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the department for Enterprise

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Dear David

LOCAL DELIVERY LICENCES

Thank you for your letter of 2 May about two Report Stage amendments that Peter Blaker has tabled to the Broadcasting Bill.

I have to say that it seems rather disingenuous for the cable industry to claim now, that without the assurance that their licences will be renewed, they will not invest. As you say in your letter, all those cable franchise holders who had applied for their franchises before the publication of the Broadcasting White Paper will be given the opportunity to become local delivery operators. The line was drawn at that point specifically because those companies had applied for franchises in ignorance of our proposals for a new broadcasting regime. That was not true for the 100 or so subsequent cable franchise applicants, whom Peter Blaker's amendment essentially addresses.

Nonetheless, I have never been attracted to the idea of fixed period franchises after which a company has had to bid for the right to continue its business. Such an arrangement tends to introduce unnecessary uncertainty, which is particularly significant in an industry with such high infrastructural costs.

I therefore have some sympathy with the cable companies' underlying case, provided that licences are only renewed if the licensee has fully met the conditions in his existing licences including, in time, I hope, those related to the provision of telephony services and that, as far as possible, he pays a market price for the new licence. On this basis, I am content to go along with your proposal.



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Your second proposal causes me greater concern since I can see it leading to the ITC having an unacceptable degree of discretion in the award of franchises and to the return of some of the opaqueness of the present system. As you acknowledge, the ITC will already have a general duty to ensure the availability of a wide range of services throughout the country which should allow it to use coverage as a reason to use its "exceptional circumstances" powers. To go beyond this and make the discretion overt would inevitably lead to a greater expectation that those powers would be used and would give the ITC an unreasonable degree of discretion.

Whilst I recognise that coverage itself may be an objective criterion, it is difficult to see how ITC might weigh this together with other factors. There seems to be a clear risk that, the more discretion that is provided, the more opaque the process becomes. In my view it is essentially for the market to make a case for the areas to be covered, not for the ITC to influence this by introducing further criteria.

I do however recognise that there are arguments in favour of introducing some specific reference to coverage and, if colleagues support your proposals, I would not wish to stand in their way.

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

James

Wanda





Broadcasting

Policy

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