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MR GRAY *Rec.*

MISC 128

I am putting forward the attached brief on additional programme services well in advance of the meeting in case the Prime Minister has a chance to familiarise herself with these papers during the recess. It may need to be brought up to date nearer the time.

AJL

A J LANGDON

31 March 1988

K01904

PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES
ADDITIONAL PROGRAMME SERVICES: MISC 128(88)4 AND 5

attached

DECISIONS

1. Discussion of this complex subject is being spread over two meetings (21 and 25 April), starting with a short presentation by officials of the kind that you had before your seminar. You will probably want the meeting on 21 April to be a general "second reading discussion", flowing from the presentation.

2. At the meeting on 25 April you may wish to arrange the decisions as follows;

- (i) Should there be any new services in the 1990s? If so, which ones?

And when should they start?

Should the UK seek further allocations of DBS frequencies?

- (ii) Should PSB requirements be applied to any new services? And, if not, should they be retained for existing ITV services?

(iii) If MVDS services are approved

(a) should they be on a "technology neutral" basis?
And, if so, should that apply to the whole operation or only to the delivery system?

and

(b) should any preferential treatment be offered to existing cable franchise-holders?

(iv) What configuration (national/regional/local) should be applied to any new services?

What, if any, constraints should be applied about financial mechanisms (subscription/advertising)?

What authority should be responsible for regulation and supervision?

(v) Should material about the studies be put in the public domain, as the Home Secretary suggests?

And, if so, should that be limited to a summary of the technical possibilities, rather than the commercial assessment?

(vi) Finally, although this question is only lightly touched on at the end of the Home Secretary's paper, you may wish to probe whether conclusions on these matters should be announced as firm decisions in the White Paper?

Or should some of them be canvassed in the White Paper as suggestions on which the Government wants the reactions of commercial interests?

BACKGROUND TO THE MEETING

3. The possibility of new ways of finding additional spectrum only emerged last year, as Departments were preparing for your seminar on 21 September. At the MISC 128 meeting on 29 September you instructed that studies of these possibilities should be put in hand, and the results are now being brought back to the Group. They throw open the whole question of how fast you want to proceed to the deregulated broadcasting world advocated by Peacock.

4. The basic questions are whether any or all of the possible new services should be authorised and, if so, on what timescale (with particular concern for the possible impact on British Satellite Broadcasting (BSB) and on the existing cable franchise-holders). There are also a number of subsidiary issues about the regulatory arrangements for any new services that might be authorised, and in particular whether they should be subject to public service broadcasting (PSB) requirements. (The Group has hitherto assumed that ITV will continue to be subject to PSB requirements through the 1990s: a competitor that was free of these restraints would clearly have a commercial advantage.)

5. If the Group decides to authorise MVDS services (which would probably be local services, because of the short range of MVDS transmissions) then it will be necessary to take account of the views that are emerging in the review of telecommunications policy. These preliminary views by a study group of officials point towards the so-called "technology neutral" approach, under which a franchise-holder might use a mixture of different technologies to deliver services. But if the Group decides that the Broadcasting Bill in the 1989-90 session should not get involved in MVDS or other new local TV services, then the interaction with telecommunications policy will be easier to handle. (In practice, it will be mainly relevant to the transmission system.)

6. These decisions on additional services are needed before the Home Secretary can come back to MISC 128 with papers on other outstanding issues on which he needs decisions before he can prepare the White Paper that he hopes to publish before the Summer

Recess. The latest possible time for publishing the White Paper would be November, to coincide with the publication of the first Broadcasting Bill. (If that Bill should slip from the programme under the pressure of Student Loans, the White Paper might perhaps be held over until the turn of the year. But the Home Secretary is impatient to announce the Government's final decisions on the Peacock recommendations, made in 1986.)

GENERAL BACKGROUND

(i) Recent history

7. The broadcasting policy embodied in the Cable and Broadcasting Act 1984, and accepted by Peacock, is that additional television services should be catered for by cable and by direct broadcasting by satellite (DBS). The technology of MVDS broadcasting was known when that policy was constructed, but the possibility of authorising MVDS was then deliberately excluded by Ministers, on the grounds that the emerging technologies had to be given a degree of protection. In the event, however, it has become increasingly apparent that cable may have failed to overcome its inherently high cost, and the window of opportunity for it may be closing. This led the Home Office to review last year whether the prohibition of competing technologies was still defensible. That, in turn, led to the possibility of MVDS being on the agenda at your seminar, and your decision that technical studies should be put in hand.

8. Quite separately, but as an indirect result of the Peacock shake-up, the advertising interests and the advocates of subscription television also began lobbying for the creation of additional UHF channels. These possibilities had previously not been examined, because it had always been assumed that new services would have to be universally receivable by the whole of the country. As a result of preliminary studies, however, it became clear that a new UHF channel might be possible at something like 70% coverage, and you therefore directed that these possibilities should be fully examined by DTI, alongside the

studies of MVDS that were being commissioned from consultants. Pressure subsequently expanded to include VHF broadcasting, and that, too, was added to the studies. There is naturally a good deal of commercial interest being expressed in these possibilities. The Rank Group, in particular, have been active in promoting the idea that they could run a new service.

9. Meanwhile, BSB have been working towards launching their DBS service in October 1989. They have so far raised £225 million, and will need to raise another £400 million between now and shortly after the time of the launch. If they are successful - and they seem to be mounting a professional operation - BSB will at a stroke provide four new services on three channels; one of these services would be devoted exclusively to films and would be financed by subscription.

(ii) The technical possibilities

10. The clearest available summary of the options is Annex 1 to MISC 128(88)4, and I attach a further copy of that Annex to this brief. Since you will also be having a presentation on the options, I will only note one point here, which you may wish to bear in mind. This is that the suitability for configuration on a national, regional or local basis is different for the various options. DBS (and any other kind of satellite broadcasting) is inherently of a national character. UHF (and VHF) broadcasting can be either national (like Channel 4) or regional (like ITV). MVDS is inherently suitable for local (ie town-size) operations, though the geographical area of an MVDS service can naturally be extended by installing more and more transmitters.

(iii) Telecommunications policy

11. Current telecommunications policy contains certain barriers to free competition, mainly in the interests of protecting new competitors who are incurring high entry costs. In particular, British Telecom (BT) and Mercury are guaranteed a duopoly of voice telephony services and the Trade and Industry Secretary has

recently announced that the review of this duopoly shall not begin until November 1990. BT and Mercury are, however, prohibited from carrying television services - though there would be little technical problem in their doing that if it were allowed. Cable companies must carry any authorised BBC, IBA and DBS services: they are prohibited from providing voice telephony except in partnership with BT or Mercury though, again, there is no technical problem about such a service.

12. The Peacock Committee recommended that BT and Mercury should be allowed to carry television, but only on a "common carrier" basis that would preclude them from providing services themselves. This recommendation was processed separately from the rest of Peacock through a new official group, MISC 131, which in turn set up a Communications Study Group. That Group, after some limited consultation outside, has concluded that the different telecommuni-
cations technologies are converging and that, as a general principle, operators should be enabled to use whatever mix of
technologies best meets their needs. The implications of this so-called "technology neutral" approach have not yet been considered in any detail by MISC 131 or by Ministers collectively.

13. Although the Communications Study Group probably envisage a "technology neutral" approach ultimately applying to all broadcasting and telecommunication services, they are focussing on local services to start with. For present purposes, therefore, their views only bear on possible MVDS television services, which are inherently of a local nature.

14. As the Home Secretary points out in his paper (MISC 128(88)5) the problem with the Communications Study Group's proposals is that they conceive of their "technology neutral" services being operated as local monopolies. The Home Secretary suggests that in terms of broadcasting policy it would be quite unacceptable for local programme providers to be shackled in that way, and that if there is to be any local monopoly of this kind it should be
restricted to the delivery system. That modified proposal is clearly an improvement on the study group's ideas, insofar as

broadcasting competition is concerned. But before even this modified proposal is accepted you may wish to probe with the Trade and Industry Secretary whether the ideal of "technology neutrality" might be approached by means that did not involve the creation of any new monopolies.

(iv) The timetable

15. There are certain key dates that you will doubtless wish to bear in mind in considering the path through this subject. They currently look as follows.

Summer/Autumn 1988

Publish White Paper on Broadcasting

October/November 1989

Introduction of main Broadcasting Bill (which cannot be postponed, because of the need to legislate on the ITV franchises)

AND

Launch of BSB, preceded and accompanied by effort to raise £400 million capital.

November 1990

This is the first date for the start of the review of the BT/Mercury duopoly.

16. Two main points emerge from this list of dates.

First, the White Paper and the run-up to the main Broadcasting Bill precisely coincide with BSB's increasing financial requirements, and their need for market confidence. So, if the aim is to protect BSB, any announcements of Government policy during that period will have to be handled with very great care.

Second, it will not be possible to develop and announce a comprehensive new telecommunications policy until after 1990. But the justification for a "technology neutral" approach lies in telecommunications policy considerations rather than broadcasting policy. If, therefore, the Group is minded to get into the local TV broadcasting area and announce a "technology neutral" approach to it before 1990, you would wish to be satisfied that this could be done without pre-empting the later telecommunications policy review.

MAIN ISSUES

17. The Government's objectives can be said to be to encourage competition in the provision of services, to ensure new advertising outlets and to encourage the testing of new methods of payment such as subscription (which may pave the way for the eventual run-down of the BBC licence fee). These objectives need to be pursued in a way that safeguards the welfare of consumers, both as regards range of choice and in matters of taste and decency, and which minimises the risk of sterilising spectrum by allocating more of it to broadcasting purposes than the market can bear.

18. The Home Secretary's paper brings out the difficulties of managing the transition to a fully competitive broadcasting environment. This involves both the way in which new services might be phased in and the way in which existing PSB constraints might be phased out. If PSB requirements apply unevenly across commercial broadcasting, they will clearly distort competition, but 1993 might be too early to remove them completely.

(i) The requirement and choices for new services

19. As mentioned in paragraph 16 above, BSB is scheduled to introduce four new services, on three channels, just at the time the Broadcasting Bill is introduced in 1989. There are two further unallocated DBS frequencies that could, under the terms of the Government's undertaking to BSB, be allocated 3 years later. The need for new services on competition grounds is thus greatly

influenced by what happens to BSB. But simply taking an enabling power to authorise new services would doubtless be vigorously opposed by BSB on the grounds that such uncertainty undermined their search for finance.

20. The easiest option to dispose of is undoubtedly a fifth channel on VHF. It seems out of the question, if only on aircraft safety grounds. You may wish to exclude it at the outset.

21. A fifth (and subsequently a sixth) channel on UHF is technically the simplest option. We know that the technology works, and it would be the cheapest option for the viewer to equip himself to receive. If the aim is quickly to promote competition and expand advertising outlets, and you judge the 70% coverage and its geographical distribution to be politically acceptable, then this would be an obvious option to support.

22. It would be possible to stop at that point, on the footing that a fifth (and possibly sixth) UHF channel plus the five DBS frequencies currently allocated to the UK provide enough broadcasting spectrum for the 1990s. But if the Group want to go further and faster in pursuit of competition they will need to consider, first, whether MVDS services should be authorised and, second, whether DTI should be instructed to open international negotiations in pursuit of further DBS frequencies for the UK. These additional DBS channels would be incompatible with MVDS broadcasting at 12 GHz, though they would not prevent MVDS operations at 2.5 GHz. Even if DTI were instructed to open negotiations for the extra DBS channels immediately, the result would not be known for about 12 months and the White Paper could not assume the answer.

(ii) Impact on BSB and existing services

23. At the meeting on 29 September you were particularly concerned that the position of BSB and the existing cable franchise-holders

should be fully taken into account. The Home Secretary therefore publicly repeated the Government's promise not to allocate the two further DBS frequencies until BSB had been operational for at least 3 years, and he also undertook that in considering any possible changes to the broadcasting environment, the Government would give full consideration to the potential impact on "DBS and cable operators, the terrestrial broadcasters and others".

24. Before final decisions are taken, it will be prudent to consult the Attorney General to ensure that there is no risk of judicial review, but at this stage you will doubtless wish to approach the question in a fairly broad way.

25. Any new services financed by advertising will be in competition for advertising revenue with each other and with existing ITV services. To that extent, all new and existing commercial services bear on each other. But there is likely to be a more direct competition within each of the technologies. And the introduction of MVDS seems likely to kill off existing cable operations.

26. Against that background, you may first wish to consider the timing of any new services. This is dictated by the extent of the protection you wish to extend to BSB. Since no new services could in practice start before 1 January 1993, the Government could simply confirm that date to BSB as the earliest time of commencement for new services, and leave the matter there. But BSB may be in a position to put us ahead of Europe in DBS broadcasting on purely private finance, and the more you wish to ensure them a clear run, the more you will wish to push back the start date for competition - to 1994 or 1995.

27. Second, the Home Secretary has highlighted the fact that the impact on existing services is a product both of timing and of the terms on which competition takes place. Given that decency etc will be protected by the Broadcasting Standards Council and the extension of the normal obscenity law, there is a case for putting new services under a very light regulatory touch. But that would

put a fifth UHF channel in a very strong competitive position vis-à-vis the existing ITV system if PSB requirements continue to apply to it. Since modified PSB requirements also apply to DBS, a lightly regulated fifth channel would also represent competition on unequal terms against BSB, though the Home Secretary's paper does not bring that out.

28. One way of securing equal terms of competition would be simply to remove PSB requirements from ITV and DBS, and leave them applying only to the BBC. The Home Secretary is absolutely clear that this must be rejected as too violent and unpredictable an upheaval to precipitate in 1993. The gist of his conclusion, therefore, is that, the earlier in the 1990s that a fifth channel is authorised to start, the stronger the case for applying PSB requirements to it.

29. The specific, and potentially lethal, impact of MVDS on cable franchise-holders is of a different order and if the group decide to authorise MVDS they will need to consider this dimension. One possibility identified by the official group would be to make MVDS only available initially on a requirement that the franchise-holder would proceed to establish cable services, though it appears objectionable to insist that one technology should come to the aid of another in that fashion. It might be possible to devise simpler preferential schemes for cable franchise-holders if the group wished to go down that road. Alternatively, cable could simply be left to take its chance in the market against the competition from which it would have been shielded for its first 8 years. The views of the Trade and Industry Secretary will be crucial on this point, as well as on the "technology neutral" argument summarised at paragraph 14 above.

(iii) Configuration and financing systems

30. There is an open question, not fully analysed in the papers, whether a fifth UHF channel should be organised on a national or regional basis. This cannot be separated from the question of subscription or advertising finance. If a fifth channel covering

70% of the country was allocated to a single contractor financing himself by advertising, he would enjoy immense competitive advantage against the present ITV regional contractors. If, however, the new channel was deliberately set up as an experiment in subscription, competition would not be direct and the case for a single contractor would be greater.

31. The importance of subscription is that it may pave the way for running down the licence fee. When the group had its first discussion of subscription, in the context of BBC night hours, you commented that it would be very hard to form a view of the robustness and viability of subscription on such a limited experiment, and that what was really needed to demonstrate the possibilities was a full service financed by subscription. (This is, of course, one of the things that BSB will provide, at no cost to the Government, if it is successful.)

32. One difficulty about requiring, or overtly encouraging, a new service to be financed by subscription is that the motive would clearly lie in the Government's attitude towards the licence fee. The normal assumption would be that the choice between advertising and subscription finance was a matter for the contractor's commercial judgement, subject to the discipline of the market. A decision to finance a fifth channel other than by advertising would be very badly received by the advertising interests. And the Home Secretary points out that the public who did not wish to view a fifth channel on subscription could well resent the disruption caused by its introduction.

33. The question of subscription and the use of BBC night hours is to be further considered at the group's meeting on 5 May. If possible, however, you will wish to avoid postponing to that meeting a decision in principle on the financing of new services. Given the Home Secretary's strong disposition against any Government-imposed requirement for subscription, the decision on a fifth channel might be that its financing could be by way of subscription or advertising at the contractor's choice. That

would leave open the question whether there should be a single national service or regional ones.

(iv) The regulatory authority

34. You will remember that you decided that a special new authority was needed to regulate the new independent radio services because of the special character of that exercise. That argument does not apply in the present case, and the appropriate regulatory authority for new TV services should flow naturally from the decisions that are taken about the application of PSB requirements. If PSB requirements are imposed on the new services, then the IBA would be the obvious regulatory authority. If, on the other hand, the new services were to run under a light regulatory touch, then a revamped and expanded Cable Authority would seem appropriate.

(v) Publication of the technical studies

35. The Home Secretary suggests, in paragraph 20 of his paper, that the technical studies on additional services should be put into the public domain before the White Paper is published. This seems broadly right in principle but there is a distinction between the purely technical part of the studies and the commercial assessments of likely profitability etc. We understand that the consultants (Touche Ross) would in any event need to do some substantial re-writing of their commercial conclusions for publication because of the "commercial-in-confidence" information that they contain. You may think that it would be safer for the published material to be limited to the technical assessments, and you may wish to ask the Trade and Industry Secretary to circulate it to the group before it is made public.

HANDLING

36. When you judge that discussion of the presentation has served its purpose, you will wish to invite the HOME SECRETARY to

introduce his paper. You may then wish to invite the TRADE AND INDUSTRY SECRETARY to give his views, and the CHANCELLOR OF THE EXCHEQUER to add his comments.

37. During the more detailed discussion at the second meeting, you will wish to ensure that the group covers the main issues set out above, and addresses the groups of decisions that are summarised in paragraph 2.

A/L

A J LANGDON

31 March 1988

ADDITIONAL TELEVISION DELIVERY MECHANISMS**UHF FIFTH CHANNEL**

One channel only. 70% coverage from 1992 (limited coverage earlier). Cost per household £30 (for an additional aerial). National or regional programming. BUT international negotiations could reduce coverage and/or delay start. Costs of relocating existing users from channels 35/37 to be met by franchisee. Most VCRs and some home computers would need to be re-tuned. Difficult to re-house/ provide for growth of broadcast ancillary services now in Ch 35.

UHF SIXTH CHANNEL

One channel only. Further study needed but 40% coverage perhaps 1990/91. Cost per household £30 if new aerial required. National or regional programming. BUT international negotiability believed difficult. Puts at risk one or more existing service to some 10,000 viewers. Reduces scope for broadcast ancillary services. A different approach giving over 50% coverage without putting existing users at risk may be possible mid 1990s but could mean expensive relocation costs of existing users to be borne by franchisee.

VHF FIFTH/SIXTH CHANNEL

One channel only. Maximum 40% coverage from 1992. Cost per household £100 (for new aerial and frequency converter). National or regional programming. BUT probably ruled out by potential harmonic interference to aircraft navigational aids and communications. UK mobile radio lobby and international neighbours seriously upset by policy reversal on these bands. Adjacent conurbations eg: Birmingham /Manchester, could probably not both be served. Serious interference early evenings May, June, July from sporadic-E. Return to large H aerials probably required. Probable interference to mobile radio services now occupying VHF broadcasting sites.

MVDS

Up to six channels at 2.5 GHz or twelve at 12 GHz. At 2.5 GHz equipment is cheaper (cost per household £250) and available off the shelf, but no spectrum available for later expansion beyond six channels or to extend coverage to meet market demands. At 12 GHz equipment is more expensive (cost per household £300-£500) at least initially, but some commonality with DBS equipment also at 12 GHz may reduce costs; better prospects of further spectrum for later expansion beyond twelve channels or to extend coverage to meet market demands; pressure on spectrum for alternative uses generally less at 12 GHz than at 2.5 GHz. With both 2.5 GHz and 12 GHz early start possible, with 70% coverage or more from 1992. National, regional or local programming. BUT up to 30% of households within coverage areas might not receive usable signal because of shielding by buildings, terrain, etc. Large dish aerials (2 foot) would need to be mounted at or above roof-top level. Could be difficult to re-house outside broadcast links at 2.5 GHz and at 12 GHz.

DBS

Up to fifteen additional channels but international negotiability uncertain. Potentially universal coverage. Cost per household £300-£500 (BSB optimistically say £200). (For dish aerial and frequency converter). Dish aerial smaller (perhaps one foot) and less obtrusive (could be mounted under eaves, at ground level or behind a window). BUT could preclude MVDS at 12 GHz. Could be difficult to re-house outside broadcast links at 12 GHz.



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