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cc: Prof. Griffiths

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From the Principal Private Secretary

5 February 1990

BROADCASTING BILL

The Prime Minister discussed with the Home Secretary today her concern that the Broadcasting Bill, as drafted, was not putting into effect a clear separation between the clearing of a quality threshold and the subsequent bid process, as had been promised in the White Paper. Mr Mellor's letter to The Times of 31 January made clear that details of the cash bid would be known to the ITC when they were assessing compliance with the quality requirement. She was worried that knowledge of how strongly a company had bid would influence the ITC's assessment of how convincingly the quality threshold had been cleared. The clarity of the two stage process had been lost. The result would be greater discretion and hence that outsiders, who would find it more difficult than the incumbents to put forward a detailed business plan, would have less chance of breaking in.

The Home Secretary said that Mr Mellor's letter did reflect the way the Bill had been drafted, but he denied that the two-stage process had been lost. It was inevitable that the size of the bid came into the evaluation in the first stage. In assessing the quality of a company's proposal, it was necessary to take account not just of promises on programme content, but of the likelihood that those promises could be delivered. This would depend on the company's net resources, after deducting the amount it was bidding to acquire the franchise.

The Home Secretary said the alternative would be to amend the Bill so that details of the financial plan and the size of the cash bid were not made available until the second stage. This was subject to two criticisms. First, the assessment of quality would be divorced from the resources required to achieve it. Secondly, it would increase the likelihood that the highest bidder was disqualified in the second stage because there was now the possibility that the amount bid had made the package unsustainable. This would make the second stage more not less discretionary. He felt that given the inevitable inter-action between bid, business plan and quality, the provisions contained in the Bill were the most satisfactory. Excessive use of the ITC's discretion was inhibited by the fact that the ITC had to give reasons where the highest bidder was not accepted and those reasons were subject to judicial review. He was doubtful whether an attempt to amend the Bill to make the process more automatic would succeed as all the pressures in Parliament were in the opposite direction.

After some discussion, the Prime Minister reluctantly accepted that the Bill should stand as drafted. It was, however, open to potential newcomers to sponsor an amendment which would provide that the size of bids would not be revealed until after the quality threshold had been considered. The Prime Minister subsequently asked Mr Gray to speak to Mr Michael Green of Carlton Communications, who had raised the issue with her, to explain why the Bill was drafted in the way it was, and why the Government would not be seeking to amend it. It would be explained to him that he was free to pursue an amendment of his own.

ANDREW TURNBULL

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