

18. Satellite technology, and especially its use by television providers, is still in its early stages. It is not yet clear how it will develop in the long term, nor how it will affect the established pattern of broadcasting. At the present time for historical and technical reasons two distinct forms of satellite service are in the course of developing. Both are the same in technical principle: a signal carrying the television programmes is beamed up to the satellite, where it is amplified and re-transmitted towards earth. The

difference between the two services lies in the power with which the satellite re-transmits the signal, the frequencies it uses and the means by which it reaches individual subscribers.

Low and medium powered satellite services

19. These services employ capacity on telecommunications satellites using frequencies and facilities which are the same as those used for international telephone and data links. So far they have not been operated as direct broadcast services, but have been primarily designed to be received at the head-ends of cable systems from where they are re-distributed to individual subscribers.

20. Most of the services currently available are commercial operations offering specialised entertainment programmes with a minimum of production costs. There are now eight such services originating from the United Kingdom covering feature films, pop music videos, sports, children's programmes and 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 is of American origin. In addition there are a number of other services currently available in the UK from other European countries, and it is also possible to receive Russian language services.

21. The commercial providers of these services may finance their operations in three ways: they may make a direct charge to cable operators who take their services; secondly, 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 he may choose to insert his own advertisements in the gaps; finally, they may also seek to sell their services to individual

subscribers who are equipped with the necessary receiving equipment. This is a relatively new development and is discussed further below.

Direct reception of low and medium powered satellite services

22. There is no technical barrier to prevent anyone within the area of a satellite's foot-print from receiving its signals. The only inhibitions are practical: the receiving dishes are at present large (at least a metre in diameter) and expensive (£700 to £2,000 or more), and would require planning consent to erect. In some countries it is unlawful to 'eavesdrop' on what are technically private telecommunications signals, but in the United Kingdom the Government announced in May 1985 that it was prepared to permit individuals who wished to do so to receive television signals from telecommunications satellites, on payment of a once only charge of £10 for a television receive only (TVRO) licence and assuming that they were able to obtain planning consent for the receiving dish. Over 4,000 TRVO licences have been issued. It is not yet clear how the direct reception of low and medium powered satellite television services will develop. 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, has announced that it will launch later this year a medium-powered satellite called 'Astra' with a capacity for 16 channels which will be capable of direct reception by individuals with relatively cheap, small (60-85 cm) dishes. It is understood that British Telecom International will be operating the uplink (ie transmitting the signal from earth to the satellite) for 11 of the 16 channels: in that event they will be transmitted from the UK, though the programme material would not necessarily be British in origin.

23. At present the primary purpose of low-powered satellite services is to feed cable systems, and the services provided by this means in the UK fall under the supervision of the Cable Authority as to matters of content, advertising standards etc. The Government is considering introducing further controls to catch non-DBS satellite services not received by cable systems. If uplinked from the UK such services could be brought within the Cable Authority's regulatory regime. The UK has taken a leading role in work towards the proposed new Council of Europe Convention on Transfrontier Broadcasting: the UK would be able to have recourse under its enforcement procedures against any satellite service uplinked from a country which was a party to the Convention, which fell short of the programme standard requirements in the Convention. The Government is also considering giving the Cable Authority a monitoring role in relation to non-DBS satellite services received here and uplinked from countries outside the ambit of the Convention. The possibility of sanctions to back up this role is also under consideration.

Direct broadcasting by satellite (DBS)

24. DBS systems are satellite systems of sufficient power that they can be used to broadcast directly to very small (30-45 cm) receiving dishes in or on people's homes. DBS has been the subject of extensive international coordination in Europe. Frequencies and orbital positions have been allocated which would allow each country to broadcast five television channels, and a number of sound and data channels. In many cases each country's DBS services will be available well beyond their boundaries (although reception may be less reliable in countries well beyond the intended reception area) and there is an EC Directive which lays a duty upon member states to use a compatible family of transmission standards.

25. The Government believes that DBS should be established on fully commercial principles with revenue raised either by subscription, advertising, or both. In the Cable and Broadcasting Act 1984 it enacted the necessary legislative framework to create the opportunity for private enterprise to provide a commercial DBS service. This opportunity has been grasped by British Satellite Broadcasting Limited, who last year signed a contract with the IBA to provide a 3 channel DBS service to the United Kingdom which is to start in 1989. BSB plan to provide a news and events channel; a general entertainment channel; and a subscription film service, which will share a channel with childrens' programmes. This service will be subject in most respects to the same standards as the IBA's terrestrial services, except that it will not be required to provide a wide and balanced range of subject matter, and it will have a 15 year, rather than an 8 year, contract period. The Government will consider making available the two remaining DBS channels allocated to the United Kingdom after the service has been in operation for at least 3 years.

THE PEACOCK REPORT

26. The report of the enquiry under Professor Peacock into the financing of the BBC (Cmnd 9824, July 1986) argued that the new technologies of cable and satellite offered the possibility for removing many of the artificial constraints imposed on broadcasting because of spectrum scarcity. The Committee believed that the guiding principle of future broadcasting policy should be to work towards arrangements where the sovereignty of the consumer prevailed. (The Committee distinguished consumer sovereignty from what they called 'commercial laissez-faire'. The Committee believed that in order to achieve this aim it would be necessary to create a genuinely competitive broadcasting market which met three essential pre-conditions:

(i) Viewers must be able to register their preferences directly by 'pay-per-view';

(ii) There must be freedom of entry for programme makers;

(iii) Transmission facilities must be operated on a common-carrier basis.

27. The Committee recognised that these were ideal conditions and that the technology did not yet exist to implement all of them. The Committee emphasised that broadcasting services financed by advertising did not fulfil condition (i) in its fullest sense.

28. The Committee acknowledged that while spectrum scarcity prevailed and there was no direct means of consumer payment for programmes, the present system of public service broadcasting was probably the best means of maximising consumer welfare through the provision of a wide range of programmes of popularity and merit. In

particular it concluded that the public service system had mimicked the effects of a true consumer market better than any purely laissez-faire system financed by advertising could have done under conditions of spectrum shortage. Nonetheless, the Committee believed that the present system had the natural imperfections of any regulated duopoly and should not be perpetuated once a better alternative was available.

29. The Committee therefore charted a course in three stages. Stage 1 was seen as a preparatory stage lasting about ten years in which the current structure of broadcasting would remain, but with a number of detailed modifications partly in order to prepare for Stage 2. Under Stage 2 BBC services would be paid for by subscription, and other broadcasting services on cable and satellite would be allowed to proliferate, using whatever payment system was appropriate. The long term goal would be Stage 3, where the full broadcasting market is achieved by means of an indefinite number of channels paid for by pay-per-programme or pay-per-channel. One way of achieving this would be through a national wideband fibre optic grid throughout the country. In both Stages 2 and 3 public service broadcasting would be preserved, but based upon a narrower definition than that now applying to the BBC and the IBA, and limited to programmes - such as documentaries, serious music, and other more demanding programmes - which would not be produced by a free market. The Peacock Committee proposed that these programmes would be supported by a subsidy disbursed by a new body, the Public Service Broadcasting Council.

The Government's response to the Peacock Report

30. The Government has already reached a view on some of the detailed recommendations put forward by Peacock, including the indexation of the BBC licence fee to the retail price index and the provision of at least 25% of

programmes broadcast on both BBC and ITV by independent producers within four to five years. On the general thrust of the Peacock Report the Government regards it as a radical and stimulating picture of what form a competitive broadcasting market might take and its advantages in terms of consumer choice. This overall picture has been an important influence on Government thinking in its review of broadcasting policy.

Specifically, it has said that it sees attractions in increasing the operation of market forces in the interests both of greater efficiency and broadening consumer choice, and these principles are in line with the Government's attitude towards encouraging the new technologies. The Committee's proposal for a national wideband cable grid has implications for the Government's telecommunications and cable policies, and these questions are being looked at further.

SUBSCRIPTION

31. As noted in paragraph 29 above, the Peacock Committee saw an important role for subscription in the financing of broadcasting. The Government is also attracted to the principle of subscription for two reasons. First, it forges a direct link between the viewer and the provider of a programme service. It enables the viewer to register directly the intensity of his preferences for different kinds of programme, in a way that neither the licence fee nor advertising does. Secondly, it may provide an extra source of finance for additional programme services.

32. In order to gain a better understanding of the technical and economic implications of subscription the Government commissioned a study by Communications Studies and Planning International Limited (CSP). CSP examined the technical feasibility of introducing subscription for terrestrial services and also estimated the costs (equipment and administration) of doing so. They also

undertook research to assess the willingness of consumers to pay for existing and possible new television services by subscription. Finally, they carried out an economic cost-benefit analysis of the value of introducing subscription. A summary of their findings is attached in Annex C. Their main conclusions were that:

(i) putting some or all of the existing services onto a subscription basis would be technically feasible;

(ii) if subscription were to be introduced, it should be on a gradual and progressive basis;

(iii) there is a substantial unmet demand for additional 'premium' programming (eg first-run feature films and major sporting events), which could be satisfied by new subscription-financed services;

(iv) a sudden switch of the four existing terrestrial channels to a subscription basis would lead to administrative chaos, and a large loss of consumer welfare. The two BBC channels would not be financially viable if put on a subscription basis on their own (and nor would ITV and Channel 4);

(v) the demand for additional 'premium' programming could be met by a new subscription service, operating on the night hours of the BBC 2 or Channel 4 frequencies, or on new over-the-air services; and

(vi) the Government should set national standards for conditional access systems (ie the systems which ensure that only viewers who have paid subscriptions receive a service); and there should also be a common payment system, ideally operated by a single agency under a Government franchise.

33. The Government published this report in July and invited comments. It is now considering how to take forward policy on subscription in the light of the report and the comments received.

34. It is, however, worth noting that developments already in train is likely anyway to lead subscription to play an important and increasing role in the financing of broadcasting. Households which take cable pay a basic subscription to be connected to the system at all, and pay additional sums for selected services. British Satellite Broadcasting's DBS service will include a subscription-financed film channel. The directly receivable satellite services carried by Astra may also include subscription channels. And other satellite subscription services may emerge. In addition, the hire and purchase of pre-recorded video cassettes constitute what is in effect a subscription market of around £500m per annum.

POSSIBLE FUTURE DEVELOPMENTS

35. The Government is keen to explore the available means of providing additional competing programme services. To this end it has recently set up a number of studies to establish whether additional services could be provided by using parts of the radio frequency spectrum not presently allocated to broadcasting, or by using some frequencies which are allocated for this purpose more intensively.

MVDS

36. In October the Department of Trade and Industry and the Home Office jointly commissioned Touche Ross to carry out a feasibility study into Multipoint Video Distribution Services (MVDS - also known as MMDS). MVDS is a technology which uses the microwave frequencies to broadcast a number of channels from a local transmitter to aerials on individual buildings. It has been in limited

use for some time in the United States. The purpose of the study was to provide an authoritative assessment of the technical options. It will be completed shortly. No decision has been taken to authorise or make spectrum available for MVDS, and the Government has made it clear that it would not reach any such decisions without first considering the possible impact on existing and prospective services, including the terrestrial services, DBS and cable.

UHF AND VHF

37. The CSP study on subscription suggested that possibilities existed for the introduction of additional television services on UHF and VHF frequencies either through more intensive use of the UHF frequencies already assigned to the BBC and IBA for television broadcasting or on UHF and VHF frequencies not currently assigned for broadcasting use within the UK. The report noted that detailed work would be needed to assess where such services could be provided. Work to assess the technical feasibility and the potential population coverage of such services on UHF frequencies has now been undertaken. Work on the VHF frequencies is still in progress. As with MVDS, the Government would not decide to introduce additional terrestrial television services on UHF or VHF frequencies, without considering the impact on existing and prospective services.

INTERNATIONAL REGULATION

38. With the development of the new cable and satellite technologies, in association with cable, television has effectively become an international medium for the first time. As a result, European countries in recent years have been considering the need for some form of transnational regulation of television programmes. In this context, two major concerns have been evident: first, that programmes should meet certain fundamental

standards, particularly on matters such as taste and decency; and second, that if some degree of harmonisation of rules can be agreed, albeit in very general terms, countries can undertake not to restrict the reception of foreign television programmes on their territory and thus ensure that the internationally held principles of free flow of information can be upheld. Discussions on an appropriate framework for international regulation are proceeding at the present time in both the European Communities (EC) and the Council of Europe.

39. In the EC, the European Commission introduced in May 1986 a draft Directive which is intended to provide a limited harmonisation of member states' law on advertising, the protection of children, and copyright in the broadcasting field with the aim of breaking down existing barriers to the free movement of broadcasting services throughout the Community. In addition, the draft contains proposals for stimulating the production of television programmes within the Community and programmes made by independent producers. The draft Directive follows from an earlier Green Paper 'Television Without Frontiers' published by the Commission in June 1984. The Government has indicated its doubts about the competence of the Community in relation to some of these proposals and has made it clear that it does not believe a case for Community legislation along these lines has been made out. A detailed account of the Commission's proposals and the reactions of the Government and other interests to them are set out in two Reports from the House of Lords Select Committee on the European Communities - 'Television Without Frontiers' (HL 43) of 17 December 1985 and 'European Broadcasting' (HL 67) of 10 February 1987.

40. The present position is that the draft Directive remains under discussion in Brussels in an ad hoc Council Working Group which has met on several occasions during

recent months to consider the text in detail. The draft Directive has also been considered, in parallel, by the Legal Affairs Committee of the European Parliament, which has itself proposed various amendments. The next step will be for the Commission to prepare a new text, taking account of the views of the Working Group and of the European Parliament, which should be available in the spring, and will form the basis for further consideration in the Council.

41. For some years the Council of Europe, through its mass media committees, has considered problems of the international regulation of broadcasting and produced a number of worthwhile recommendations. At the first Council of Europe Conference of Broadcasting Ministers, held in Vienna in December 1986, it was decided that the Council of Europe should prepare a European Convention on Broadcasting with binding effects. The Government favours the Council of Europe as the most appropriate forum for these matters because of its more flexible approach and its wider geographical coverage. The drafting of the Convention is now well advanced, and although a number of difficult issues remain unresolved (in relation for example to the insertion of advertising and the European origin of programming), it remains the hope that a final text can be agreed in the course of 1988, with a view to the Convention being approved for signature at the second Conference of Broadcasting Ministers which is due to be held in Stockholm at the end of the year.

THE FUTURE OF PUBLIC SERVICE BROADCASTING

42. One of the main aims of the Government's broadcasting policy has been to create the framework for a more competitive broadcasting market. It is for this reason that it has opened up opportunities for competing programme services through cable and DBS, and is now examining the possibility of authorising additional

services. This is also why it is taking a close interest in subscription as a method of financing programme services. The Government nevertheless sees a continuing role, in the more competitive environment which is now emerging, for the regulatory principles which have historically formed the basis of public service broadcasting.

43. As noted in paragraph 1, these principles have been underpinned by two factors: spectrum scarcity; and the power, authority and intimacy of broadcasting as a medium. The former can be regarded as the basis of the positive public service obligations (eg that programmes should inform and educate as well as entertain), and the latter as the basis of the consumer protection obligations (eg that programmes should not offend against good taste and decency). With the development of new services the force of the argument from spectrum scarcity diminishes (especially as cable offers a way out of scarcity altogether), and the case for laying the positive obligations upon service providers correspondingly weakens. Hence the light regulatory regime for cable in the Cable and Broadcasting Act 1984. But the argument from the power of the medium remains valid. Television retains its power and intimacy no matter how services are delivered to the home. The Government therefore believes that new services should be subject to the consumer protection obligations. These obligations are laid upon cable by the 1984 Act, and can be expected to be part of the regulatory regime for any new services.

44. The positive public service obligations will also have a continuing part to play. The existence of these obligations has led to the broadcasting of programmes which are widely valued, and which might not otherwise have been produced. As noted in paragraph 29, the Peacock Committee recommended that in its Stages 2 and 3 a Public

Service Broadcasting Council should support from public funds the making of 'public service' programmes which would not be produced by the market. The market situation prevailing today is still very different from that envisaged by Peacock. The BBC, ITV and Channel 4, acting in accordance with their public service obligations, broadcast a considerable amount of the types of informative, educational, cultural and innovative programmes which the Peacock Committee had in mind. The Government envisages that they will continue to do so. The position of the existing broadcasters in a more open market, facing competition from new entrants not subject to all the same duties, will require careful thought. But the Government has no present proposals to lift their public service obligations.

<wk>JS/HComms/HAC/KEEP

Table 2.1: Broadcasting Obligation

IBA [and BBC]	DBS	Cable
High quality	Yes	No
information education and entertainment	Yes*	No (but section 7(2)(d) provides some encouragement to educational interest
high general standard	Yes	No
proper balance and wide range in subject matter	No	No (but section 7(2)(a) provides some encouragement to "range and diversity"
secure a wide showing for programmes of merit	No	No
nothing which offends against good taste and decency	Yes	Yes
or encourages crime or is offensive to public feeling	Yes	Yes
sufficient time for the news	No	No
news impartial and accurate	Yes	Yes (for UK news)
proper proportion of British (includes EC) material	Yes	Yes
suitable proportion of material to appeal to taste and languages of persons served by a particular station	No	Section 7(2)(d) provides some encouragement.
impartiality on matters of political or industrial controversy or relating to current public policy	Yes	Section 11(3)(a) provides a diluted version of this requirement.

*The provisions envisage that DBS will be part of its television service providing information, education and entertainment, but it would be open to the Authority to confine its DBS service to, say, entertainment on the grounds that its terrestrial services adequately provided information and education.