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Draw Secretary of State,

**BROADCASTING BILL**

I have seen your minute of 22 February to the Prime Minister about the progress that has been made on the Broadcasting Bill and the concessions you consider necessary to ease its passage through both Houses.

I have to say that your proposals cause me some concern. I am worried in particular that their general effect will be to increase the barriers to entry for new competitors thereby reducing choice. There is a real possibility that the quality hurdle and tender elements of the allocation process will become so entwined that the system will be little different from that at present and the role of the ITC will become more and more like that of the IBA.

You have suggested that the "exceptional circumstances" provision should be clarified by having on the face of the Bill an illustration of how it might be used in respect of quality. Whilst MISC 128 acknowledged that quality could be an element in the use of the "exceptional circumstances" power it did not envisage it being spelt out. Nor did it envisage the ITC using the power purely on the basis of exceptional quality without reference to the value of the relevant tenders. Rather, it felt that there might be a case for using it when there were two similar bids, the slightly lower of which proposed significantly higher quality programming. The danger of basing any clarification merely on "exceptional quality difference" will be to encourage applicants and put in



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minimal bids. This would be particularly attractive to the existing ITV companies who would probably find it easier to convince the ITC of the quality of their applications based on their past record than would a new entrant. It is also important to ensure that any power in this area remains a wholly exceptional one and is not allowed to become the norm.

Turning to your proposal that Channel 3 licensees should be required to devote sufficient time in their schedules to programmes of high quality across the range of main programme types, I am not sure that this would involve simply a drafting amendment. My main concern is that it would significantly increase the ITC's scope to disqualify applications on the inevitably subjective judgement of what is or is not of high quality. Whilst this may just be defensible when considering an application as a whole, it could be used very arbitrarily when applied to particular classes of programming. I find it difficult to imagine how the ITC could tell whether or not the proposals for, say, sports coverage or soap operas in a particular application were of high quality.

A similar argument could, of course, apply to regional news although I accept that this is a much more restricted category of programme and that there is some logic, and presentational advantage, in putting regional news on the same basis as national and international news. I do, however, continue to believe that regional news should not be excluded from the scope of the independent production initiative. As I have previously pointed out, its exclusion would effectively reduce the scope from 25% to under 20%.

I can see the force of your arguments in respect of children's and religious broadcasting and I can imagine that any amendments would be well received. I wonder, however, whether now is the best time to introduce these or any other concessions that we agree. Is there not a case for waiting until the Lords has had the opportunity to debate the Bill and then to table our amendments? If we give way at this stage, we face the prospect of pressure for yet more concessions later.

Finally, I was disappointed to see that you did not include in your minute the question of the cross-ownership restrictions between terrestrial TV franchisees and providers of non-domestic satellite channels about which we corresponded a few weeks ago. As I said in my letter of 7 February, I hope that we can make some progress towards a degree of relaxation based on the ideas in John Major's letter of 25 January, which would allow a company to control a small number of non-domestic satellite channels without being disqualified from applying for a major terrestrial ITC licence.

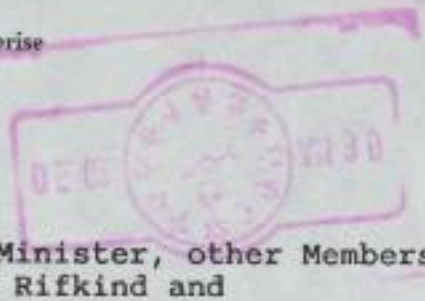


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I am copying this letter to the Prime Minister, other Members of MISC 128, to Kenneth Baker, Malcolm Rifkind and Peter Brooke and to Sir Robin Butler.

Yours sincerely  
Rosalind CBE.

(Approved by the Secretary of State and signed in his absence.)



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BROADCASTING-  
Policy Pt 10

