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26 September 1988

Dear Professor Griffiths,

BROADCASTING WHITE PAPER

....
The Home Secretary was grateful for your comments on his letter of 21 September about a number of possible amendments to the White paper package. I now attach revised passages to the White Paper on the relevant matters, which the Home Secretary will be discussing with the Prime Minister tomorrow. New material is underlined or sidelined.

BBC night hours

The passage attached amending paragraphs 13 and 14 of Chapter III meets the point. The Home Secretary believes that once one channel is removed from the BBC it should be left to them to decide the best use to make of the one remaining - whether for specialised services like medical downloading or for more general entertainment services. The important thing is that they would have a clear financial incentive to maximise revenue.

ITN

The proposed changes to guarantee the existence of a high quality news service in competition with the BBC are reflected in paragraph 12, Chapter VI. As Mr Hyde explained, the reason for saying that there should be 'at least one' news organisation is simply that this is the form of section 22 of the 1981 Act at present and there would be advantage in aligning the new provision closely with it. It seems unlikely that the ITC would make an early move to establish a second organisation.

BBC transmission

The revised paragraph 2 of Chapter IX reflects the Home Secretary's view that the Government should indeed ask the BBC to contract out its transmission operation, with the possibility of legislation mentioned in reserve.

/Channel 4

Professor B Griffiths

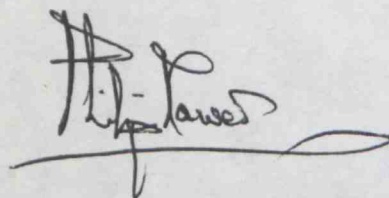
Channel 4

The revised paragraph 23 of the Chapter VIII is attached. The Home Secretary remains firmly of the view, expressed in his Minute of 14 September to the Prime Minister, that it will in practice be difficult to keep a profit maximising company to Channel 4's special remit. Accordingly he hopes that the White Paper, while canvassing the options, can express a clear preference for Channel 4 to be a non-profit making subsidiary of the ITC; and that we should also mention the idea that the ITC would have power to top up Channel 4's revenue if that became necessary. This does not of course mean that Channel 4 could simply write itself a blank cheque: the ITC would move in to provide a subvention only if it were persuaded that Channel 4's income from subscription and advertising was adequate to meet Channel 4's remit, on the assumption that Channel 4 were behaving efficiently.

Although the draft passage mentions as a longer term possibility the idea that there might be a link between Channel 5 and Channel 4 with the former funding, or helping to fund, the latter the Home Secretary believes that given the uncertainties before Channel 5 it would not be possible at this stage to make Channel 4's future dependent on Channel 5. Channel 4's needs will exist from the start, but Channel 5 will not exist.

My earlier letter canvassed the idea that the ITC should be given, 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. The Home Secretary continues to see merit in this idea, partly because of the reassurance it would give to the Government supporters about its determination - as expressed in the Manifesto, to enhance quality. The final passage in the enclosures to this letter sets out the arguments.

Yours sincerely,



P J C MAWER

BBC NIGHT HOURS

Pages so marked are
the Home Office's
reviser's following the
Home Secretary's talk
with Brian.

CHAPTER III, PARAGRAPHS 13 AND 14

13. The Government proposes to authorise the BBC to run subscription services during the night hours. The BBC [has already started] [plans to start soon] a downloaded service, in conjunction with a commercial partner, British Direct Television, providing information for the medical profession. It plans to run other similar specialised services, and also to move into entertainment services, catering for particular tastes and interests, drawing on its programme archives. It will be for the BBC in this area, as more generally, to decide the best mix of programme services within the framework of financial incentives laid down.

14. The Peacock Committee proposed that the night hours (1:00am to 6:00am) should be removed from the BBC and other broadcasting authorities and sold for use to provide new services by the highest bidder (paragraph 652). There is, however, scope for new services to be provided in other ways, while removal of the night hours on both its channels would make it hard for the BBC to introduce subscription without running the risk of depriving views of valued programming which they had been accustomed to receive free. It would also hamper the BBC's plans for building substantially on its initial downloading experiment in a way which offered the prospect of substantially widening viewer choice and establishing a firm base for subscription technology. The Government therefore proposes to allow the BBC to retain the night hours of one of its channels, on the basis that it uses it as fully as possible for developing subscription services. It accepts the case for removing the night hours on the other BBC channel from the Corporation and assigning them to the ITC (see Chapter VI, paragraph 14).

ITN

CHAPTER VI, PARAGRAPH 12

12. Taken together these requirements will ensure that Channel 3 helps forward the main objective of enlarging viewer choice. The first reflects the Government's agreement with the Home Affairs Committee (paragraph 171 of their Report) that the regional basis of what will become Channel 3 is crucial. The third will ensure - on the same basis as for national commercial radio services - that the Channel is not monopolised by programmes of appeal to only a single target audience. The fourth and fifth will ensure a competitive programme production market. It will be open to Channel 3 licensees to contract out all their programme making if they find it efficient to do so. The second requirement, concerning news, would in itself do much to ensure that the public does not lack opportunities to keep itself informed. However, the Government believes it necessary to go further, in the case of Channel 3 alone, to ensure that there is adequate competition to the BBC and to guarantee the continued availability of a high quality news service of the kind ITN has provided throughout the existence of the ITV system. ITN has its existence by virtue of section 22 of the Broadcasting Act 1981, which requires there to be at least one news organisation in which each ITV contractor must be given opportunities to invest. The Government intends to retain this provision in modified form: it will impose a duty on the ITC to ensure that there is 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, under the new provision at least a minority of shares would be held externally, by bodies without licences on any television channel. Although not having general control of scheduling the ITC would have powers to ensure that the news service provided by this body was shown by Channel 3 stations and, as already indicated, that this should include exposure during peak viewing times.

BBC TRANSMISSION

CHAPTER IX, PARAGRAPH 2

2. The BBC's transmission responsibilities are reflected in its Charter which lasts until the end of 1996, and the Government does not wish to question the BBC's continuing transmission role, at least in that period. The advent of new services will, indeed, open up new commercial opportunities for the BBC. The Government hopes that the BBC will make the best of these opportunities by offering a transmission service to other broadcasters on a commercial basis, and the BBC has indicated its interest in pursuing that. In the same way the BBC should test the market for the operation by others of its transmission system. The BBC has already tested the market for a range of support services as part of its general policy of devoting as great a proportion as possible of its resources to programme making. The Government sees advantage in it adopting the same approach to the transmission area too. Accordingly, while it wishes to consult the BBC about the approach, it envisages that the BBC should contract out to the private sector, as far as possible, the operation and servicing of its transmission system; and the Government will keep in mind the possibility of legislating to that end. That approach is compatible with the BBC, at the same time, offering a transmission service to other broadcasters, for example the new national commercial radio services and those wishing to offer an MVDS delivery service. The Government appreciates that there is some risk that because of its dominant position as a vertically integrated national broadcasting organisation the BBC may be able to undercut commercial competition for transmission contracts. It will keep under review the extent to which market distortions, through pricing policy or otherwise, arise and if necessary will seek remedies under the competition legislation.

<mg>Min/ChaptIX/Para2

CHANNEL 4

Chapter
~~PARAGRAPH VI~~ PARAGRAPH 23

23. The Government accordingly believes that Channel 4's special role is best fulfilled by an independent self-financing organisation subject to ITC oversight, but without structural links to its other licensees. The ITC would be responsible for transmitting the service, as explained in Chapter IX. Channel 4 will, for the first time, be given the opportunity - and accompanying freedoms - to recover the costs of fulfilling its special programming remit by its own efforts. It will be responsible for the sale of its own air time, though it might choose to contract this out. Like other independent television services it will also be given the right to charge the public subscription and the freedom to decide when and how to do this. On this basis Channel 4 could either remain a non-profit making body, in the form of a subsidiary of the ITC (with any surplus revenue going towards the costs of S4C) or the service could be provided by a private sector company licensed by the ITC in much the same way as services on Channel 3. If a commercial company were to fulfil Channel 4's special role the programme remit would need to be clearly expressed in the form of licence conditions which the ITC would need to enforce rigorously. The licence could thus be awarded by competitive tender, as described in paragraph 15. In particular it would be necessary to ensure that the Channel should continue to provide a service which, as well as being innovative and experimental, addresses a wide range of minority tastes. However, an express requirement that it should be different from all services licenced by the ITC could not sensibly be laid down as a licence condition.

23A. The Government does not regard the concept of Channel 4 operating under a commercial licence as impracticable or necessarily inconsistent with the Channel's special role, but it sees force in the fears expressed that if Channel 4 were operated by a profit maximising private company concern about its revenue would put pressure on its adherence to its special remit, and on any regulatory structure designed to secure such adherence. This

risk would be reduced if Channel 4 were to remain a non-profit making body, in the form of a subsidiary of the ITC.

23B. The evidence suggests that in present circumstances Channel 4 could be self-financing. The Government's hopes that as a non-profit making body it could continue to be so. It recognises that there is some risk, in the more competitive environment in prospect, that the Channel's ability to fulfil its special innovative and complementary role might, in future, be compromised if it were wholly dependent on the advertising and subscription it could raise itself: the problem arises because it will always seem possible to Channel 4 management to avoid any risk to its revenue by slightly trimming its programming to depart from its special function which inevitably involves it in showing a number of programmes of minority appeal. Accordingly the Government suggests that the ITC might be given a duty to ensure that in commissioning programmes Channel 4 acts with efficiency and that its revenue is adequate to the task. The ITC will have power to raise subscriptions from other stations operating on UHF which might be applied, subject to a ceiling established by Government, to meet any shortfall in Channel 4's revenue. (At the same time the ITC will have power to extract any surplus from Channel 4's revenue and to apply this towards the costs of the Welsh Fourth Channel.) It would clearly be wrong if Channel 4's management were cushioned entirely from incentives to efficiency and it would be important for the ITC to devise procedures to safeguard against this. Channel 4 might be required to submit an annual budget to the ITC to justify any financial claim, together with itemised accounts to show the relationship between the previous year's budget and its actual spending. The ITC would be required to scrutinise the budget and the accounts and to be under a statutory duty to seek value for money. There might also be a limit, variable through subordinate legislation, on the extent to which the ITC subvention could be increased in a single year.

23C. ~~{Another possibility is that~~ In time, when Channel 5 services have become firmly established, it ~~will~~ be possible to make some organisational link between Channel 4 and Channel 5

with complementary programming and scheduling and with Channel 5 assisting in the funding of Channel 4.]

23D. The Government would welcome views on the future constitution of Channel 4, on which it will wish to consult further in the industry. This consultation will be on the basis that Channel 4's special role and remit should be preserved, and that advertising on Channel 4 should be sold separately from that on Channel 3. The Government's preliminary view is that the constitution of Channel 4 should be a subsidiary of the ITC, on the basis described in paragraphs 23A [and B] above.

PROGRAMME QUALITY AND DIVERSITY

CHAPTER VI, PARAGRAPH 39A

The Government believes that its proposals taken as a whole will provide not only for an enhancement of programme quality and diversity, but also for a widening of consumer choice. New services will cater for new tastes, both in providing more localised services and in meeting different interests, especially given the introduction of subscription which will assist the operation of the market and enable broadcasters to meet viewer needs, including demands for specialist programmes or thematic channels. As well as programmes of general appeal, there will be an increasing ability to cater for niche markets in broadcasting. Nonetheless, even in a mature broadcasting market there may be a need, as the Peacock Report argued, for mechanisms to ensure the continued production of demanding programmes of high quality which viewers, as citizens, would wish to have available, even though the market may not sustain them. Peacock proposed, in due course, the establishment of a Public Service Broadcasting Council to provide separate and secure funding of such programmes of merit, which he believed should be funded from the proceeds of competitive tender (paragraph 682-689).

The Government believes that it would be a helpful safeguard to provide the ITC, on a contingent basis, with a reserve power which could be activated 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. Such an arrangement may provide the precursor of Peacock's idea of a Public Service Broadcasting Council to provide an Arts Council of the Air. The Government would need to set the limit on the ITC's expenditure for this purpose. Such a provision will provide a flexible means of

| ensuring that the Government's commitment to the strengthening of
| programme quality and diversity is indeed achieved.

<mg>Min/ChapterVI/Para39A