

*PC/on*



*NBAH at this stage.  
A. BIF 14/10.  
PRIG  
12/10*

QUEEN ANNE'S GATE LONDON SW1H 9AT

10 October 1988

*Dear David,*  
DBS CHANNELS 4 and 5

*will request if required*

.....  
We had a word at Cabinet about Sir Trevor Holdsworth's letter of 30 September to me summarising British Satellite Broadcasting's views about the White Paper. In that letter he indicates that BSB would now be willing to see the three year moratorium on the allocation of DBS Channels 4 and 5 lifted, and would indeed wish to see the early allocation of the two channels so that they would be in use by the summer of 1990. I enclose a copy of the relevant extract from the letter for the benefit of colleagues who will not have seen it.

The sole purpose of the undertaking which I gave to BSB last year, with the agreement of colleagues, that DBS Channels 4 and 5 would not be allocated until they had been operational for at least three years, was to offer them a measure of protection from competition in their early years. As the intended beneficiaries of the moratorium now no longer want this form of protection it would be paradoxical to maintain it. Furthermore, it would delay unnecessarily the introduction of new programme services. The IBA has indicated that they would support the allocation of the two channels, on condition that BSB make arrangements to enable other operators to use their receivers without necessarily being tied into the same subscriber management system. I therefore propose, subject to the resolution of the point identified by the IBA and the agreement of colleagues, to tell BSB that the channels will be released for allocation as soon as possible. Releasing the channels at this stage would not give BSB an inside track. Although they intend to apply for them if they are advertised, they accept that there would be open competition. And while the BSB would be obliged to consider any application from BSB, my officials have been told that the present thinking of the Authority is that it is very unlikely that BSB would be awarded the franchise.

Releasing the channels in advance of legislation would, of course, mean that the franchise would have to be allocated by the IBA in accordance with the procedures laid down in the Broadcasting Act 1981 and the Cable and Broadcasting Act 1984, rather than by competitive tender as the draft White Paper envisages for future DBS channels. I do not believe in practice that this will make any significant difference. Any prospective satellite operator will have the option of leasing transponders on a medium-powered satellite like Astra or Eutelsat II which would not involve paying for frequencies (which is what competitive tender would effectively amount to in this context). So even if we delayed the release of DBS Channels 4 and 5 so that they could be allocated by competitive tender it seems unlikely that the

The Rt Hon The Lord Young of Graffham

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market would value them highly. To the extent that allocating them in advance of legislation would involve foregoing revenue, this would be offset to some degree by bringing forward the date from which the operator could be expected to start paying levy and tax. Allocation of the channels in advance of legislation would also imply awarding the franchise on the basis of the existing regulatory regime for DBS, which we are proposing to relax slightly. This awkwardness already applies of course to BSB; and the draft White Paper notes that discussions with them about the transitional arrangements will be necessary. Whatever arrangements are devised can be applied similarly to the operators on the two additional channels.

..... The natural opportunity to announce a decision that the two channels were to be allocated would be the White Paper. I attach draft paragraphs for this purpose.

I am copying this letter to the Prime Minister, other members of MISC 128 and Sir Robin Butler.

Yours,

Douglas

2. DBS Channels 4 and 5

In making a response to the Government's ideas about the possible transfer of BBC2 and Channel 4 to DBS, BSB made a number of suggestions about alternative uses of DBS Channels 4 and 5 - including the creation of a Pay-Per-View Channel on a common carrier basis. We indicated our willingness to discuss the lifting of the three year moratorium. Since that time there has been one preliminary exchange with officials and a more detailed series of discussions with the IBA. For two reasons we would now urge the allocation of the Channels with a view to them broadcasting by Summer 1990.

- i) Although the two additional Channels will siphon some potential revenue from BSB they can be distinguished from new terrestrial competition in that they will reinforce the appeal of satellite broadcasting during whatever window of opportunity you allocate to us. Furthermore, leaving aside the Press backing available to the Murdoch and Maxwell Channels, the only strength which Astra has over BSB is its ability to offer up to eleven English language Channels. The UK DBS position of 31 degrees West would be strengthened by a five, rather than three, Channel offering; and
- ii) If DBS Channels 4 and 5 are not allocated until after the inception of the Fifth Channel and, perhaps, MMDS services, there is a very significant chance they will not be viable and will remain unallocated for some years - leading to wastage of a national resource.

BSB would wish to apply for these Channels but allocation would naturally be subject to competition. BSB would be willing to negotiate constructively with other operators if they were chosen by such a process about the possibility of carriage on the BSB satellites. We understand that the IBA would support earlier allocation, subject to discussion of practicalities.

DRAFT PARAGRAPHS FOR WHITE PAPER

Replace Chapter VI paragraph 27 by:

The Government gave BSB an undertaking last year that the UK's fourth and fifth DBS channels would not be allocated until BSB's service had been in operation for at least three years. BSB have, however, recently indicated that they would be willing to see this moratorium lifted. The Government has therefore decided to make these channels available for allocation as soon as possible. The IBA expect to advertise the contracts for the use of these channels in January next year and to have awarded the franchise by June, with a view to the service starting in mid-1990.

This will account for all the DBS channels so allocated to the UK. The Government believes however that it would be sensible to make legislative provision against the possibility that the UK is allocated any additional DBS channels in future. It envisages that the ITC will allocate licences for any future DBS services. These services will be subject to the viewer protection requirements described in paragraph 10. They will also be required to meet the positive requirements on independent production and on EC material described in paragraph 11. The Government does not believe it right to impose the diversity requirement, and clearly the regional programming requirement would be inapt. The Government is inclined not to require any future DBS services to show news and current affairs, though it would consider carefully any contrary views.

<wk>J/Q/ltr/fm/BSB

