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Dear Professor Griffiths,

BROADCASTING WHITE PAPER

I have been reflecting as I promised on our discussion yesterday, and about the need to ensure that the White Paper proposals taken as a whole achieve the right balance. There are a number of ways in which the proposals in the draft White Paper circulated with my minute to the Prime Minister last week could be adjusted to meet concerns about this balance. I take these, in turn, below.

News Provision on Channel 3

The draft White Paper envisages, in paragraph 11 of Chapter VI, an obligation on each Channel 3 station to show news and current affairs. Since this is, and is likely to remain, the most popular channel in competition with the BBC, I believe we need to be more explicit about this. We should make clear that the obligation should be to show high quality news and current affairs dealing with national and international matters, and that the ITC should have a duty to ensure that the news (and possibly also current affairs) is shown during the main viewing periods. We want to avoid the possibility that licensees might shuffle news into the non-peak hours - say in the middle of the afternoon or very late at night. On the other hand we must be careful not to reintroduce the whole panoply of bureaucratic regulation of scheduling, which the present system entails, and which we are agreed ought to go.

This would meet some of our objectives, but I believe there is a strong case for going further to ensure that there are adequate institutional arrangements to provide a news service which, at the level of a quality achieved by the ITN, is necessarily expensive. Accordingly, I believe we could retain a modified version of section 22 of the Broadcasting Act 1981, the provision by virtue of which ITN has its existence. The provision would impose a duty on the Independent Television Commission (ITC) to ensure that there was at least one body effectively equipped and financed to provide news on its Channel 3 service. Channel 3 licensees would be required to finance the organisation and in exchange would have the opportunity to own shares in it. However, whereas at present all ITN shares are held by ITV contractors, I envisage as we discussed that under the new provision at least a minority of shares would be held externally, by companies without licences on any television channel. The ITC would have powers to ensure that the news service provided by this body was shown by the stations and, as already mentioned, that this should be at proper times.

Professor B Griffiths

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The justification for this approach will, I think, be readily understood: namely the need to ensure that Channel 3 - likely to remain the most popular and universal service in competition with the BBC - provides viewers with a first class news service. The likely result, although I do not believe we could or should seek to achieve this on the face of the statute, is that ITN would be re-established on this new basis.

If we took these steps I would not want to press further the suggestion in paragraph 14 of Chapter VI of the White Paper that one of the licences offered for Channel 5 would be for a service with a substantial proportion of news and current affairs among its output.

BBC Night Hours

In my minute of 19 August to the Prime Minister, I explained the case for allowing the BBC to retain the night hours on both channels on the basis that this would assist in moving the BBC over to a subscription basis. But there is a strong case for removing one of its channels to reduce its dominant position and to avoid the risk that it could become the market leader of subscription services. The Trade and Industry Secretary has already expressed doubts about the approach I canvassed and I would be content, if that reflects the general view of colleagues, to revert to our earlier decision to remove the night hours from the BBC on one of its channels. Probably the best way of doing this would be to hand the frequency to the ITV who would allocate it by competitive tender, on a similar basis to the night hours on Channel 3. The BBC would then have to do its best to introduce subscription on its remaining channel, though whether it found it best to proceed through further specialised services like its present one to doctors or by more general entertainment channels is something we might leave to them. Obviously our ability to reduce the licence fee in recognition of subscription income would be less than it would otherwise have been.

Transmission

I have looked again at what the draft White Paper says about the BBC's transmission role. We could go further than officials proposed, and canvass a provision, parallel to that envisaged for the ITC, requiring the BBC to contract out as far as possible the operation of its transmitters. If the White Paper says that is what we want to happen, there is a reasonable prospect that the BBC will proceed to do it without waiting for legislation, and we could take a final decision on whether it was necessary to include a specific provision in the Bill nearer the time.

I still believe that it would be right to allow the BBC to offer a transmission service on commercial terms to other broadcasters, for example those wishing to mount new radio services or those licensed to deliver local MVDS services. The BBC is keen to do that and we have been anxious to encourage them to be more commercial to reduce the demands on the licence fee. This approach is entirely compatible with the requirement that the operation of the transmission system should be contracted out to the private sector. However, I appreciate the concern that because of its dominant and

and established position the BBC might be in a position to undercut other potential operators. The White Paper should allude to this risk and make it clear that the Government will watch with care to ensure that there are no market distortions. The remedy would lie through the normal procedures under competition legislation.

Channel 4

It is important that we ensure continued and adequate competition for the BBC and its audiences across the full range of programming, including quality programming. We are all agreed that Channel 4's special remit must be preserved. We need to make sure that Channel 4 provides a bulwark of quality public sector broadcasting in the independent sector which stands comparison with the BBC. But it is obviously essential in addition that the channel is adequately financed and organised for that task. We are agreed that advertisements on Channel 4 must be sold separately from those on Channels 3 and 5. The simplest answer is for Channel 4 itself to sell them, though it may sub-contract that operation if it so wishes. The problem will arise if the revenue from this is not adequate - or is feared by Channel 4's management not to be adequate - to enable it to continue to meet its special role. The remedy I believe is to provide the ITC with a duty to ensure both that Channel 4 is efficient in the way it commissions and finances programmes and that Channel 4's revenue is adequate to its task. If the advertising revenue were insufficient, in the ITC's judgment, it could require those who held licences for other independent television services to make payments from which it would top up Channel 4's income accordingly. This would mean that the management of Channel 4 would know that they had no need to take the channel down-market to secure greater resources, and should accordingly help them to maintain their high quality remit in competition with the BBC. We should obviously need a provision to ensure that the Government could set a ceiling on the ITC's ability to require payment for this purpose.

It was, as you know, already my own view that Channel 4 should remain a non-profit making body, and that a fully commercial entity would find it difficult to fulfill its special remit. The arrangements suggested above for guaranteeing that it had an adequate income would really only work on this basis. I therefore propose that Channel 4 should, in future, take the form of a wholly owned subsidiary of the ITC, though as now with a separate Board effectively guaranteeing its independence.

The Third Force

I was very struck with your ideas on the need to develop an effective third force in UK broadcasting, to provide adequate competition across the full range of both popular and quality programming, to the BBC and Channel 3. There may even be a case for looking to Channel 5, perhaps in conjunction with Channel 4, to provide this as it becomes established. A lot of work has yet to be done to clear the technical way for the existence of Channel 5, and then to set it up, so we cannot predict with any certainty how matters may develop. But with your objective in mind I see a good case for giving the ITC, on a contingent basis, a reserve power which the Government could activate by subordinate legislation, to provide a transparent subsidy if it judged it necessary to ensure the production and showing at appropriate times of quality programming on any non-BBC service. This mechanism could be used

to build up Channel 5, perhaps linked with Channel 4, as the third force. But it could also provide the core of the mechanism which Peacock envisaged in the long term of a Public Service Broadcasting Council to provide an Arts Council of the air. Again there would need to be provision to ensure that the Government could set the limit on the ITC's expenditure for this purpose, but it would provide a useful mechanism to ensure the continued availability of wider ranging and quality programming in the independent sector, and would thereby strengthen our ability to rebut the attack which is clearly going to be mounted that the White Paper will lead to an effective narrowing of choice through the impoverishment of independent television.

These are difficult and important issues on which colleagues will clearly have views. If the proposals outlined above meet with the Prime Minister's approval I would be content to put them at once to MISC 128 in the hope that they would secure general approval. I would explain that they stemmed from a further assessment of the package as a whole, including the BBC's place in the scheme of things and the need to ensure the continued vitality of the independent television sector. In the meantime I am asking officials to work up on a contingent basis the drafting changes needed to the White Paper to reflect these points. I think that they hang together and should be considered as a whole.

Yours sincerely,

Philip Davies

APPROVED BY THE HOME SECRETARY
AND SIGNED IN HIS ABSENCE