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B. ccmt
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22 February 1989

Dear Paul,

SATELLITE TELEVISION -Ref B

You sent Philip Mawer a copy of your letter of 15 February to Neil Thornton recording representations which had been made by Sky Television to the Prime Minister. Subsequently Andrew Turnbull sent him a copy of the letter of 16 February recording the discussion which the Prime Minister had with the Home Secretary and the Secretary of State for Trade and Industry after Cabinet. I am responding to points (iv) (licensing of SMATV systems) and (vi) (must carry rule) in your letter of 15 February.

... The detailed position is set out in the annex to this letter. On the licensing of the SMATV system Sky's difficulties stem from the licensing policy which the Cable Authority has adopted in relation to SMATV systems within cable franchise areas. This policy has not been an arbitrary one and has flowed from the Authority's statutory duty under the Cable and Broadcasting Act 1984 to promote broadband cable. We understand, however, that the Authority is considering relaxing its policy in certain ways which would ease matters for Sky. Although this is a matter for the Authority rather than directly for the Home Office, the Home Secretary has asked officials to keep in touch with the Authority about this. He believes that it should be possible for the Authority to arrive at a policy which will remove unnecessary obstacles from Sky's path while at the same time taking account of the legitimate expectations and interests of cable operators. As regards the must carry rule, the Home Secretary believes that a balance must be struck between the aim to see that the rule is not perpetuated unnecessarily into the future, and the need to meet BSB's legitimate expectations that they would be guaranteed carriage on cable systems licensed under the existing law; and he is satisfied that this balance has been properly struck in the present proposals.

/It is worth

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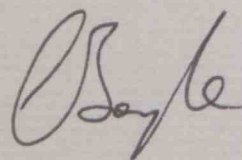
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It is worth bearing one general point in mind when considering complaints by Sky that the regulatory framework operates against them. BSB have chosen to use UK broadcasting frequencies, and to be part of the UK-regulated broadcasting industry. Sky have chosen to use foreign frequencies and thus to operate largely outside the sphere of UK regulation. Both these choices are legitimate, but both carry with them compensating advantages and disadvantages. BSB's choice has conferred on them certain benefits (eg the 'must-carry' rule); but it also brings with it certain liabilities and constraints (eg liability to levy, strict regulation by the IBA on technical matters, and the need to go through an open competition in order to secure additional channels). Sky's choice means that they do not enjoy some of the benefits available to BSB, but also that they are not subject to the same liabilities and constraints. In their representations to the Prime Minister on the regulatory aspects Sky have, not unnaturally, drawn attention to some of the drawbacks of their choice. But in assessing these representations it is worth taking into account the advantage they enjoy, and the fact that they made their choice with their eyes open.

As Neil Thornton noted in his reply, it is a pity that Sky, unlike some of the other satellite operators such as W H Smith Television, have not been in touch with Government earlier to discuss their perceived difficulties. Mr Renton has, however, offered to meet Andrew Neil soon to discuss the issues he has raised, and we will do all we properly can to remove any unnecessary obstacles from Sky's path. In particular, we will encourage them to pursue further with the Cable Authority, what appears to be their principal difficulty, namely the licensing of SMATV systems.

I am copying this letter to Neil Thornton and Stephen Catling.

Yours sincerely



PP MISS C J BANNISTER

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ANNEX

Licensing of SMATV systems

Any cable system serving two or more households requires a licence from the Cable Authority under the Cable and Broadcasting Act 1984, except where the system carries only BBC services or channels regulated by the IBA. This requirement would apply where two or more households were sharing a satellite dish to receive Sky. The main purpose of the licensing requirement is to enable the Cable Authority to apply controls to the content of services to make sure that acceptable programme standards are maintained on matters such as taste and decency. Our understanding is that such licences are not generally complicated to obtain or expensive. It is, however, true the Cable Authority has not generally granted them in cable franchise areas, or in areas where a franchise was being advertised. The reason for this is that the Cable Authority is under a statutory duty to use its licensing powers in such a way as to promote broadband cable. Accordingly, it generally does not licence SMATV systems in franchise areas for fear that they will 'cherry-pick' lucrative areas, thus putting the viability of the cable operator's business at risk. The preference for broadband cable built into the 1984 Act was based on the hope that cable operators would begin to provide telecommunications as well as entertainment services, and thus pose competition to BT at the local level.

We understand that the Chairman of Sky Television has met the Cable Authority to discuss this matter. The Cable Authority apparently accepts that the arrival of Sky changes matters, and that it could be open to criticism if its refusal to grant SMATV licences in areas where the cable system was not operational led to viewers being denied access to Sky. It is therefore considering relaxing its policy in certain ways.

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BSB's services do not need to be licensed by the Cable Authority because they will already be regulated by the IBA. To propose that they should be licensable, as some cable interests have, would amount to pointless double regulation.

'Must Carry' rule

under the 1984 Act all cable systems above a certain capacity are required to carry BBC and IBA services (including BSB's services). The reason why the 'must-carry' rule was applied to DBS as well as to the four terrestrial channels was that it was conceived of as an extension of public service broadcasting. It is perhaps unlikely that the rule would be applied to DBS if the regulatory framework were being designed afresh now; and indeed the new framework for local services proposed in the White Paper does not contain a must-carry rule at all. But BSB signed their contract with the IBA on the basis that they would benefit from the rule (though given the slow growth of cable so far this is unlikely to be a significant benefit), and any change at this stage would leave Government open to the charge that it had unfairly moved the goal posts. In the response to the report of the Home Affairs Select Committee on broadcasting, the Home Secretary accordingly indicated that any cable systems licensed under the existing law would continue to have must-carry obligations for the remainder of the term of their licences.

<kd>js/dr/ltr/Gray

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