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Seek P.V. advice. JHP +15
CEP
QUEEN ANNE'S GATE LONDON SW1H 9AT

30 April 1990

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REGULATION OF BBC TRANSMISSION ACTIVITIES

I am writing in order to draw your attention to the enclosed working paper which has been prepared by our officials and to try to resolve one or two points on which they were unable to reach agreement.

filed 179 *relevant papers and bundles attached*
Following consideration by MISC 128 last summer, my predecessor's statement of 4 July announced that the BBC would not be allowed to compete for the transmission of new broadcasting or telecommunications services while its transmission operations remained in the public sector. The target date for the privatisation of the IBA's transmission operation is early 1991; the statement noted that the BBC would retain their transmission responsibilities until after the Royal Charter expires in 1996, unless the BBC wished to divest themselves of these sooner. Although the point was not spelt out in Douglas Hurd's statement, it was recognised that the restriction on the BBC would not exclude the provision of transmission-related facilities where this was a matter of practical necessity. The enclosed paper seeks to establish a workable framework for the BBC's activities in the light of these decisions.

The main recommendations of the working party are listed in the appendix to the paper, and I shall not attempt to summarise them here. It is plainly sensible for the BBC to provide (and charge a reasonable price for) access to their sites and masts if the market is not to be unduly inhibited; and in the case of spare capacity services there is no practicable alternative to transmission by the BBC. It is equally clear that for the BBC to maintain other operators' equipment on non-BBC sites would represent a significant

/expansion

The Rt Hon Nicholas Ridley, MP
Department of Trade and Industry
Victoria Street
LONDON, SW1

expansion of activities, which would go well beyond the efficient use of existing resources, and that this should not be permitted.

The arguments for and against allowing the BBC to engage in the final three areas listed in the appendix are more finely balanced and I think that efficient use of existing resources must be an important consideration. In the case of transmission on the two MF radio channels, excluding the BBC from operation and maintenance would, for technological reasons, impose significant opportunity costs. In addition, whilst the position may eventually change as local radio MF frequencies currently used by the BBC are re-allocated, the fact is that at present the only national operators so far to have declared a firm interest would prefer the BBC to operate and maintain the service. In the circumstances I think it is right that the BBC should be permitted to enter this area, but that its activities should be subject to economic regulation.

Our officials have agreed that the BBC should be permitted to conduct maintenance work for non-broadcasters on its own sites, provided it uses only the downtime of existing staff. Strictly speaking extending this to maintenance of other broadcasters' equipment on the same sites would represent an expansion of the BBC's activities. However, there would be a clear opportunity cost in preventing the BBC from turning its existing resources to full account, on its own sites, where there was a call for this from other operators. (The time required to maintain broadcast transmitters is falling and, whilst engineers need to be on call at base for emergencies, they have little to do; there is therefore scope for productivity savings). On balance I favour allowing the BBC to compete subject to a similar proviso about using only existing staff resources.

As the paper indicates there are strong arguments either way in the case of project management services (planning etc) for broadcasters. The BBC would clearly be in a strong position and exclusion would be the cleanest solution. On the other hand, the same drawback arises of preventing the BBC turning its existing skills to full account, even where there is clear demand for these. On balance I think that the BBC should be permitted to carry out project management for both non-broadcasters and broadcasters, but again restricting this to using the downtime of existing staff.

Allowing the BBC entry, subject to restrictions, into these last three areas would encourage them to make full use of their assets and skills to earn as much income as possible and so to reduce its independence on the licence fee. In the case of MF radio the BBC could be subjected to strict regulation by OFTEL, via its Telecommunications Act licence. In the case of maintenance and project management it could be made clear to the BBC that the Government expected that they

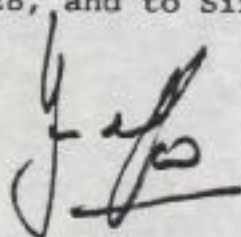
would restrict their activities to the use of existing staff. This would ensure that the principle of preventing the BBC exploiting its position to expand into major new areas of transmission-related activity is maintained.

Since the preparation of the paper, one further issue has come to our attention. It has already been agreed that, in order to ensure adequate national coverage, the BBC should be obliged to grant mast space to the new privatised transmission company, and OFTEL. This is because the large majority of BBC and IBA transmission sites are effectively local monopolies. It looks, however, as if there may be a small number of cases involving Channel 5 and VHF radio in which a transmission operator would have an effective choice between sites owned by the BBC and the privatised transmission company.

We need to consider whether the BBC should be allowed to offer site access and mast space in such cases (but not any other services), in competition with the privatised transmission company. On balance, I believe that they should. Fledgling transmission operators should be given as much choice as possible as they begin to enter a market initially dominated by two well-established organisations; and there is the argument that the BBC should be allowed to turn the surplus site and mast space to good use for the benefit of the licence payer. Furthermore, allowing the BBC to compete with Transco in this market would reduce the need for detailed and intrusive price regulation of Transco. Finally, the business involved would be small in terms of the total transmission business.

Our officials are already in touch with the BBC about their draft Telecommunications Act licence. Subject to colleagues' agreement, I propose to inform the BBC of the framework we envisage. Further discussion of the detailed regulatory mechanisms and the preparation of the necessary licence conditions can then be conducted at official level. In particular, we shall need to ensure that the Strategic Business Unit which the BBC proposes to set up for its transmission business is run in such a fashion that OFTEL can be satisfied that there are no unfair cross subsidies.

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

A handwritten signature in black ink, appearing to be 'J. G. S.', is written below the typed text.

WORKING PARTY ON THE PRIVATISATION OF THE TRANSMISSION SYSTEM

REGULATION OF BBC TRANSMISSION ACTIVITIES

At the Working Party meeting on 22 November the Home Office undertook to circulate a paper with a view to establishing an acceptable dividing line between transmission-related activities in which the BBC should be allowed to engage and those from which it should be excluded, in the light of the decisions announced by the Home Secretary on 4 July. This paper explores the main areas where demarcation is difficult, and proposes a division between permissible and non-permissible activities.

The broad policy

2. Ministers agreed that it was the Government's intention to privatise the BBC and IBA transmission systems as soon as it was in a position to do so. In the BBC's case this would not be before the expiry of its Royal Charter in 1996 (unless the BBC chose otherwise) although the position would be reviewed beforehand. In the meantime, the BBC would be largely restricted to transmitting its own services, and in particular would not be allowed to compete for new broadcasting transmission business, or to enter into joint telecommunications ventures with the private sector. Although the point has not been explicitly spelt out, Home Office Ministers have accepted that the restriction on the BBC's entering significant new areas of transmission related business should not exclude the provision of facilities (eg space on transmission masts) to new and existing television and radio services where this was a practical necessity.

3. There are three main considerations in turning these broad Ministerial decisions into practical policy:

- (i) how best to ensure that the BBC does not enter any unacceptable areas of transmission-related activity;
- (ii) allowing the BBC to carry out activities (eg rental of existing facilities) where it would be impossible for new broadcasters to go elsewhere, or where to do so would involve disproportionate additional costs;
- (iii) how far in practice under any available regulatory mechanisms it would be possible to impose, and to enforce, particular restrictions.

The BBC has accepted the basic policy decision to exclude it from new transmission activities. The rest of this paper seeks to assess the less clear cut areas of where it may be acceptable or necessary for the BBC to be allowed to have a role, in the light of the three considerations above.

4. One further development relevant to these issues is the decision by the BBC to take steps to set up its transmission operation as a strategic business unit. This unit would 'charge' the television and radio arms of the BBC for transmission services. The intention is that there would be no cross-subsidy of the unit by the rest of the Corporation. It would however be acceptable for any profits the unit may make to be used to enhance licence fee income and to pay for programming.

Access to masts and sites

5. Access to BBC masts was considered by the Working Party. In the case of new broadcasters it was agreed that the BBC

should not only be allowed to rent them mast space etc but required to do so, where reasonably practicable. (A refusal to allow access could frustrate the development of new services). The BBC control about half the best sites and operators will frequently need to look to the BBC for mast space where they have no other choice. Price regulation is therefore necessary. One model would be a requirement to allow broadcasters access to its sites at an agreed rate (and subject to Oftel arbitration) as a condition of the BBC's Telecommunications Act licence. This would be similar to the arrangement envisaged for the IBA's privatised successor. The position for non-broadcasting operators (eg cellular radio) is more competitive. The BBC sites are only one of a number of possible sets of sites (including water towers and other tall buildings) which such operators can use. Allowing the BBC to make its existing mast space available would help the development of the growing market for new telecommunications services. It will however be necessary to look more closely at the wider competitive framework and the availability of other sites before deciding whether price regulation would be necessary.

Maintenance

6. At present the BBC rents space to telecommunications operators on many of its sites and masts. Where it does this, it often contracts with the operator to maintain their equipment as well. An explicit Ministerial decision has not been taken on whether to allow the BBC to carry out such maintenance for new broadcasters on its sites. If it was decided to exclude the BBC from this area the only feasible way of doing so would be by means of a clear Ministerial expectation along the lines envisaged in paragraph 7. The BBC's own Telecommunications Act licence could require it to allow access to other companies' maintenance crews. Excluding the BBC from competing would be consistent with the objective of not permitting them to expand into new areas. But, against that, to prevent the BBC from providing such services where there was a demand for them, could

impose additional costs on operators. The provision of such services would also provide an additional source of non-licence fee income and add value to the transmission assets.

7. There is clearly no question of requiring the BBC to stop providing maintenance services for non-broadcasters on its own sites under existing contracts. Nor does there seem to be a compelling reason for prohibiting the BBC from taking on any new contracts of such sorts, subject to one proviso. That proviso is that the BBC should not take on new staff to carry out work under such contracts, but should only use the downtime of existing staff. This limitation would ensure that any new activity in this area would amount only to a turning to account by the BBC of its assets. It follows that the BBC should be excluded also from maintenance work on all non-BBC equipment on non-BBC sites (since it would go beyond turning their assets to account). We have not been able to identify any feasible means of enforcing such an exclusion. The way forward is probably to make it clear to the BBC that there is a clear Ministerial expectation that its maintenance activities should be confined to its own sites, and to the use of existing assets and staff.

Project management

8. The BBC also conducts project management work (eg planning installations and arranging procurement of equipment) for some of the telecommunications operators currently renting its mast space. It is possible again to differentiate broadcasting from other telecommunications. In the case of non-broadcasting services, there appears to be no strong reason to require the BBC to withdraw from an activity in which they are already engaged, and where the market is an open one. It would however be consistent with Ministers decisions to discourage the BBC from extending its activities by restricting these to using the down time of existing staff. Although this could be difficult to police at the margin, a clear Ministerial expectation could be signalled.

9. As regards broadcasting services, arguably the cleanest solution would be not to allow the BBC to enter this new field at all. As the provision of project management services is not itself a licensable activity (and does not appear to be controllable through the licences held by other operators), the only obvious way of enforcing this restriction would be for Ministers to indicate to the BBC that they did not wish them to enter this area. The main drawback is that this would prevent the BBC undertaking work even where other broadcasters might wish them to do so and they could do so more cheaply.

Transmission: spare capacity services

10. Ministers have already agreed to one exception to the general policy that the BBC should not be allowed to provide transmission services for other broadcasters. They have agreed that part of the spare capacity on the BBC's television and national radio signals should be assigned to the ITC, who will allocate it by competitive tender to private operators. The BBC will need to be required to transmit the new services on behalf of other operators (because transmission of spare capacity services cannot be separated from transmission of the main service). Transmission of these spare capacity services will require price regulation. This could take the form of an agreed rate formula, with arbitration by Oftel in case of disagreement.

Transmission: national MF radio services

11. Under the Broadcasting Bill three sets of radio frequencies will be allocated by the Radio Authority to independent national radio (INR) stations. Two of these are existing MF radio channels now used by the BBC (for Radios 1 and 3) for which the BBC has its own transmission system. This system has relatively recently been refurbished, and now has an estimated working life of at least ten years. Two questions arise:

- a. should the operators of the two INR stations have access to the existing transmission system; and, if so, how should this be arranged; and
- b. should the BBC be allowed to bid for the operation and maintenance of the system?

12. Given the sunk investment in the existing system it seems clear that the new INR stations should have access to it. Home Office Ministers have recently received representations to this effect from ITN (who are planning to bid for one of the MF frequencies). Consultants working for ITN have estimated the cost of constructing a new system at £12-15m (excluding land) for one channel (the second would cost less provided it used the same masts). These costs could well make the INR stations unviable. As it is, there is already concern that these licences will not attract significant cash bids.

13. It does not necessarily follow, however, that the BBC would have to maintain and operate the transmitters in order for the INR stations to have access to them. In principle, it would be possible for the BBC to sell or lease the transmitters on the basis that the INR stations, or some other operator on their behalf, would operate and maintain them (although the BBC could not be obliged to do this). This would, however, add to the costs of the INR stations. The existing transmitters are integrated with other equipment on the BBC transmission sites: their output is combined with that of the other high-power MF transmitters and radiated from the same antennas. Careless maintenance of one of the transmitters could therefore affect the output from the others. (It might be possible for a new user to obtain insurance against liability for damage but the risk of unacceptable disruption would remain). The BBC have said that, if the transmitters were to be maintained by non-BBC staff, they would wish to protect their position either by supervising these people (which, since the sites in question are not regularly manned, would involve additional costs) or by

insisting that the transmitters should be made capable of being isolated when being maintained (which would involve modifications to the existing equipment). This appears to be a reasonable position for the BBC to take. Maintenance by anyone other than the BBC would therefore impose additional costs on the INR stations, though the scale of these costs is not clear at the moment (a proper engineering study would need to be undertaken to determine the cost of isolating the transmitters). ITN have indicated that they would prefer to be able to go to the BBC for maintenance services, on grounds of simplicity and cost. They estimate the cost of an all-in transmission service from the BBC at £0.8-1.2m p.a.

14. The arguments for and against allowing the BBC to bid for the operation and maintenance of the MF transmission system are clear. It would be more consistent with broad Ministerial decisions not to allow them to do so. Against that, any other solution would add to the costs of two INR services the viability of which is anyway in question. To the extent that positive tenders were forthcoming, the tender proceeds would be likely to be depressed. It would be difficult to defend imposing avoidable additional costs on the INR stations particularly if they preferred to go to the BBC for operation and maintenance services. Much will however depend on how many local radio MF frequencies currently used by the BBC will eventually be re-allocated to the Radio Authority since they will be able to broadcast from the same existing BBC sites as the two national MF networks. A situation could arise where more independent MF stations were being broadcast from many BBC sites than were BBC ones, thus weakening argument for the BBC to maintain those networks. If the BBC was permitted to enter this area, price regulation by Oftel would be necessary.

Transmission: national FM radio service

15. The third new independent radio channel will be on an FM frequency not currently in use. No transmission system has yet

been constructed although the necessary sites - all owned by the BBC - have already been earmarked. Frequency planning has been done on the basis that these sites would be used. The BBC argue that its staff are uniquely qualified (unlike the IBA's) by virtue of their experience in maintaining other high-powered FM equipment to provide a full transmission service. This claim is questionable. There are several potential new operators (including Marconi and the IBA's privatised successor) which either have, or could acquire, the necessary expertise. The FM INR station is likely to need to transmit from the BBC's sites; and the BBC will be required to grant access to them (para 4). However, there does not appear to be a good reason in this case for departing from the general policy of not permitting the BBC to provide transmission facilities for new broadcasters.

Conclusion

16. The Working Party's conclusions about the dividing line between permissible and non-permissible BBC transmission activities, discussed in paragraphs 5-15, are summarised in the attached Appendix.

Home Office
December 1989

RBBCTA.MK2

E.R. PRIVATISATION OF THE IBA TRANSMISSION SYSTEM**DRAFT STRUCTURE FOR BBC ACTIVITIES****Required**

1. Providing access to BBC sites and masts for other broadcasters. (Para 5)
2. Providing full transmission service for spare capacity licensees. (Para 10)

Permissible

1. Rental of existing BBC mast space to non-broadcasters. (Para 5)
2. Maintenance of non-BBC equipment on BBC sites (non-broadcasters). (Para 7)
3. Project management for non-broadcasters. (Para 8)

Non-permissible

1. Maintenance of any transmission equipment on non-BBC sites. (Para 7)
2. Full transmission service for anyone other than spare capacity licensees. (Paras 2 and 10)

To be resolved

1. Transmission of MF INR stations. (Paras 11-14)
2. Maintenance of non-BBC broadcasting equipment on BBC sites. (Para 6)
3. Project management for other broadcasters. (Para 9)

BROADCASTING POLICY BILL

