

CPH



Prime Minister
The attached Policy Unit note recommends that you reject the Home Secretary's revised proposals. Instead the proposed package would be

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

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- ✓ - OFT to approve the networking arrangement; but
- ✓ - no role for the ITC.

Dear Barry

Are you content to put the Policy Unit proposal to the Home Secretary? BHP 2574 Yes totally.

**BROADCASTING BILL:
TRANSITIONAL NETWORKING ARRANGEMENTS**

The proposals in the

I am writing in response to Paul Gray's letter of 3 April, conveying the Prime Minister's views on the Home Secretary's minute of 30 March. The Home Secretary has also seen Mr Ridley's letter of 10 April.

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The Home Secretary fully understands the Prime Minister's concern that his proposals for a transitional networking arrangement involve giving excessive additional powers to the ITC. He believes however that the scheme can readily be modified to meet this point while still achieving the essential objective, to which he continues to attach great importance, of ensuring that a satisfactory networking arrangement is in place on 1 January 1993.

What he now proposes is that the ITC should be required when inviting applications for the Channel 3 licences to publish a specification of a networking system. This would set out the number of hours of networked programmes, the cost-sharing arrangements, and the mechanism for commissioning and scheduling. Applicants would be required to ensure that their proposals were consistent with the specification, but they would not be precluded from seeking to negotiate alternative programme sharing arrangements if they so chose. The expectation would be that voluntary arrangements of this kind would in the event be concluded without the intervention of the ITC. As a fallback, however, the ITC would have the power to impose the arrangements originally specified on licensees if, by a specified date, they had not themselves formed their own alternative networking agreement. As before, the imposed

/arrangement would

Barry Potter, Esq
Private Secretary
10 Downing Street
LONDON
SW1A 2AA

arrangement would last for a maximum of two years, or for such shorter period as was agreed between the licensees.

The Home Secretary recognises that networking arrangements are likely to amount to restrictive trade practices and would thus in the normal course be liable to registration with the OFT under the relevant legislation. The Home Secretary would not wish under this proposed arrangement to remove networking from the OFT's ambit, and accordingly he envisages that the ITC's network specification, and any alternative scheme agreed by the licensees, would both fall to be approved by the OFT.

The Home Secretary believes that a revised arrangement on these lines should meet the specific points raised by the Prime Minister and Mr Ridley. First, it clearly places the onus of agreeing network arrangements on the licensees, leaving the ITC with a fallback power only in the event that no agreement is reached. Thus the network budget and cost-sharing arrangements could be imposed by the ITC only in those circumstances. Secondly it makes clear that any networking arrangement will be subject to restrictive trade practices legislation and it thereby places responsibility for approving the practical arrangement for the operation of the network on the OFT rather than the ITC. Thirdly, it prevents the possibility that the large ITV companies could abuse their dominant market position by holding out for unfair programme sharing arrangements by enabling the ITC to step in to impose the OFT-approved scheme if agreement is not reached in reasonable time through collective negotiation. It is, of course, precisely to avoid the possibility of abuses of this kind that the need for a power for the ITC to specify network arrangements arises.

The Home Secretary hopes that the Prime Minister will be prepared to agree to a revised scheme on these lines.

I am copying this to the Private Secretaries to members of MISC 128, to Jim Gallagher (Scottish Office), Stephen Leach (NIO) and Sonia Phippard (Cabinet Office).

Yours sincerely
Sara Dent

MS S J DENT

BROADCASTING : POLICE PTI

