

PREM 19/2594

29/36

Part 8

MT

CONFIDENTIAL FILING

Broadcasting Policy  
Television Licence Fees  
Finances of the BBC  
Part of the BBC  
World Television News

BROADCASTING

pt 1: July 1979

pt 8: May 1989

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
<del>3.5.89</del>							
<del>8.5.89</del>							
<del>10.6.89</del>							
<del>12.5.89</del>	TAM						
<del>18.5.89</del>							
<del>23.5.89</del>							
<del>7.6.89</del>	TAM						
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<del>11.6.89</del>							
30.6.89							
<p>PREM 19/2594</p>							

Part 8  
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PART 8 ends:-

SCOTTISH OFF to CS 30.6.83

PART 9 begins:-

SS/OT to Home SEC 3.7.83

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Prime Minister

### Gaelic Television Services

Douglas Hurd's statement on 13 June concluded with a commitment that we would announce soon our plans for Gaelic television. This minute makes proposals for a way ahead. Subject to colleagues' agreement, I would like to be able to float these ideas at a Scottish Grand Committee Debate on Broadcasting which the Opposition have requested for 11 July.

### Background

There are some 80,000 Gaelic speakers in Scotland. In 1988, BBC TV, Grampian and STV together offered about 80 hours of new production - and a total of about 100 hours watched by a very high proportion of Gaelic speakers. The total cost of all Gaelic broadcasting is estimated at about £4m. The two Scottish ITV companies at present pay a subscription to Channel 4, of which about £2.75m is attributable to the Welsh S4C. There are about 500,000 Welsh speakers and S4C broadcasts about 1,300 hours a year, of which just over one-third are provided by the BBC. S4C expenditure is of the order of £70m (£50m subscription plus the value of the BBC contribution - say, £20m).

### Position since the White Paper

Since the publication of the White Paper, there has been a sustained campaign by the Gaelic interests to secure a greater commitment to Gaelic in our broadcasting proposals. They commissioned the authoritative London-based broadcasting consultants - Putnam, Hayes and

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Bartlett (PHB) - to examine the case for a Gaelic Broadcasting Service (GBS). This report drew attention to the disparity between the S4C provision for Welsh and the current provision for Gaelic, and developed a well-argued case for a GBS which would aim to produce ultimately about 500 hours of Gaelic a year across BBC and commercial channels and would cost more than £20m. They proposed that this would be funded by a combination of BBC contribution in kind, the diversion of the existing Scottish ITV contributions to S4C, and a further £16m or so from franchise revenues.

**Proposals**

I should make clear first that I have no intention of going down the S4C route which would lock us in to a complicated statutory mechanism and a much larger scale approach than I believe to be appropriate. Moreover, I do not want to pursue the GBS approach which it seems to me would be unnecessarily bureaucratic and would involve commissioning as much as 500 hours Gaelic programming a year across both the BBC and the commercial channels. I do however feel that given the very considerable concern in Scotland about the future of Gaelic and the desire for a greater commitment to Gaelic television, we must establish some new mechanism which would secure a significant increase of Gaelic programming.

I propose therefore the establishment of a Gaelic Television Production Fund, the details of which are outlined in the annex to this minute. The essence of the proposal is that a Production Fund would be managed by the ITC, would like S4C be funded from franchise revenues, and would supplement the C3 companies' existing levels of production, in association with the continuing commitment to Gaelic television from BBC2. The target would be to fund a further 200 hours or so of production - so that the total Gaelic television on all channels might, over a period of years, rise to some 300 hours - still less than an hour a day spread across day-time, peak and night hours.

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From talking to George Russell, I think such a proposal is workable - but he advises that it will certainly need to be underpinned by a statutory obligation on the ITC, when awarding franchises covering significant Gaelic-speaking areas, to secure a commitment from the franchise holders to Gaelic production. In parallel with that, I would seek a commitment from the BBC that they would maintain, and if possible increase, their Gaelic production levels, and I hope Douglas Hurd can help in securing this.

**Costs**

Television production does not come cheaply. PHB suggest that 500 hours would cost more than £20m, and 300 about £12m. At this stage, I do not think we should commit ourselves to a figure but indicate that our objective is to secure a further 200 hours or so of television in addition to the existing production levels over, say, the first two or three years of the operations of the Fund. That might imply a commitment from franchise revenues of a sum of the order of £8m at present prices.

Subject to colleagues' agreement, I would hope to float these ideas on 11 July - making it clear that our ideas were still developing and were subject to further discussion with the BBC, the IBA, the ITV companies and the Gaelic interests.

I hope you can agree. I am copying this minute to colleagues on MISC.128 and to Sir Robin Butler.

MR

**M R**

Scottish Office  
30 June 1989

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**A POSSIBLE "GAELIC TELEVISION PRODUCTION FUND"****Aim**

To promote good quality Gaelic television production on Channel 3, to supplement companies' existing levels of production, and in association with a continuing commitment to Gaelic television from BBC.

**Objective**

To fund a further 200 hours of production so that total Gaelic television production on all channels rises to some 300 hours a year.

**Funding**

Perhaps £8m a year from franchise revenues, to supplement companies' existing commitments, estimated at some £4m.

**Constitution**

The Fund would be administered by a Committee of the ITC, appointed and funded by it, with a small executive staff employed by the ITC.

**Method of Working**

The Fund would annually indicate to the C3 companies (STV and Grampian or their successors) its intentions for the following year to fund a specified number of hours of Gaelic broadcasting, with an indication of the proportion of that attributable to, say, schools broadcasting, the arts (music, drama, literature, etc), sport and general interest. The companies would be invited to tender proposals for the production and showing of such programmes in their schedule of Gaelic programmes. As a matter of policy, the Fund would expect a significant proportion of the programmes to be produced by independent producers.

**Need for Legislative Backing**

The ITC would need to be enabled to require C3 companies to provide a commitment to Gaelic broadcasting as part of their quality/diversity requirements. (It is envisaged that access to the Production Fund would be dependent on the satisfactory delivery of Gaelic programmes, particularly for news and current affairs, in their basic schedules.)

**Pros**

- manageable within the ITC framework at arm's length from Government (though there will be Governmental involvement in decisions about agreeing the level of funding from franchise revenues)
- the franchise revenues recycled through the Fund would go only to C3 companies and not to the BBC: so the commercial companies would not be funding the BBC

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- the Fund would avoid concentrating all Gaelic production on a single channel, on the S4C model
- evolutionary because funding levels, and fund priorities, can vary with experience, without the rigid statutory framework of the S4C model.

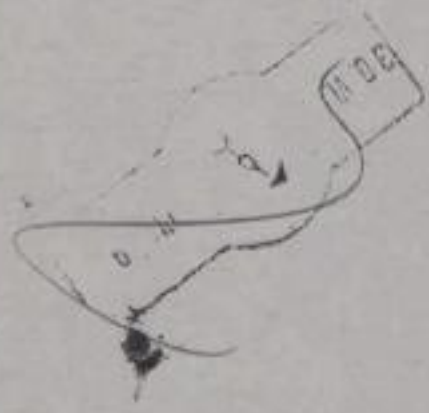
Cons

- participation of the C3 companies would need to be enforced by franchise requirements, backed by legislation
- no formal mechanism for ensuring complementary continued production by BBC
- falls short of the all-embracing Gaelic Broadcasting Service envisaged by the Gaels, which would have funded and co-ordinated production across both the BBC and C3.

Scottish Office  
29 June 1989



BROADCASTING : BBC Finance  
178.



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ST. ANDREW'S HOUSE  
EDINBURGH EH1 3DG

CC PLK



Miss Caroline Slocock  
Private Secretary  
No 10 Downing Street  
LONDON  
SW1A 2AA

NBRM

ALCG

1/1

30 June 1989

Dear Caroline,

**TRANSMISSION AND NIGHT HOURS**

With 1/9

My Secretary of State has seen the Home Secretary's minute of 29 June about the forthcoming statement on privatisation of the transmission system and the arrangements for BBC night hours.

Mr Rifkind strongly supports the Home Secretary's recommendation that transmission charges should be based on Net Advertising Revenue (NAR). This seems to him to be the most readily explicable and acceptable basis for charging for a national network in a way which takes account of the very different revenue generating capacity of the transmission network in different franchise areas. He accepts that that may change over time and that the IBA financial projections suggest that by the end of the century the gap between population and NAR tariffs would be quite small. Indeed, a merit of the NAR system is that it responds to the changing balance of financial strength amongst the Channel 3 companies rather than ossifying contributions on the basis of population shares.

Mr Rifkind is also content with the terms of the Home Secretary's proposed announcement on the retention by the BBC of both sets of night hours.

I am sending copies of this letter to the Private Secretaries to other members of MISC.128 and to Trevor Woolley at the Cabinet Office.

Yours sincerely,

A handwritten signature in dark ink that reads 'David Crawley'.

**DAVID CRAWLEY**  
Private Secretary

PRIME MINISTER

TRANSMISSION AND NIGHT HOURS

At the last meeting of MISC 128 it was agreed that Douglas Hurd would circulate draft announcements on transmission and the BBC night hours. He also undertook to propose what arrangements should be made to mitigate the effects on the smaller Channel 3 companies of the wide regional variations in the cost of transmission.

Douglas Hurd's minute at Flag A meets those remits. He attaches two separate draft Arranged PQs. And on the issue of the smaller Channel 3 companies he proposes a transmission tariff based on each company's share of the total relevant income of the Channel 3 companies.

Brian Griffiths' note at Flag B accepts the proposal for the regional costs of transmission. He is also generally content with the terms of the two draft announcements, but raises one query on the second page of the privatisation draft. I have highlighted the passage concerned; Brian wonders whether this might be used by the BBC to try to get round the ban on joint ventures with the private sector. You might therefore want to question this sentence.

Content:

- (i) To agree the proposal for the regional costs of transmission? *Yes*
- (ii) To agree the draft announcements subject to questioning the sentence on page 2 of the privatisation draft?

*Yes - I agree with Brian on this*

*Rec.*

PAUL GRAY  
30 June 1989  
DASAVU

PRIME MINISTER

## FINANCING OF CHANNEL 5

When the Home Secretary announced the outcome of the broadcasting package for Channel 3 last month, you questioned the Treasury's proposal that CASH bonds for unsuccessful applicants for Channel 3 franchises should not be returned. The Treasury argued that these bonds might be used to finance the costs of setting up Channel 5. You said this would be a new policy to which you saw major objections.

The further Treasury letter at Flag A explains the thinking behind their proposal. The problem is that there will be a massive bill - possibly £100 million - to be paid for clearing the spectrum to make room for Channel 5. As Brian Griffiths' note (Flag B) brings out, some way has to be found of meeting this bill. But Brian points to the difficulties with the Treasury idea. He suggests that you should invite the DTI (who have also written in criticising the Treasury idea - Flag C) to come forward with alternative proposals for financing the Channel 5 costs.

Content?

P.G.

PAUL GRAY  
29 June 1989

Yes - we can't have a major  
new proposal through the back  
door in this way. It would be  
depreciating applicants of their money.  
- P.G.

PAUL GRAY

29 June 1989

TRANSMISSION AND NIGHT HOURS

I have now read the minute from the Home Secretary to the Prime Minister on the above and have no substantial comments, except to say:

- (a) the drafts are fine although I am a little nervous about the sentence beginning in the tenth line on page 2 of the draft on privatisation of the transmission system; I do not know quite how this might be used by the BBC to obviate <sup>the ban on</sup> joint ventures with the private sector;
- (b) in terms of variations in the regional cost of transmission, I have no objection to the NAR option which the Home Secretary is content with - even though the Treasury option is more attractive. I do find the point made in 4b a real political difficulty.

BRG.

BRIAN GRIFFITHS



PRIME MINISTER

TRANSMISSION AND NIGHT HOURS

*mainly attended*

At MISC 128 on 21 June I was asked to circulate draft announcements about our decisions on transmission and the BBC night hours.

2. I attach drafts of Arranged Questions on these two subjects. I would like to make these announcements on 4 July, and I should therefore be grateful for any comments by noon on 3 July.

3. The one issue which we left open was what arrangements should be made to mitigate the effects on the smaller Channel 3 companies of the wide regional variations in the cost of transmission. I attach a note prepared by officials which analyses the options.

4. The proposal put forward by the Financial Secretary is an ingenious one, and I see the attractions in allowing Channel 3 companies to procure transmission facilities individually rather than collectively. However, I also see two major difficulties with this approach:

- (a) it could lead to the smaller Channel 3 companies being cross-subsidised by Channel 4 (or S4C in Wales), and in some places by Channel 5. This would be a perverse result. If the weaker Channel 3 companies need support, then the stronger Channel 3 companies are the natural candidates to provide it, not Channels 4 and 5;

(b) it would not be clear whether the smaller companies would be viable until they had completed their negotiations with the transmission company. The continuing uncertainty (which would last until well into 1992), might well make it impossible to stick to the present map at all. We would be letting ourselves in for three more years of political difficulty on this subject.

5. I therefore think that we have a choice between a tariff based on NAR and one based on population share. The advantages and disadvantages of these two approaches are evenly balanced. Colleagues at MISC 128 appeared in general to favour the NAR option, and I am content with this. As the note by officials points out, the tariff would in fact have to be based on each company's share of the total relevant income of the Channel 3 companies, taking account of sponsorship and subscription income as well as advertising revenue.

6. Although we have decided that the BBC should not be permitted to compete for new broadcasting transmission business, some of the new broadcasting services will, as a matter of practical necessity, have to be transmitted from BBC masts. There may be other back-up technical facilities which can only be provided by the BBC. The draft announcement therefore does not exclude this.

7. If possible I should like to include our decision on engineering and R and D in the transmission announcement. If, however, it does not prove possible to settle this issue in time, I would propose to press ahead with the transmission announcement on 4 July, leaving the other matters to be dealt with separately.

/8. I am

3.

8. I am copying this minute to other MISC 128 colleagues and to Sir Robin Butler.

*Catherine Barnock*

Approved by the Home Secretary  
and signed in his absence.

29 June 1989



DRAFT ARRANGED PQ ON PRIVATISATION OF THE TRANSMISSION SYSTEM

To ask the Secretary of State for the Home Department if he will make a statement about the privatisation of the terrestrial broadcasting transmission system in the light of the Price Waterhouse report.

DRAFT REPLY

In the White Paper on Broadcasting we stated that our objective was to move the terrestrial transmission system progressively into the private sector. The Price Waterhouse report analysed the various ways in which this could be achieved. In the light of that report, we confirm that our intention is to privatise the transmission networks owned and operated by the BBC and the IBA as soon as we are in a position to do so. We believe that a move into the private sector will reinforce the pressures for efficiency, and will enable more intensive use to be made of the valuable transmission infrastructure.

We have considered carefully the different possible options for the structure of a privatised transmission industry. On balance we have decided that the best approach would be to set up two national transmission companies based on the present BBC and IBA transmission networks, rather than to restructure the system in the way proposed in the Price Waterhouse report.

The BBC's transmission responsibilities are rooted in their Royal Charter which lasts until the end of 1996. They have

indicated that they do not wish to have these responsibilities transferred to a private transmission operator. We have therefore decided that the BBC should retain their transmission responsibilities, including for the World Service, until the expiry of the Charter. The position will be reviewed at that point with a view to privatisation. In the meantime, the BBC will be confined to transmitting its own services, and will not be permitted to compete for the transmission of new broadcasting services. However the BBC will be allowed to provide essential, ancillary services to private transmission companies where necessary. We are concerned that the private transmission market should develop in a fair manner; and, while the BBC's transmission operation remains in the public sector, there would be insuperable difficulties in ensuring that the BBC entered this market in a way which would be perceived to be fair to its competitors.

The IBA have welcomed the proposal that their transmission operation should be privatised, and we will be including the necessary provisions in our legislative proposals on broadcasting. We shall be considering further the timescale for privatisation, bearing in mind the possible implications for the ITV contracts. We have taken note of the wide regional variations in the cost of transmission, and of the possible consequences of these variations for the smaller Channel 3 companies. We propose that there should be a uniform tariff for Channel 3 companies based on their share of the total Channel 3 income, taking account of any subscription and sponsorship revenue as well as net advertising revenue.

The private transmission company which takes over the IBA's transmission operation will have a powerful market position. We therefore consider that economic as well as technical regulation will be necessary. We propose to amend the Telecommunications Act 1984 to enable this regulation to be carried out by the Director General of Telecommunications. This

regulatory framework will be designed to ensure that the transmission market operates fairly, and also that the coverage, quality and reliability of the system is maintained.

[IBA R & D]

C:\WP\JS\DPQPNTN.PQ

DRAFT ARRANGED PQ ON BBC NIGHT HOURS

To ask the Secretary of State for the Home Department if he will make a statement about the proposal in the broadcasting White Paper that the night hours of one BBC channel should be assigned to the ITC.

DRAFT REPLY

We have considered carefully the comments we have received on this proposal. We have decided on balance that it would be better to leave the BBC with both sets of night hours in order to enable a faster start to be made with the development of subscription services. The BBC will therefore be permitted to retain both sets, on condition that it makes the fullest possible use of them for raising subscription income, consistent with its public service obligations.

When we come to consider the level of the licence fee from April 1991 onwards we will review the use which the BBC is making of the night hours. The level at which the licence fee is set will take account of the BBC's capacity to generate subscription revenue from two sets of night hours.

C:\WP\JS\DAPQNTHS.PQ

## TRANSMISSION CHARGES FOR CHANNEL 3

### Note by the Home Office

At MISC 128 on 21 June Ministers decided that a mechanism should be devised to mitigate the effects of the regional variations in the cost of transmission upon the smaller Channel 3 companies. Officials were asked to examine two options:

- a. a system in which the smaller Channel 3 companies would approach a national transmission operator in their areas, offering to pay a charge slightly exceeding the marginal cost of transmitting their service; and
- b. a national tariff based on shares of Net Advertising Revenue (NAR).

In examining option (b) this note compares it with a national tariff based on population shares.

### Marginal cost system

2. Under this system individual Channel 3 licensees would procure their transmission facilities individually rather than collectively. The companies would approach a national transmission operator capable of providing a service in their areas and negotiate a price. In practice the transmission operator would want a price exceeding the marginal cost of transmitting their service.

3. As the BBC is not to be permitted to provide transmission facilities to other broadcasters, the Channel 3 licensees would initially have to be transmitted by the IBA's privatised successor. (In theory it would be possible, in some areas at

least, for a new entrant to offer an alternative service using BBC masts. But as it is hard to see how this operator could be transmitting any other services, the marginal cost of transmitting the Channel 3 licensee would be equal to the full cost). The IBA's privatised successor would also be transmitting Channel 4 and (in some areas) Channel 5. As the Channel 3 licensee would not be bearing his share of the transmission operator's fixed costs these would have to be recovered from Channel 4 and (in some areas) Channel 5. Channels 4 and 5 would therefore be subsidising the Channel 3 licensees. The extent of cross subsidy would depend on the prices which the transmission company could negotiate with C3 licensees. The assumption would be that it would seek the maximum contribution the market would bear from each C3 company towards its fixed costs. This might mean a higher price for the richer C3 companies and a lower (marginal) price to those of slender means but still one which provided some income and profit which would be foregone if their business was not there.

4. The transmission operator's charges will be subject to regulation by Oftel who would not normally allow fixed costs to be recovered disproportionately. Special provision would therefore need to be made for this in the transmission operator's licence. Oftel would also ensure that the transmission company did not exploit its position excessively with either rich or poor licensees.

5. Following the privatisation of the BBC's transmission operations after 1996, this arrangement would offer the greatest opportunity for market forces to operate, as individual Channel 3 licensees would be able to switch from one transmission company to the other.

### NAR tariff

6. The main advantages of a NAR tariff is that it is transparent; is capable of being applied as a uniform national tariff; and, most importantly, it links the charges for local transmission to the earning power of the local network. But, as with national tariffs for utilities such as the postal service, it would have only a tenuous link with the actual costs of providing these local services. Between them the five small companies would pay £1.61m (on the basis of present NAR shares) against actual costs of £7.51m. Nevertheless, they would pay more than twice as much for transmission as they do at present, and their share of C3 transmission costs is projected to increase further over the years.

7. Under the Government's proposals Channel 3 companies (like all independent broadcasters) are to be permitted to raise revenue through subscription and sponsorship as well as advertising. The NAR tariff proposal should therefore presumably be widened to take account of these two other sources of revenue. The result would be a formula based on Channel 3 companies' share of the total Channel 3 revenue from advertising, subscription and sponsorship. This broader approach would be consistent with the decisions announced about competitive tender.

8. Any tariff based on revenue shares would act as a disincentive to Channel 3 companies to increase their share of the Channel 3 market, although they would have a powerful general incentive to increase their overall revenue (and their share of overall NAR) and reduce costs in order to remain profitable.

9. The effect of a NAR tariff is likely to change over the next franchise period as illustrated in the table (which is based on

financial modelling by the IBA). The main reason for this change is that the penetration of Channel 5 will vary from region to region. Where a Channel 3 licensee is subject to competition his NAR will tend to be depressed, leading his share of the total Channel 3 NAR to fall. Conversely, a Channel 3 licensee who is subject to little competition will find his share of the Channel 3 NAR tending to rise, even if his NAR is not growing in itself. The small Channel 3 companies are likely to be subject to less competition than the others (mainly because of the limited geographical coverage of Channel 5), and so their aggregate share of the Channel 3 NAR is likely to rise over the next franchise period.

#### Population share tariff

10. An alternative approach would be a tariff based on population share. The main advantages of this approach are that it would be simple, predictable and (like the charging arrangements for other universally provided services, such as the postal service) would be based on the proposition that there should be a uniform charge for serving each individual person or household. The main disadvantage is that it would not take account of the differences in the earning power of different transmitters, attributable to the varying attractiveness to advertisers of the populations which they serve - though this is, of course, a point which would be reflected in the competitive tender mechanism.

#### Comparison of NAR and population share tariffs

11. On the basis of the 1989 NAR shares a NAR tariff would be more beneficial than a population share tariff to all of the five small companies, except Channel. However, according to the IBA projections, the population share tariff would be more beneficial than a NAR tariff to TSW as well as Channel by 2002.



While Grampian would still be better off with a NAR tariff the gap would have narrowed. By 2002 the aggregate transmission charges paid by the five small companies would be roughly the same under either tariff system.

12. Among the larger companies, Thames, LWT and TVS would all pay more under a NAR than a population share tariff. In the case of TVS this disparity would grow (because Channel 5 will not have UHF coverage over large parts of its franchise area). As to the medium sized companies, HTV and Tyne Tees would pay more under a population share tariff (though in the case of the former the difference would disappear by 2002). TV-AM would be significantly worse off with a population share tariff.

13. It would be necessary to make clear how long any arrangement based on cross-subsidy between Channel 3 companies would last. If it lasted for the whole of their licence period it would bind the companies to seeking transmission facilities collectively for ten years. This would restrict competition with the privatised BBC operator after 1996, or any potential new entrant to the transmission market.

Home Office  
June 1989

TMNCSCH3.NT

EFFECT OF DIFFERENT TRANSMISSION TARIFFS ON CHANNEL 3 COMPANIES

	<u>Actual</u> <u>Costs</u>	<u>Present</u> <u>Tariff</u>	<u>Population</u> <u>Share</u>	<u>NAR</u> <u>(1989)</u>	<u>NAR</u> <u>(1997)</u>	<u>NAR</u> <u>(2002)</u>
Thames	0.67	4.19	3.00	4.05	3.7	3.6
LWT	0.35	3.15	1.74	3.04	2.7	2.6
Central	2.41	3.97	3.88	3.84	3.7	3.6
Granada	1.23	2.93	2.84	2.84	2.4	2.2
Yorkshire	1.46	2.38	2.44	2.30	2.2	2.2
TWS	2.57	3.12	2.17	3.02	3.7	3.9
HTV	3.54	1.72	1.94	1.67	2.0	2.1
Scottish	1.93	1.48	1.44	1.43	1.3	1.3
Anglia	1.23	1.78	1.71	1.72	2.2	2.4
Tyne Tees	1.44	0.99	1.31	0.95	0.9	0.9
TSW	1.86	0.39	0.68	0.66	0.9	1.0
Ulster	1.14	0.14	0.63	0.40	0.4	0.4
Grampian	2.81	0.14	0.50	0.32	0.3	0.4
Border	1.35	0.03	0.27	0.19	0.2	0.2
Channel	0.35	0.01	0.05	0.08	0.1	0.1
TV-AM	3.75	1.67	3.51	1.61	1.4	1.4

Notes:

1. Figures based on a total charge for Channel 3 of £28.09m, which includes an assumed return on capital of 5%. Numbers do not necessarily amount to £28.09 due to rounding.

2. Actual cost and population share figures for Thames, LWT and TV-AM are time apportioned.

3. Figures for 1997 and 2002 assume 70% coverage of Channel 5; penetration of 65% within coverage areas; and viewing share of 21.5% within households equipped to receive it.

MISC 128: CHANNELS 3, 4 & 5

At the time Cabinet approved the setting-up of Channel 5, the DTI noted that it would involve a once-for-all cost associated with the re-allocation of channels within the radio spectrum.

The DTI's best estimate for that cost is £100m: with the re-adjustment of video-recorders being a significant element in the total.

The Treasury have rightly asked the question, "Who pays?" In principle the cost could be allocated to four different groups:

- (a) the Exchequer;
- (b) TV licence holders or owners of video recorders;
- (c) applicants for the C3 and C5 franchises;
- (d) the broadcasting industry as a whole;
- (e) some combination of the above.

The Treasury propose option (c), (ie a non-returnable fee would be charged to all those bidding for C3 and C5 licenses) not because they consider it ideal, but because they cannot think of a better.

The DTI are right to emphasise the weakness of this scheme: it would be a major disincentive for companies to

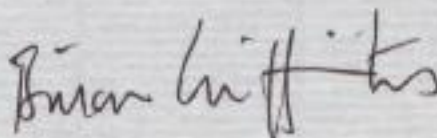
apply for C3 and C5 licences, and would distort the relative attraction of cable and satellite TV. In addition, given the size of the costs involved, it would be virtually impossible to cover the total costs of establishing C5 in this way.

An alternative would be to place a levy on all territorial broadcasting companies which use the scarce spectrum and which depend on the DTI for its proper management: this could be in the form of an actual rent payable over a fixed number of years, equal in total to the cost of re-allocating spectrum to fit in C5.

Other alternatives are possible.

#### RECOMMENDATION

Invite the DTI to respond to the Treasury's concern by setting out alternative ways of financing.



BRIAN GRIFFITHS



Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Lord Young of Graffham  
Secretary of State for Trade and Industry  
Department of Trade and Industry  
1-19 Victoria Street  
London SW1H 0ET

28 June 1989

Dear Secretary of State,

INDEPENDENT BROADCASTING ENGINEERING AND R&D

I have seen your letter of 16 June to Douglas Hurd.

I support your proposals to limit the ITC's in-house R&D capability and to take powers to privatise the IBA's Experiment and Development Department. I am, however, aware that no work has been done to identify a potential buyer for the E&D Department. It may be that none can be found, and the Department should be closed down. I am concerned that any announcement should be carefully worded to avoid a commitment to privatisation that it may be impossible to fulfill.

Any powers taken in the Broadcasting Bill to privatise the E&D Department should be set within a timetable, and if privatisation were to fall within that timetable, the Department could be closed. This would avoid the undesirable situation that you have identified where the department exists in a temporary home, where it is not encouraged to compete in the market.

I am copying this letter to the recipients of yours.

Yours sincerely,

ff NORMAN LAMONT

(approved by the Financial Secretary  
and signed in his absence)

NBPM

RR:G

29/6



QUEEN ANNE'S GATE LONDON SW1H 9AT

27 June 1989

Dear David,

INDEPENDENT BROADCASTING ENGINEERING AND R & D

WITH I.C.? / WITH REQUEST FOR EQUIPMENT

Thank you for your letter of 16 June enclosing a paper about the future of the IBA's engineering and R & D.

In general I agree with your conclusions. The only area where I would like to suggest a slightly different approach is the privatisation of the IBA's Experimental and Development (ED) Department. I agree that the future of ED Department should depend on whether it can pay its way by selling its services in the market. If it cannot do so then there will be no case for finding it a continuing home in the public sector. But I think that we need to consider carefully how we manage the process of privatisation. ED Department will have to make a considerable cultural change, from a public sector body operating at some distance from the market to a private company operating in a very competitive environment. It will be undergoing this change at a period of considerable flux in broadcasting. As the paper by officials notes, in the early 1990s broadcasters may be too preoccupied with short term problems arising from the 1993 franchise round to make longer term decisions about R & D. I therefore fear that a privatisation in early 1991 - which is what your proposal would mean in practice - might well fail. This would not be a happy outcome. We would suffer the embarrassment of a failed privatisation; and the resource represented by ED Department would be broken up, probably irrevocably.

So I think we need to find a way of providing ED Department with stability in the short term, to give its management time to make the adjustments necessary to enable it to survive in the private sector. Our privatisation policy has always recognised that some public sector organisations need time to reorganise themselves before they can be successfully moved into the private sector. Specifically, I propose that ED Department should be set up in the Bill as a separate company required to operate on a commercial basis. In the very short term it would be a subsidy of the ITC. However, the ITC would be empowered to require those of its licensees using UK frequencies (i.e. Channels 3 and 5 licensees, and local delivery operators) to invest in the company for a limited period (until, say, the end of 1994). At the end of this period the ITC licensees could withdraw from the company if they wished. Most of these licensees would not come into force until January 1993. In the period before January 1993 the ITC could be asked to encourage the ITV companies, BSB and cable operators to make modest investments in the company if they wished. It could also seek investment from outside the broadcasting industry, e.g. from equipment manufacturers. I understand that the annual budget of ED Department is

The Rt Hon The Lord Young of Graffham

/over....

presently £2.5 million, so the financial exposure of any individual licensee required to invest in it would be minimal even if it were a complete commercial failure.

The basic model I am putting forward - required investment by ITC licensees - is similar to the one which successfully launched ITN, and which we are envisaging for the Channel 3 news organisation in future. The main difference is that the licensees would be required to invest for only a limited period. I see it as having three main advantages. First, it would give the management of the new company a short period in which to adjust to the private sector environment. During this period it would have to compete for R & D contracts. There would be no guaranteed sources of work from the ITC. Second, it would give a clear target date - the end of 1994 - by which time the company would have to be ready to stand on its own feet. Third, the involvement of broadcasters and others in the industry would reinforce the pressure on the company to focus on the needs of its potential customers.

I take your point that there is a danger that transitional arrangements can run for longer than originally intended. I believe, however, that we can guard against this possibility by specifying in primary legislation the latest date until which ITC licensees would be required to invest in the company. In this way it would not be possible for the ITC to extend the period of required investment in the company, even if it were tempted to do so. The company might, of course, go under at the end of 1994. That would be a pity; but it would at least have been given a reasonable chance to establish itself.

I think that transitional arrangements on these lines would be fully justified on the merits. But we also need to keep in mind the politics of this issue. ED Department has a high reputation internationally, and has admirers in this country, including among some of the more knowledgeable of our own supporters. While the IBA would, I believe, support privatisation, they are likely to oppose any scheme which did not include transitional arrangements; and they would not be short of Parliamentary support. I am not keen on this issue becoming a running sore throughout the passage of the Bill.

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

Yours,  
Douglas

dti

the department for Enterprise

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The Rt. Hon. Lord Young of Graffham  
Secretary of State for Trade and Industry

J M G Taylor Esq  
Private Secretary to the  
Chancellor of the Exchequer  
Treasury Chambers  
Parliament Street  
London SW1P 3AG

Department of  
Trade and Industry

1-19 Victoria Street  
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Our ref NP5ABP

Your ref

Date 26 June 1989

*See Letter*

MISC 128: CHANNELS 3, 4 AND 5

My Secretary of State has seen the exchange of correspondence about the use of cash bonds which currently rests with your letter of 19 June to Paul Gray. *FILG WITH PG*

Like the Prime Minister, he has considerable doubts about the Chancellor's proposal that the cash bonds of unsuccessful applicants should be used to contribute towards the setting up costs of Channel 5. There seems little justification in obliging unsuccessful applicants to subsidise the winner of the Channel 5 franchise. A non-returnable deposit could also act as a barrier to entry to Channel 3, particularly since it would effectively be subsidising a Channel 5 competitor. Furthermore, I understand that the IBA have done some work which suggests that we can expect positive tenders for Channel 5 even if all the start-up costs are assigned to the franchise.

The problem, incidentally, relates to the current use of Channel 36 (not 35 and 37) by VCRs and home computers, which may suffer adjacent channel interference from the new service on Channels 35 and 37.

The problem will already be known to those interested in Channel 5. The White Paper highlighted the potential difficulties over retuning and made it clear that the Channel 5 franchise would be obliged to meet the costs related to using Channels 35 and 37.

the  
Enterprise  
Initiative



**dti**

the department for Enterprise

No one is questioning the fact that the Home Secretary's statement did not say that the cash bonds would be returned. We are not, therefore, in a position of having to make an early announcement. Nonetheless, my Secretary of State hopes that, once officials have been able to assess more precisely the extent of the problem, colleagues will be able to consider more definite proposals on Channel 5.

Yours

*Gareth Jones*

**PP** GARETH JONES  
Private Secretary



PRIME MINISTER

20 June 1989

BBC NIGHT HOURS

David Young's minute on this subject is far better than Douglas Hurd's and I strongly support his conclusion.

I attach a note I submitted previously: the crux of this argument is at the top of page 4.

Brian Griffiths

BRIAN GRIFFITHS

Tom may prefer to await  
Try out DTI comments before becoming  
involved in this. But Brian's  
points appear very valid.

PRIME MINISTER

Brian

1 a few

26 August 1988

pat

- as soon as  
we have DTI comments - we

MISC 128: SUBSCRIPTION AND THE NIGHT HOURS

will write

according to this minute. In  
the meantime - you could contact

The remit of the BBC and the existing franchises for ITV do not cover the night hours. At present BBC and C4 rarely use the night hours for broadcasting, (the exception being the General Election). Recently, however, the ITV companies have begun to show repeats of previous programmes and old films, thereby prompting the charge of 'squatting'.

David  
Young  
wrote  
replied  
to find  
his

In January, the Home Secretary approved the BBC broadcasting a specialist service to doctors paid for by subscription on a two year experimental basis.

preliminary  
view.  
mb

Because of these developments, and also because the use of the night hours is a valuable asset, MISC 128 asked the Home Secretary to come forward with a set of proposals for their use. He has now done this and proposes that:

- i. The BBC should have the use of the night hours on BBC1 and BBC2, provided they use them for subscription services.
- ii. The licence fee will be reduced by an amount which reflects the revenue which the BBC can earn through subscription.
- iii. The ITV companies should not be allowed to use the night hours but these should be allocated under a separate franchise to different companies, with the terms being decided by the ITA.

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He also mentions in the note but not in the recommendations that "We need to signal clearly our long term objective of replacing the licence fee by enabling the BBC to make a significant early start with subscription".

These proposals are different to what MISC 128 recommended and need to be considered carefully.

They are open to question on a number of points.

#### Greater Dominance for the BBC

First, they would give the BBC a more dominant position after 1992.

Most of the past year in MISC 128 has been spent discussing ways of increasing competition among the ITV companies. The companies recognise that change is coming: hence their attacks on restrictive practices, the rearguard action which some companies are fighting, and the enterprise being shown by ITN.

The BBC has been looking on at this debate rather smugly, secure in the knowledge that its public subsidy will keep rising with the cost of living, at least for the time being. Because the Corporation has accumulated so much fat over the years, it is not threatened by the need for some belt-tightening: it can lay off some of its surplus staff through natural wastage.

In this already uneven situation, the Home Secretary's proposals will strengthen the BBC by providing it with two valuable assets (night hours on BBC1 and BBC2) while at the same time weaken the ITV companies by stripping them of their night hours. The broadcasting scene post-1993 looks something like:

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- a. an enlarged BBC having two terrestrial channels including night hours
- b. smaller terrestrial ITV companies with franchises which run from, say, 9.00am, to 10.00 pm
- c. new companies (BSB, C5, Cable, Community TV), mainly non-terrestrial.

The end result will be a more dominant BBC and a larger but more fragmented commercial sector made up of smaller companies.

#### Replacing the Licence Fee with Subscription

Second, the Home Secretary suggests that allocation of the night hours of BBC1 and 2 to the BBC is a step to replacing the licence fee. This seems an extremely dubious proposition.

The BBC management know that it would be impolitic not to move a little in the direction of subscription. But from all the conversations I have had with them in the past two years I believe they will fight for the retention of the licence fee as fiercely as they can and to the bitter end. The only way for the Government to inform the BBC of its objective is for it to be specifically set out in the White Paper in some detail: in particular the Government need to set a date by which the licence fee will be phased out.

The original recommendation of MISC 128 was that the BBC should be granted the use of the night hours on BBC2 but not on BBC1. The Home Secretary now suggests both channels.

If the intention is that the BBC has the opportunity to learn how to manage subscription, then surely all that is needed is one channel.

The argument the Home Secretary uses is that allocating two channels would maximise the BBC's opportunities to raise subscription revenue. While it would certainly increase the time available for this, it is very doubtful if the BBC would really use the opportunity to maximise their revenue.  
 The plans they seem to have presented so far would not generate much revenue (special programmes for dentists, farmers, architects, educational services, hobbies and particular interests). To the extent that the BBC sees a larger market for exploiting their archives, they could just as well sell these programmes to a commercial operator rather than be allocated an additional channel all for themselves.

Protection for BSB

Third, the proposals will have the effect of restricting competition for BSB.

The cash flow for BSB will be generated - at least in the early years - by a film channel paid for by subscription. The Home Office have been at pains now for some time to ensure that BSB have as little competition possible in this field. Hence their proposals that the new channels 5 and 6 should be advertising financed and that MVDS and Cable should be local. (As the details of the night hour franchises for ITV will be settled by the ITA, one can imagine that when this body come to make the decision it will be leant on to ensure that once again the ITV companies will not use the night hours to broadcast new films by subscription).

BSB are already being provided with a number of significant privileges. After 1993 it would be preferable for the use of the night hours on all channels to be determined by viewer choice rather than bureaucratic rules.

CONCLUSIONS

The new proposals from the Home Secretary will strengthen the role of the BBC, weaken the position of the ITV companies and bolster the position of BSB among the new entrants to television.

RECOMMENDATIONS

1. The BBC should be authorised to run subscription services on BB2 as soon as possible.
2. The BBC should be informed that the level of the licence fee from April 1991 onwards will be lower on account of the extra revenue raised.
3. The Home Secretary should inform the BBC that the Government's objective is to replace the licence fee by subscription and that the licence fee will be phased out by a fixed date: the White Paper should mention the date.
4. The right to the night hours on BBC1 and C3 should be allocated by franchise on the same basis as the new day and evening franchises are allocated to the ITV companies; the body responsible for this should be the new ITA.
5. The Home Secretary's minute does not mention C4: this should be treated in the same way as BBC1 and C3.

*Brian Griffiths*

BRIAN GRIFFITHS



*cc Backley*

## PRIME MINISTER

## MEETING OF MISC 128 : 21 JUNE

You saw over the weekend some of the papers for tomorrow's MISC 128 meeting. There are, I fear, now quite a few more in the folder. This note attempts to guide you through them.

You now have three items on the agenda

- (I) Transmission
- (II) BBC Night Hours
- (III) The 25 Per Cent Initiative

Most the papers are specific to one of those individual items, and are included in the three dividers. But immediately below this note are two more general minutes which I suggest you look at first:

✓ Flag A a note by Brian Griffiths bringing together the three agenda items and expressing his concern that, as a package, they are much too favourable to the BBC

Flag B supplementary Cabinet Office briefing on the extra items which have been added to the agenda since the weekend

Divider I - Transmission

Flag C the Home Secretary's paper, which you studied over the weekend

Flag D the more detailed report by officials, also in the weekend box, which you do not need to bother with

Flag E Cabinet Office brief on transmission which you have already seen

Flag F a brief by Brian Griffiths on transmission. You will

want to go through this carefully.

- Flag G note by the Foreign Secretary on the World Service aspects of transmission
- Flag H more detailed paper from Lord Young on other aspects of transmission, which was also in the weekend box. Hopefully these detailed points do not need to be discussed and can be cleared in correspondence - so you need not bother with this

Divider II - BBC Night Hours

The papers here are:

- Flag I Home Secretary's minute which you saw over the weekend
- Flag J note by Lord Young, questioning the revised proposals to let the BBC have both sets of Nights Hours
- Flag K briefing by Brian Griffiths which strongly supports Lord Young

Divider III - The 25 Per Cent Initiative

The papers are:

- Flag L minute from Douglas Hurd suggesting that in view of the latest BBC offer to make information available on independent production, there is no need to legislate to require the BBC to satisfy the OFT about the 25 per cent figure
- Flag M note from Lord Young, questioning this and continuing to urge the desirability of legislation
- Flag N briefing from Brian Griffiths, again supporting Lord Young.

PP. *Brian Griffiths*  
(PAUL GRAY)

20 June 1989

*Buty ask*

K02215

FROM: PHILIP MAWER  
DATE: 20 June 1989

MR GRAY

MINISTERIAL GROUP ON BROADCASTING SERVICES (MISC 128)  
MEETING ON 21 JUNE

1. There have been a number of developments relevant to this meeting since I submitted a brief for the Prime Minister on 16 June.

## i. BBC Night Hours

2. In his letter of 19 June to the Home Secretary, the Secretary of State for Trade and Industry has confirmed his wish to discuss the Home Secretary's proposal that the Group's earlier decision to remove one set of night hours from the BBC should be reversed. Paragraphs 22-23 of my brief of 16 June set out the issues. We have therefore added this item to the agenda for tomorrow's meeting, following the item on transmission.

## ii. Monitoring the 25% Independent Production Initiative

3. The Home Secretary's minute to the Prime Minister of 19 June refers to proposals which Lord Young made in a minute of 6 April for monitoring the terms of contracts between the broadcasters and the independent producers. Lord Young's minute indicated that the BBC would not voluntarily supply details of contracts and your letter of 24 April recorded the Prime Minister's dissatisfaction with this. The Home Secretary's latest minute indicates that the earlier exchanges were based on a misunderstanding and that the BBC are prepared to make details of individual contracts available on a commercial-in-confidence basis to the Office of Fair Trading (OFT). The Home Secretary suggests that in view of this there is no need to legislate to require the BBC each year to satisfy OFT that 25% of programme

production was coming from independent producers and that the monitoring proposals in Lord Young's minute of 6 April can be endorsed.

Flag J | 4. Lord Young wrote to the Home Secretary yesterday welcoming the BBC's willingness to make available to the OFT details of individual contracts, but suggesting that there was still a case for legislating to require the BBC to fulfil the 25% independent production target. The new licences to be awarded to independent television companies would require them to meet the target and it therefore seemed to Lord Young reasonable that there should be an equivalent requirement on the BBC. Lord Young again suggested that the matter should be discussed at tomorrow's MISC 128 meeting, and we have therefore added this item to the agenda after that on BBC night hours.

5. In relation to both these items the Prime Minister will no doubt wish to invite the Home Secretary to speak to his latest proposals, and then to ask Lord Young to set out his reasons for dissenting from them, as a preliminary to wider discussion among the Group.

iii. Independent Broadcasting Engineering and Research and Development

Flag H | 6. The Trade and Industry Secretary's letter to the Home Secretary of 16 June attaches a paper about the future of the IBA's engineering and research and development activities. The paper, which has been discussed by the Official Group, recommends that the Independent Television Commission should retain only those engineering staff (no more than about 10 in number) essential to its light touch regulatory role. In line with that view Lord Young proposes that:

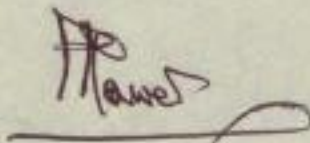
- i. the ITC should not retain any in-house research and development (R&D) capacity but that the IBA's Experiment

and Development (E&D) Department should be privatised as soon as legislation allows;

ii. contrary to the IBA's proposals, the privatised E&D Department should not be given any short term guarantees of work or income. Powers would be included in the Broadcasting Bill to vest the assets of the Department temporarily in the Home Secretary, with a view to them being sold off as quickly as possible.

Lord Young suggests that if his proposals are agreed by the Group, an early announcement should be made at the same time as the Group's decisions on transmission are published.

7. Lord Young expresses the hope that his proposals can be cleared in correspondence without need for substantive discussion at the meeting on 21 June. I understand that neither the Home Secretary nor the Chancellor of the Exchequer is likely to dissent from the principle of what Lord Young is proposing, although they may have some reservations about the practicability of privatising the IBA's E&D Department on the terms Lord Young suggests. This is, however, a relatively minor matter which I suggest can safely be left for clearance in correspondence.



P J C MAWER

TRANSMISSION, BBC NIGHT HOURS AND THE MONITORING OF  
THE 25% INITIATIVE BY THE BBC

Before examining these papers in detail, there is one general issue which needs to be considered - namely the balance between the BBC and the independent television sector which will result from implementing the White Paper proposals.

Our current deregulation of ITV means that private television companies face considerably greater competition as a result of:

- (a) the auction process;
- (b) the higher quality hurdle which they now have to meet;
- (c) the special provision they must make for high quality international news;
- (d) the subsidies which C3 has been required to give to C4 (the safety net on income financed by a levy on C3 and the definite cross-announcement and possible cross-scheduling between C3 and C4).
- (e) the process of takeovers;
- (f) possible EEC ownership;
- (g) satellite broadcasting;
- (h) more liberal regime for cable.

By contrast the BBC has a guaranteed annual income of £1 billion for the foreseeable future.

Yet despite the increased competition within ITV, the Home Secretary's proposals for the BBC on transmission and night hours will both lead to an expansion and strengthening of the BBC's dominant position, and as David Young points out, the proposal on the 25% initiative for the BBC is far weaker than it should be and much less robust than that for ITV.

If we take the de-regulation proposals for ITV together with the current proposals of the Home Secretary for the BBC, there is absolutely no doubt whatever that its one achievement will be a stronger, larger and more dominant BBC.

This is hardly the result that was envisaged when the Government set down this path.

There are two arguments which are repeatedly used by the Home Office in connection with the BBC in these matters which need close scrutiny.

One is that the BBC has been given the green light to earn extra income. That is so. But surely the intention at the time this green light was given was not that the BBC should expand into every conceivable new area, but rather that it should discover ways of earning some fees on existing activities eg by selling its publications more effectively, or exporting programmes to other countries with greater vigour etc.

Second, is the argument that even if these proposals result in an expansion of the BBC's revenue we can always cut the

BBC back by reducing the licence fee. I am very sceptical about this argument. Not only would it appear vindictive and ungrateful to reduce the licence fee if the BBC they had been successful, but almost certainly the BBC would allow the costs of producing programme to rise, (funded by the revenue from new activities,) on the argument that the higher costs were absolutely vital to produce high-quality public service broadcasting. We would find, in other work, that there is no room for reducing the licence fee!

#### RECOMMENDATION

If the BBC is to be contained, all three proposals of the Home Secretary need to be challenged. However if some concession has to be made the 25% initiative and transmission are more important than the night hours.

Brian Griffiths

BRIAN GRIFFITHS



*cc*



Treasury Chambers, Parliament Street, SW1P 3AG  
01-270 3000

20 June 1989

Rt Hon Douglas Hurd CBE MP  
Secretary of State for the Home Dept  
Home Office  
50 Queen Anne's Gate  
LONDON  
SW1H 9BW

*Allen  
Raco  
2/6*

*Alan Douglas*

**BBC NIGHT HOURS**

*with/lo?*

I have seen your minute to the Prime Minister recommending that the BBC should keep both sets of night hours.

I agree that this is the right course to take given the other decisions we have taken. But I attach considerable importance to the corollary that we should use the financial lever of the licence fee to make sure that the Corporation develop subscription seriously.

I am copying this letter to the recipients of yours.

*Nigel Lawson*

**NIGEL LAWSON**

PRIVATISATION OF THE TRANSMISSION SYSTEM

Flay  
C  
//  
This subject is best tackled by examining the Home Secretary's 10 conclusions (a) to (f) in para 9 of his minute.

(a) Objective: to privatise transmission

Privatisation will bring benefits of increased choice and greater efficiency - at present the Price Waterhouse Report (PWR) suggests that the transmission of both BBC and IBA assets are managed badly.

Recommendation

Agree to privatise transmission.

(b) Privatisation in present form

The PW Report considered three ways in which the transmission system might be privatised: the present system with two independently operated and maintained systems (ie the IBA would form one company and the BBC another), a number of local monopolies which could be grouped together, or the grouping together of local monopolies on a regional basis which would provide yardstick competition (comparative judgements could be made about different regional operations). The Report rules out the regional option on technical grounds, though it is far from clear that this Report is on solid ground in doing this.

The official group (MISC 129) recommends in favour of privatising the two transmission operations in their present form for a number of reasons, the major one being that it would avoid the cost of changing the system, and that it would mean the IBA operation could be privatised separately from the BBC.

Recommendation

Agree to proceed with privatisation in present form but commit to review the arrangement as part of the review of the telecommunications duopoly

(c) OPTTEL as regulator

After privatisation there will be a duopoly of the core areas of broadcasting transmission and therefore there will need to be economic as well as technical regulation. The natural candidate is OPTTEL.

Recommendation

Agree to OPTTEL as the regulator, part-privatisation.

(e-h) BBC and privatisation of the transmissions

Recommendations (e-h) need to be considered together.

The BBC is opposed to the privatisation of its transmission system. It has over 51 main transmission sites and 800 in all. These are clearly valuable. It would be virtually impossible to get planning permission for some of them if they were being set up today. If the BBC have to sell its transmission system today, the estimated price which is mentioned would be between £300-500m.

The BBC view their transmission system as a valuable asset with which they can defend themselves against the uncertainty of government policy. They believe that if they retain their transmission system it will rise in value for two reasons:

- (i) through attracting new transmission business for C5 and the three new national radio networks.
- (ii) by entering into joint ventures with companies such as Mercury and Marconi in the field of telecommunications.

They would hope to be able to undertake the first of these fairly soon: the second would depend on being awarded a telecommunications licence after the review of the existing telecommunications duopoly.

The result of what the BBC want therefore, far from being a step in the direction of privatisation, is a step in precisely the opposite direction. They will be trading in the private <sup>sector</sup> in order to build up the value of public sector assets! This is back door nationalisation and what is even more staggering the Home Office are set to go along with all of it.

Before we examine the points in detail it is worth setting out the options facing the BBC on transmission. They are:

- (i) status quo
- (ii) wholly owned and operated subsidiary

- (iii) wholly owned subsidiary but with operations contracted out
- (iv) wholly owned subsidiary with new business (transmission plus telecommunication)
- (v) privatisation.

**(e) Objective - privatise the BBC's transmission system but no attempt to progress against their will**

Certainly state that the objective is to privatise the BBC's transmission system by 1996.

The added recommendation not to attempt progress against their will is much more questionable.

One option considered by the official paper is to provide some incentive to the BBC - such as a share of the proceeds of privatisation. It is argued in the paper that it is unlikely that any share of the proceeds which could be realistically offered would lead them to change their mind on privatisation.

Because the other alternatives are so unattractive this point needs to be explored in much more depth. For example, it is not clear that the BBC would turn down the following if it were to be offered:

- (i) share of the proceeds of privatisation;
- (ii) prohibition on a wholly-owned subsidiary seeking new transmission and telecommunication business - which is de facto nationalisation;

- (iii) possible minority stake (say 15%) in new transmission company - which was then free to obtain new business.

Recommendation

Accept the objective of privatising the BBC by 1996 but reject the recommendation of taking no further steps to help privatise at the same time IBA assets are privatised.

- (f&g) Endorse BBC proposal to establish their transmission operation as an arms-length subsidiary and compete for new broadcasting transmission business

Establishing an arms-length subsidiary is an internal matter for the BBC. If they wish to do this in the interests of internal efficiency, then it is a useful step forward.

There are two problems with allowing them the right to compete for new business - (i) it is back-door nationalisation and (ii) it is not easy to see how it could be restructured so that it did not offer unfair competition. The problem is how the BBC would price transmission services in order to earn a reasonable rate of return on capital. Because there is no competitive yardstick for transmission prices, it is not possible to value the assets other than in an arbitrary way. The BBC could if they so chose compete at a price below the successor company to the IBA and it would be virtually impossible on any objective grounds to declare it as unfair competition.

(h) Cautious but not negative response to BBC joint-venturer on telecommunications

This is the very opposite of privatisation.

Recommendation

Strongly resist any suggestion that the BBC should become a telecommunications operator.

(i) Transmission charges for C3 should be based on a national tariff related to proportion of TV households in any given franchise area

This issue arises because of the way in which the ITV map is currently drawn. In a free market transmission charges for certain areas (Grampion, HTV, Channel) would be so high that it could result in negative tenders. To avoid this result more densely populated areas will have to subsidise sparsely populated areas. One proposal is for transmission charges to be averaged out per household and included in the operators costs on that basis.

Any alternative arrangement is likely to prove very contentious.

Recommendation

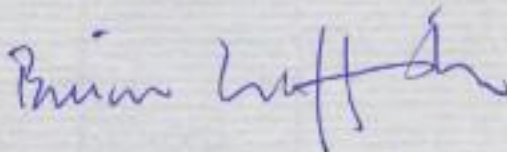
Accept as proposed.

CONCLUSION

As we have found with their attitude to the 25% independent production quota and the night hours, the BBC can be relied on to promote their own interests with a vengeance. Transmission is proving no exception. The present Home Office proposals reflect faithfully what is in the BBC's, but not necessarily the public interest.

Not only have they objected to privatisation but they propose capitalising on public sector assets and effectively expanding the public sector through joint-ventures.

Transmission is a far more important issue than night hours. If a concession must be made at the meeting, then it should be made on the latter but not the former.



BRIAN GRIFFITHS

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20 June 1989

MONITORING THE BBC'S 25% INITIATIVE

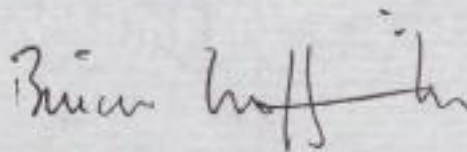
Meeting the 25% target is a major problem for the BBC.

Until now they have refused to disclose details of individual contracts. The Home Secretary's proposal not to legislate rests on the goodwill of the BBC's middle managers. Until now we have not been able to rely on such goodwill from these people. These are also the people who have claimed privately to colleagues at conferences that the BBC will never reach the 25% target as it will mean such a major shake-up of the corporation.

It would be far better and safer to put the BBC and ITV on exactly the same footing and require both to act on the basis of legislation.

RECOMMENDATION

Require the BBC to meet the 25% requirement through legislation, in exactly the same way that the ITV companies are being required to do.



BRIAN GRIFFITHS

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dti

the department for Enterprise

CONFIDENTIAL

The Rt. Hon. Lord Young of Graffham  
Secretary of State for Trade and Industry

The Rt Hon Douglas Hurd CBE QC MP  
Secretary of State for the  
Home Department  
50 Queen Anne's Gate  
LONDON  
SW1H 9AT

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1-19 Victoria Street  
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Telex 8811074/5 DTHQ G  
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Direct line 215 5422  
Our ref PBLBMJ  
Your ref  
Date 19 June 1989

*Dear Secretary of State,*


MONITORING THE 25 PER CENT INITIATIVE

Thank you for sending me a copy of your minute of 19 June to the Prime Minister. *flap.*

I note that the BBC have said they are now willing to provide details to the OFT of individual contracts with independent producers, in order to further the monitoring process. This is a welcome development.

I am not sure, however, that we should not return to the possibility of requiring the BBC to fulfill the 25 per cent target by legislative means while the opportunity is available to us. The current proposals in relation to the BBC would still only amount to monitoring the situation and would provide no opportunity for requiring them to act in accordance with the 25 per cent target should this prove necessary. We shall of course be requiring the ITV licensees to meet the 25 per cent target and it therefore seems to me that an equivalent requirement for the BBC would not be unreasonable. I hope we will have an opportunity to discuss this at the MISC 128 meeting on 21 June.

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

*Yours sincerely,*  


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

  
the  
Enterprise  
Initiative

Broadcasting Plant pt 8



dti

the department for Enterprise

CONFIDENTIAL

The Rt. Hon. Lord Young of Graffham  
Secretary of State for Trade and Industry

The Rt Hon Douglas Hurd CBE QC MP  
Secretary of State for the  
Home Department  
50 Queen Anne's Gate  
LONDON  
SW1H 9AT

Department of  
Trade and Industry

1-19 Victoria Street  
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Direct line 215 5422  
Our ref PB1BML  
Your ref  
Date 19 June 1989

*Dear Secretary of State,*

**BBC NIGHT HOURS**

*Separate Note at Source.*

I refer to your minute of 14 June to the Prime Minister in which you propose that the BBC should be allowed to keep both sets of its night hours.

As you know, I have always seen the night hours as a potentially valuable resource, the true value of which can only be assessed if it is put on the open market. You will recall that the Peacock Committee took a similar view and recommended that the night hours of all four national networks should be sold.

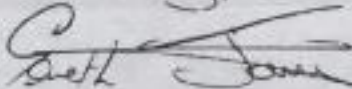
I am afraid I am not persuaded by the argument that the BBC's public service functions or the aim of expanding its subscription services should entitle it to retain both sets of night hours. They are rather reasons for our having decided to allow them to retain one set of night hours. Major events such as the Olympic Games are fairly infrequent and I see no good reason why the disruption of subscription services on such occasions should be any worse than the disruption such events cause normal programming. Now that we have decided to award the night hours with the Channel 3 regional franchises, the BBC's second set remain the only national night hours that could be put out to the market.

Having said that, if other colleagues agree with your proposals then I would in principle also be prepared to do so. But I am not convinced that it would be sufficient merely to flag up an expectation that when the licence fee is reviewed in ten years' time we would expect them to be earning significant amounts of subscription income. Surely this will

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also be the case with one set of night hours which they have yet to utilise fully so far? If we are to countenance letting them keep the second set of night hours then we should use this to try to ensure that we achieve a satisfactory outcome on transmission. This will need to await the outcome of MISC 128 on Wednesday 21 June and I therefore suggest we discuss the matter then.

I am copying this letter to the recipients of your minute.

Yours sincerely,  


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

Broadcasting Policy Pt 8.



A *up*

Treasury Chambers, Parliament Street, SW1P 3AG  
01-270 3000

19 June 1989

Paul Gray Esq  
Private Secretary  
10 Downing Street  
LONDON  
SW1A 2AA

*Dear Paul*MISC 128: CHANNELS 3, 4 AND 5 2

Thank you for your letter of 14 June to Duncan Sparkes about the suggestion (in his letter of 12 June to Catherine Bannister) that there might be circumstances in which cash bonds would not be returned to unsuccessful applicants for franchises on Channel 3 and 5.

The thinking behind the proposals was this. Before Channel 5 can start test transmissions in 1992 - and full scale broadcasting in 1993 - we will need to clear existing users from the part of the spectrum on which it will transmit, UHF channels 35 and 37.

At the moment, this part of the spectrum is used extensively by video cassette recorders and home computers. Although it seems likely that it will be possible to find alternative channels to which these activities can be moved, the process of conversion will be expensive, given the millions of VCRs and home computers now in use. Officials are still working on the likely scale of the task but a total bill in the area of £100 million is by no means inconceivable. The question which then arises is who pays.

If we make the task the responsibility of the successful bidder for the Channel 5 franchise it may well be that the cost of clearing the spectrum is more than the franchise is worth. At the very least, it would certainly have a severely depressing effect on the market for the Channel 5 franchise.

What Treasury officials have been considering, therefore, is the possibility of charging a non-returnable fee for all those seeking franchises on Channel 3 or Channel 5, the proceeds from which could then be used to finance the necessary spectrum clearance. Given that we can probably expect up to 100 applicants for the



18 franchises available on both channels, an entry fee of less than £1 million would go along way towards solving the problem.

Needless to say, the Chancellor recognises that there may be well be a better solution. But none has so far been discovered, and he therefore attaches importance to this option being kept open whilst other ways of dealing with the problem are being sought.

I am sending copies of this letter to the Private Secretaries to the Members of Misc 128 and to Sir Robin Butler.

*Yours truly*

A handwritten signature in dark ink, appearing to read 'J M G Taylor'.

**J M G TAYLOR**  
Private Secretary



Bloodcasting Play PE 8





*File No*

10 DOWNING STREET  
LONDON SW1A 2AA

*From the Private Secretary*

19 June 1989

*D. - [unclear]*

**BBC NIGHT HOURS**

The Prime Minister is grateful for the Home Secretary's minute of 14 June. She would like to add this issue to the agenda for the next meeting of MISC 128 on 21 June.

I am copying this letter to the Private Secretaries to the members of MISC 128 and to Trevor Woolley (Cabinet Office).

*[Signature]*  
Paul Gray

Miss Catherine Bannister,  
Home Office.

*[Signature]*



PRIME MINISTER

MONITORING THE 25% INITIATIVE

In his minute of ~~6 April~~ <sup>Acas PTT.</sup>, David Young put forward proposals for monitoring the terms of contracts between the broadcasters and independent producers. The purpose of this was to complement the Home Office's monitoring of the volume of independent production commissions.

2. David indicated that the BBC (though not the IBA) had made it clear that they would not voluntarily supply details of contracts. Following consultation with the Director General of Fair Trading, he proposed that the latter should monitor the volume of independent commissions by using the quarterly returns the broadcasters send to the Home Office; hold quarterly meetings with IASC (Independent Access Steering Committee) to discuss both general and specific cases; and report every six months to the Trade and Industry Secretary.

3. Your Private Secretary's letter of 24 April expressed concern about difficulties in assessing the BBC's progress and the Corporation's unwillingness to provide detailed information voluntarily; and suggested that the Broadcasting Bill should require the BBC each year to satisfy OFT that 25% of programme production was coming from independent producers.

4. Following this, my officials have had discussions with the BBC about the terms on which information might be released. The BBC are prepared to make details of individual

2.

contracts available on a commercially confidential basis to OFT, accepting this as necessary for them to carry out monitoring of the 25% independent production initiative.

5. In view of this I see no need to legislate. The BBC are co-operating with the Home Office in the supply of information about the volume of independent commissions, and they have confirmed that they are prepared to co-operate with OFT by supplying details of contracts. I would therefore support the arrangements proposed by David Young in his minute of 6 April, with the additional comment that it would also be open to OFT to approach the BBC and IBA for further information about individual cases as necessary to satisfy themselves about the terms of contracts.

A copy of this minute goes to other colleagues on MISC 128 and to Sir Robin Butler.

*David Young*

19 JUNE 1989

BROADCASTING: POLICE PT 9



SRWCAO

PA

PRIME MINISTER

We have a further meeting of your broadcasting group MISC 128 next week. You may like to have a first look at the papers over the weekend.

Briefing from Brian Griffiths is not yet available, and I will let you have that on Tuesday night. The enclosed papers are:

Flag A the main paper for the meeting, a note by the Home Secretary setting out his proposals on the privatisation of the transmission system

Flag B a more detailed report by the Official Group on the same subject. This is not essential reading

Flag C Cabinet Office briefing on transmission

Flag D a letter from Lord Young concerning a further more detailed aspect of the transmission discussions not covered in the other papers, i.e. the future of the IBA's engineering and R & D. Lord Young hopes to clear this in correspondence, but raises the possibility of adding it to the agenda for Wednesday's meeting. I suggest at this stage you simply note this paper's existence, and see whether colleagues can sort it out before the meeting.

Flag E the minute from Douglas Hurd on BBC Night Hours which you saw before your bilateral with Brian Griffiths this morning. Unfortunately there was not time to discuss this at that meeting. Brian's view is that it would be worth adding this issue to the agenda on Wednesday rather than agreeing it in correspondence beforehand.

The only immediate decision needed is whether to add the Night Hours paper at Flag E to Wednesday's agenda.

Do you want to do this?

*Leather, K. A. H. / C*  
 (PAUL GRAY)

16 June 1989

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dti

the department for Enterprise

The Rt. Hon. Lord Young of Graffham  
Secretary of State for Trade and Industry

Rt Hon Douglas Hurd CBE MP  
Secretary of State for the  
Home Department  
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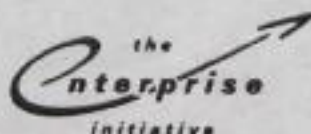
Direct line 215 5422  
Our ref NP4A3K  
Your ref  
Date 16 June 1989

*125 Secretary of State.*

The next meeting of MISC 128 is due to discuss a paper on the privatisation of the television and radio transmission systems. The maintenance and operation of the systems accounts for the great majority of the staff in the engineering departments of both the BBC and the IBA. **Whatever final decisions are made about the transmission systems, it seems clear that the BBC will retain its other engineering activities, including R&D at least until its Charter expires in 1996.**

Decisions do have to be made, however, about the future of the IBA's engineering and R&D.

... The attached paper examines the problem and details various options. It is based on discussions our officials have had in MISC 129. The paper concludes that the ITC should be allowed a small core of engineering staff, of perhaps up to ten professionals, no larger than is needed to allow the ITC to meet its statutory duties. I recommend that the ITC should have no "in house" R&D, within certain strict limits. The paper concludes that the IBA's Experiment and Development (E&D) Department, responsible for the IBA's current R&D, should be privatised as soon as legislation allows. On balance, I also judge that there is not a strong enough case for giving the independent E&D Department any short term guarantees of work or income, as suggested by the IBA. Such guarantees can often run longer than originally intended and only put off the day on which the organisation must fend for itself in the commercial world.

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I hope that my recommendations can be cleared in correspondence but if necessary we can of course discuss them at the next meeting of the Committee, scheduled for 21 June.

In view of the uncertainty that our proposals on transmission have stimulated among the staff of the IBA's Engineering Department, and to allow the management the greatest time in which to prepare for privatisation, I would strongly favour an early announcement of our decisions about engineering and R&D. If possible, I think it should be made at the same time as that on transmission. I would be grateful therefore for your comments and those of colleagues before we meet on Wednesday 21 June.

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

*✓ as ready.*

*John Lewis*

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



CONFIDENTIAL

INDEPENDENT BROADCASTING ENGINEERING AND R&D

The paper examines the future of the following functions, at present all undertaken by the IBA:

- a) engineering (except transmission);
- b) research and development; and
- c) representation on international standards committees.

Background

2 The IBA's present responsibilities for planning and operating the transmission system have led them to have a major engineering division of some 500 people. The great majority of these are involved in running the transmission system and can be expected to move to the privatised transmission company that will take over the IBA's present functions in this area. In addition, the IBA's Experiment and Development (E&D) Department, responsible for applied R&D in support of the transmission system, has a further 80 staff. Additional resources are devoted to network and frequency planning. The BBC also has a team of engineers responsible for its transmission system, a Research Department of about 230 staff and a much smaller Design and Equipment Department responsible for shorter term development.

3 Under the White Paper proposals, the ITC would lose the IBA's responsibility for operating the transmission system and, consistent with the ITC's role as a "light touch" licensing body, the Government's aim should be to reduce the ITC's engineering and technology staff and activities to the minimum consistent with its functions. The following functions proposed

for the ITC in the White Paper will require some technical input:

- a) to supervise the transmission arrangements for independent services, in order to ensure conformity with international obligations and the observance of technical specifications designed to limit interference; and
- b) to determine...the nature and pattern of franchises for local television programme services whether delivered by cable, MVDS or both.

There could also be limited technical/engineering knowledge needed in determining the geographical structure of Channel 3, the use of the night hours and the advertisement of any future DBS licences.

#### Engineering

4 It seems likely that, whatever the final decisions over the exact form of the ITC, it will have responsibilities related to the transmission of programmes and the organisation of the LDO map which will require up to date knowledge of spectrum management and techniques of service planning. As technologies develop (eg HDTV, EDTV, greater use of sidebands) the ITC will also need access to independent technical advice to support its planning decisions.

5 One option would be to deny the ITC any access to in-house technical advice. They would have to buy in such advice either on a case-by-case basis or possibly with an on-going contract with some private sector organisation. It seems unlikely, however, that such an extreme position would prove cost effective. However much of the technical advice came from outside, the ITC would need some senior staff who were familiar with the technical side of broadcasting, if only to know what

questions to ask and of whom and to interpret the answers.

6 In response to the White Paper, the IBA have recommended that the ITC should have a small core of engineering staff and the ability to commission or second-in spectrum management and other skills from outside (perhaps from a separate independent broadcasting engineering unit). The IBA maintain this would be consistent with the idea of the ITC as a light touch body and would also ensure that those responsible for engineering advice worked in a dynamic engineering environment rather than run the risk of losing touch with developments in a regulatory body.

7 The IBA propose a structure for the ITC (Annex A) with branches responsible for frequency planning; transmission and telecoms; and standards, technology and R&D. It is not clear, however, that even this much structure will be required. Frequency planning will be needed in planning the MVDS map and, to a lesser extent, in the maps for Channels 3 and 5 and DBS where much work has already been done. The workload will be variable and this strengthens the case for such expertise to be bought in, as suggested by the IBA. Such an approach would be consistent with the Price Waterhouse report. The case for involvement in transmission and telecommunications will depend on the regulatory regime for transmission and the role played in it by OFTEL, but it is unlikely that the ITC will need much expertise in transmission beyond that related to interference and international obligations and even those duties would be exercised in collaboration with Radiocommunications Division of DTI where appropriate. The case for a technology and R&D branch depends on any future R&D responsibility of the ITC which is considered separately below. The perceived role of the Technical Facilities Unit is unclear although, if it is simply an office support unit to assist the ITC to view programmes, then it seems reasonable.

8 In conclusion, there is a case for a minimum level of engineering knowledge within the ITC but it is doubtful whether

it needs even to be as large as envisaged by the IBA. In particular, there seems only a very limited role in transmission and telecommunications. The final size will need to depend on the precise extent of the ITC's responsibilities and the ITC's initial budget. The Government could use the budget process as a means of setting a precise limit to the size of the engineering department. We would recommend, however, that provided it did not include more than about ten engineers then its exact size and form should be left to the ITC to decide in the light of their eventual responsibilities under the new legislation and their own priorities.

#### Research and Development

9 The IBA argue that the ITC will need the ability to commission long term R&D work in order to have the necessary expertise to respond quickly and authoratively to proposals from licensees and others relating to innovations in transmission technology. Long term R&D would also help the ITC lead in chosen areas of national and international standards making, as the voice of independent broadcasting. The IBA draws parallels with OFTEL's responsibility for promoting research into the development and use of new techniques and argues that the ITC should have a similar responsibility, which it should discharge by managing and funding a long term R&D programme.

10 The IBA recognise, however, that there is little case for having the R&D facility "in house" and propose that the present IBA E&D Department, along with the small R&D departments in Thames, Granada and Scottish, should be brought together as an independent body and privatised. This "unit" would earn its income from customers such as the ITC, ITC franchisees and the transmission companies. The IBA warn, however, that the short term viability of such a body in the uncertain times around 1991/3 is questionable and are seeking some guaranteed work and a temporary "home" for the unit prior to full privatisation in the mid-1990s.

11 This presents us with two main policy questions:

- a) What should the ITC's role be in broadcasting R&D; and
- b) is the preservation of the R&D expertise currently within the IBA important enough to justify special arrangements being made in the short term to help preserve it as a unit?

12 In planning how to license new services and how to incorporate technological advances into existing services, the ITC will need to have access to impartial R&D. A general ability to commission R&D may, however, run the risk of allowing the ITC to devote significant resources to this area. This would be inconsistent with the idea of a light touch licensing body. The DTI therefore recommends that the level of R&D should be controlled by restricting its scope to being of direct relevance to the ITC's statutory duties.

13 It would be possible to go further than this and set specific criteria against which any work could be scrutinised either in the PES round, if the ITC is to be controlled in this way, or through formal Government approval of an R&D programme. It is questionable, however, as to whether Government should be so closely involved or that such scrutiny would be worthwhile if the R&D has in any event to be of direct relevance to the ITC's statutory duties. The main determinant of the level of R&D commissioned will be the size of the ITC's budget which will be determined by the Government, either through the PES system or by means of an annual report.

14 Whatever arrangements are finally agreed, there should be a move from R&D funded by the IBA/ITC to R&D funded by industry direct. The ITC should be encouraged to look to private sector funding for any R&D work as far as is consistent with obtaining

impartial advice to support the execution of its duties. This could increasingly involve international collaboration. This should help maximise the relevance of the work to the industry. The reduction in IBA/ITC R&D and the other changes in broadcasting over the next few years will produce a new climate to which companies will need time to accustom themselves. To help a private sector R&D presence to emerge in this new regime, the ITC should also be given the general duty to promote and encourage those active in the industry to do R&D.

15. Turning to question 11(b), the IBA's E&D Department has played an important role in developing (mainly transmission) technology to the benefit of UK broadcasters and their customers and has on occasion had such developments accepted across the world. The Department's achievements have included early work on teletext, the first digital converter of US TV signals to UK standards and the development of the MAC transmission standard. The MAC standard has now been adopted as the European standard and is compulsory for all high powered satellite broadcasting in Europe although its place in the UK market remains uncertain given the further delays to the BSB launch and the position of its competitor Sky which uses a PAL standard. The work at the IBA has tended to complement that done by the BBC and the rivalry between the two organisations has acted as a stimulus to both.

16. There is an argument that such R&D facilities are a scarce national resource and that positive efforts should be made to preserve them. In the case of broadcasting there may in any event be a market failure when the IBA is wound up and the major independent TV franchises are reallocated. The market for broadcasting R&D is restricted by the issuing of IBA/ITC licences and, immediately post-1993, new entrants may take some time to assimilate the knowledge and experience from running a business necessary to make longer term decisions on R&D. In the interim they may ignore R&D in favour of shorter term goals. This could also be true of the new transmission company/companies.

17 There are various ways in which any short term problem could be overcome. Thus, to take the example of market failure post-1993, the licences of the transmission companies, and perhaps also certain ITC licensees such as for Channels 3 and 5, could contain an obligation to undertake R&D into new broadcasting techniques or one of the transmission companies could be obliged to buy the E&D Department as well. Price Waterhouse suggested that a separate authority or trade association, funded by Government or by an industry levy, should be established to undertake R&D. Other obligations might also be considered. But it is not clear that there is a sufficiently strong case, in terms of either the value of the E&D Department as a national resource or the possible market failure, to justify the imposition of any rigid obligations. Nonetheless, a general obligation on the transmission companies to undertake R&D but which left the level to each company to determine could be envisaged. This parallels a provision in the cellular radio licences which has helped stimulate the right climate for commercial R&D.

18 If the Department is worth preserving then it should be able to pay its own way by selling its services to potential customers whether they be the ITC, ITC licensees, the transmission companies or any other company or organisation that is prepared to pay for the services. Rather than protecting the Department from the market by guaranteeing it a home, even if only into the mid 1990s as suggested by the IBA, or a workload, they should be permitted and encouraged as soon as possible to compete for contracts in the market. A guaranteed "home" or workload always runs the risk of continuing for longer than originally planned and a continuing responsibility for the Department would be contrary to the ITC's role as a licensing body.

19 We therefore recommend that the ITC should not retain any in-house R&D capability. As far as present legislation allows, the IBA should work towards privatisation without delay. They

should be encouraged to maximise the level of commissions they receive from outside, consistent with their current responsibilities, and generally compete in the market place as much as possible. In practice, however, the present vires of the IBA are unlikely to allow a privatisation before the IBA is dissolved and we recommend that powers be included in the Bill to enable the assets of the E&D Department to be vested temporarily in the Secretary of State for the Home Department with a view to their being sold as quickly as possible. This would not be a temporary home in the manner proposed by the IBA but rather a necessary administrative arrangement to enable the E&D Department to be sold off or, failing that, wound up. If any interest were expressed in some form of management buyout then this should be encouraged. But if this and other options, notably a trade sale, fail then the E&D Department should be disbanded. There should be no temporary home into the mid-1990s and no guaranteed future workload.

#### Representation at international standards committees, etc.

20 The IBA currently represents the UK's independent broadcasting sector in many national and international technical standards committees. The BBC tend also to be represented. Who, if anyone, should take over the IBA's role? The IBA's contribution is valued by the DTI who see it playing a complementary role to that of the BBC. We do not consider that the BBC could represent the interests of independent broadcasting as well as a separate representative and would support a continuing role either for the ITC or another representative body (perhaps the R&D "unit" proposed elsewhere by the IBA).

21 This is, however, a comparatively small part of the IBA's functions and should not be allowed to "wag the dog" of our overall policy towards engineering matters. The core of ITC engineers could continue in this role for the more "policy" related committees so far as their exposure to the latest



technological developments allowed them. Representation on the detailed technical committees could then be provided by the independent R&D unit, if it establishes itself, or from an agreed representative direct from the industry. The exact arrangements would have to await the outcome for engineering and R&D.

### Summary

22 The paper recommends that:

- a) the ITC should be allowed to retain a small core of engineering staff with the final numbers and organisation being left to the ITC in the light of the precise extent of its statutory responsibilities, its budget and priorities but unlikely to include more than ten engineers (para 8);
- b) the ITC should have no "in house" R&D facility (paras 10, 19);
- c) the ITC should be given the power to commission R&D provided it is directly relevant to its own responsibilities, on a joint funding basis with industry where possible (paras 12, 14);
- d) the level of R&D commissioned by the ITC should be subject to Government scrutiny of the budget, either through PES or otherwise (para 13);
- e) the ITC should be given the duty to promote R&D into new broadcasting techniques by industry (para 14);
- f) the IBA should encourage the E&D Department to become more market orientated with a view to it

being privatised as soon as possible. If this cannot be achieved then the Department should be disbanded (paras 18, 19);

- g) the assets of the IBA's E&D Department should be vested temporarily in the Home Secretary on the dissolution of the IBA with a view to their being sold immediately thereafter or, failing a sale, wound up (para 19);
- h) no particular arrangements should be made at this stage for independent broadcasting representation on standards and other committees but ITC staff should be allowed to undertake this role as and when appropriate (para 21).

Department of Trade and Industry  
June 1989

Director of Systems & Technology

Deputy Director

Head,  
Frequency Planning  
& Co-ordination

Seconded Frequency  
Planning Team  
& Measurement Staff

Function: Planning ITV  
and C5 map MVDS, and DBS  
frequency coordination;  
monitoring coverage,  
liaison with DTI, CAA,  
etc.

Head,  
Transmission  
& Telecommunications

Function: Award of  
transmission service  
contracts and monitoring  
of performance; liaison  
with OFTEL.

Head,  
Standards  
& Technology

Support to  
Long Range R&D

Function: Technical  
standards matters,  
promotion of R&D and  
administration of long-  
range R&D budget;  
representation of ITC  
on EBU, CCIR, BSI and  
DTI committees.

Technical Facilities  
Unit

Function: Support to  
internal ITC  
activities - meetings,  
videotape recordings,  
etc.



PM/89/030

PRIME MINISTER

Privatisation of the Transmission System

1. I have seen a copy of the MISC 128 paper on the Privatisation of the Transmission System which we are to discuss on Wednesday 21 June.
2. BBC World Service (WS) issues are not central to domestic transmission privatisation, but a short statement on the WS will be necessary at the time of the domestic privatisation announcement. There is no advantage in seeking to privatise the WS assets, and significant complications (including treaty difficulties over overseas relay stations). I therefore agree with Price Waterhouse's conclusion that these should remain in the public section, and that the BBC WS should be asked to propose options for the cost-effective operation of the WS system in the new domestic transmission environment. Competition and efficiency savings may be developed in the subsequent arrangements for operation of the WS assets.
3. There are likely to be increased costs to the WS in bearing the full commercial costs for operation of its transmission assets and these would have to be met through the FCO Grant-in-Aid.
4. I am copying this minute to members of MISC 128.

(GEOFFREY HOWE)

Broadway

Policy.

P. 8.

PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES  
PRIVATISATION OF THE TRANSMISSION SYSTEM (MISC 128(89)9 AND 10)

DECISIONS

1. The documents before this meeting address the major issue which remains to be settled before work on the Broadcasting Bill can proceed: whether and on what terms the Broadcasting transmission system should be privatised. The report by the Chairman of the Official Group (MISC 128(89)9) sets out the arguments for and against privatisation and the options for pursuing it. The paper by the Home Secretary (MISC 128(89)10) invites the Group to:

a. agree that the aim, set out in the Broadcasting White Paper, of privatising the transmission system set out in the Broadcasting White Paper should be confirmed. Key issues: does the Group accept that the market disciplines and opportunities for which privatisation would pave the way are worth the additional cost of transmission to programme companies, bearing in mind the limited nature of the competition which could be introduced and the difficulties of privatising the BBC transmission operation in advance of the expiry of the Charter in 1996?

b. agree that the BBC and IBA transmission systems should be privatised in roughly their present form. Key issue: does the Group accept that this option is preferable, on grounds of cost and enhanced competitive benefit, to either the regional model floated in the Broadcasting White Paper or the option favoured by Price Waterhouse of two national companies providing a patchwork quilt of local monopolies?

c. agree that the new arrangements should be subject to regulation, on quality as well as economic and technical

grounds. OPTTEL should be the regulatory authority. Key issue: does the Group accept that because of the limitations on competition even after privatisation, regulation is necessary and OPTTEL is the right body to undertake it?

d. note that there are no obstacles in the way of privatising the IBA transmission system.

e. agree that while the object should be to privatise the BBC system no later than 1996, the BBC should not be forced to accept privatisation against their will or persuaded to accept it by the offer of incentives. Key issue: does the Group agree that the BBC's Charter is a real obstacle to privatisation of their transmission assets against their will, and that there should not be any attempt to induce the BBC to accept privatisation?

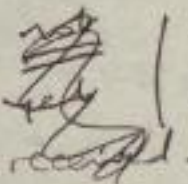
f. agree that the BBC's transmission operation should instead be established as an arm's length subsidiary of the Corporation. Key issues: does the Group accept that requiring the BBC to contract out the operation and maintenance of its transmission assets would not be a satisfactory alternative and that the aim should be to set up the BBC's transmission operation as a subsidiary of the Corporation but with safeguards to ensure that it is not cross-subsidised by the Corporation?

g. confirm the White Paper proposal that the BBC should be allowed to compete for new broadcasting transmission business. Key issue: is the Group satisfied that the subsidiary could be established on terms which did not offer unfair competition to a privatised ex-IBA operation?

h. agree that there should be a cautious, but not negative response to the BBC's proposal that they should enter into joint ventures with the private sector to compete for

telecommunications business. Key issue: involvement of the BBC in the telecommunications sector (subject to the outcome of the review of the telecommunications duopoly policy) would be a major step. Does the Group accept that the possible contribution which such a step might make to ending the BBC's dependence on the licence fee would make it worth contemplating and that there are adequate safeguards to prevent the BBC acquiring too dominant a role in the telecommunications market?

i. agree that the transmission charges for Channel 3 should be based on a national tariff related to the proportion of TV households in any given franchise area. Key issue: does the Group agree that, although such a step would prevent individual Channel 3 companies from making their own transmission arrangements, it is necessary in order to ensure the viability of the smaller regional companies?

 In his minute of 16 June to the Prime Minister, the Foreign Secretary seeks the Group's agreement that:

j. The transmission assets of the World Service should remain in the public sector but the BBC should be asked to propose options for the cost effective operation of the World Service system in the new environment which would be created by the Home Secretary's proposals on domestic transmission.

Finally, the Home Secretary's paper envisages that the conclusions reached by the Group on these various issues should be:

k. The subject of an early announcement by means of an arranged written Answer.



## BACKGROUND

2. Paragraph 9.1 of the White Paper on broadcasting said that the Government intended to move the UHF broadcasting transmission networks run by the BBC and IBA progressively into the private sector, separating transmission (ie service delivery) from service provision, while ensuring that high technical standards were maintained. The White Paper suggested that the best arrangement in due course would be a regionally based, privatised transmission system, designed to promote competition, while containing certain common carrier obligations. The BBC would continue to have responsibility for transmitting its television and radio services, but would gradually test the possibilities of involving commercial contractors in the running of its transmission system. The Independent Television Commission (ITC) would not acquire the IBA's transmission system except as a short term arrangement pending its privatisation. It would, however, have a supervisory role in ensuring that the arrangements made for the transmission of all national or quasi-national independent broadcasting services made proper use of the frequencies available.

3. Following publication of the White Paper, consultants-Price Waterhouse - were appointed by the Home Office and the Department of Trade and Industry to examine the options for privatisation. The executive summary of their report is at Annex A to MISC 128(89)9. Briefly, they found that the present system was not structured financially to provide an efficient allocation of capital or correct financial pressures on costs. There were, however, constraints on the degree of competition which privatisation could induce because of the existing pattern of ownership of transmission assets and service arrangements. Privatisation would need to be accompanied by price regulation and control over the standards of service provided. And because of the requirement to earn a return on capital, it would add some 15-30% to the transmission costs of the programme companies.

4. Price Waterhouse concluded that the White Paper proposal of privatising the present transmission networks on a regional basis would not be sensible: it would be technically feasible but it would be unlikely to produce significant benefits and there would probably be some loss, albeit modest, of economies of scale. They identified instead two options for privatising the systems on a national basis:

i. Two similarly sized organisations, each responsible for approximately half of the transmitting sites in the United Kingdom equally distributed throughout the country. Each company could be described as a patchwork quilt of local monopolies.

ii. Privatising the BBC and IBA operations separately in essentially their present form.

5. The first option was favoured by Price Waterhouse, although they recognised that, if changes to the BBC's Royal Charter were impracticable, the transmission systems could be privatised along the lines of the existing arrangements, given the need to find a solution for the IBA in the short term.

6. Officials have reviewed the options identified by Price Waterhouse and have also consulted the BBC, IBA and OFTEL. The key outcomes of these discussions are:

i. The BBC is opposed to the privatisation of its transmission system because of the likely increase in transmission costs and because it would prevent the Corporation from exploiting its transmission assets as a way of generating additional income. The Corporation has, however, proposed the establishment of its transmission operation as a wholly owned subsidiary company operating at arm's length from the Corporation.

ii. The IBA would enthusiastically embrace privatisation, although because of contractual relationships between the

IBA and the existing programme contractors, it would probably not be possible to privatise the IBA's transmission system before the expiry of the existing ITV franchises at the end of 1992.

iii. OFTEL would be prepared to regulate standards and charging in the new transmission system, provided that the necessary additional resources were made available to it.

7. In the light of these and other considerations, the Home Secretary endorses the Official Group's recommendation that privatisation should proceed, but on the basis of the two existing operations rather than Price Waterhouse's favoured option. This approach would avoid the costs and delays which would arise from any attempt to reallocate the existing systems, would hold out better competitive prospects in the long run and would enable the privatisation of the IBA operation to proceed even if that of the BBC could not do so ahead of revision of the Charter in 1996.

#### MAIN ISSUES

##### Whether or not to proceed with privatisation

8. You may wish first to establish whether the Group agrees that the object should continue to be to privatise both the BBC and the IBA transmission systems. The arguments against privatisation are that it would lead to only limited competition; that because of the requirement to earn a return on capital, it would put up the costs of transmission to the programme producers; and that it seems unlikely that the IBA's transmission operation could be privatised before 1993 or the BBC's before 1996. On the other hand, eventual privatisation would bring market disciplines to bear on the provision of services, encourage the more cost-effective use of transmission assets and potentially assist in opening up the telecommunications market, if private transmission operators were

permitted to enter that market after the telecommunication duopoly review due to begin at the end of 1991. For these reasons, you may wish to invite the Group to confirm that privatisation remains the aim.

What form should privatisation take?

9. You may then wish to establish whether the Group accepts the Price Waterhouse recommendation that the White Paper proposal of privatisation on a regional basis is not a runner. Assuming that the Group does so, the choice appears to lie between the Price Waterhouse-favoured option of two equally endowed national companies (which its report describes as "a patchwork quilt of local monopolies") or the recommendation of the Official Group, endorsed by the Home Secretary, that the system should be privatised in basically its present form (ie as two companies, based on the existing BBC and IBA operation). Does the Group agree that the additional cost and potential for delay inherent in the option favoured by Price Waterhouse point conclusively in the direction of privatising the two transmission operations in basically their present form?

10. Paragraphs 9-10 of the note by the Chairman of the Official Group (MISC 128(89)9) suggest that in order to make the two proposed transmission companies attractive to investors, it would probably be necessary for a limited period of, say, 5 years, to give each of the two companies guaranteed contracts for the transmission of two of the four main terrestrial television channels. This point is not picked up in the Home Secretary's paper and you may wish to invite him to comment on it, particularly as such an arrangement would give the newly privatised companies a substantial initial dowry.

Who should regulate the new system?

11. Given the inherent limitations on competition even in a privatised system, it seems clear that some form of regulatory authority to ensure quality as well as to cover technical and

economic issues is necessary. If this is accepted by the Group, you may wish to invite them to confirm that OFTTEL should be the regulatory authority for the new system.

#### Position of the IBA and BBC

12. The IBA is positive about privatisation and as the Home Secretary's paper notes, the only outstanding issue there is whether the privatisation of the IBA system would be possible during the currency of the present ITV contracts. You may wish to invite the Home Secretary to pursue this issue with the IBA and to report back to the Group in correspondence.

13. The Home Secretary's paper suggests that, if an attempt were made to amend the Charter to force the BBC to accept privatisation against their will, the result would be a quasi-constitutional argument into which The Queen could be dragged. You may wish to establish that the other members of the Group agree with the Home Secretary that this effectively rules out privatisation of the BBC's assets in advance of the expiry of the Charter in 1996.

14. An alternative course would be to seek to persuade the BBC to accept privatisation by offering them incentives such as a share in the proceeds of privatisation. However, officials believe that any such offer would be ineffective and it is in any event questionable whether it would be right to seek to negotiate a return to the BBC on assets which they only hold thanks to the licence fee. For these reasons, you may wish to invite the Group to confirm that there should be no such negotiation with the Corporation.

15. The Home Secretary suggests that nonetheless the aim should be to privatise the BBC's transmission operation as soon as possible after the Charter expires (or earlier if possible). One option would be to require the Corporation to contract out the operation and maintenance of its system, but this was not recommended by Price Waterhouse as separating off ownership and

operation could jeopardise the maintenance of the necessary pool of skilled staff. A more obvious preliminary to privatisation, which the Home Secretary recommends, would be to espouse the BBC's proposal that they set up their transmission operation as an arms length subsidiary of the Corporation. If this option were to be contemplated, it would be essential to ensure that the subsidiary operated on commercial lines and in particular that there was no cross-subsidisation of the Company by the Corporation. The subsidiary might be encouraged to develop on commercial lines if private equity was involved in it. Provided that the subsidiary was established on a basis which did not represent unfair competition to the IBA's successor company, the Home Secretary proposes that the White Paper suggestion that the BBC should be permitted to compete for new broadcasting transmission business while it retains a transmission role, should be endorsed.

16. The Home Secretary notes that establishing the BBC transmission operation as a subsidiary company of the Corporation might generate substantial additional revenue for the BBC, especially if, as the BBC has proposed, it entered into joint ventures with the private sector to use its transmission assets for telecommunications purposes. Such a step would depend on the outcome of the telecommunications duopoly review, but it could establish the BBC as a major player in the telecommunications industry and provide a substantial alternative source of income to the licence fee. The Home Secretary argues that the terms of Charter itself, his own power to determine the basis on which the subsidiary was established, and the telecommunications licensing regime, would together provide adequate safeguards. On the other hand, it could be argued that the establishment of a transmission subsidiary on the lines envisaged would be of a wholly different order of magnitude from any income generation proposal previously contemplated. You may wish to invite the Group to consider carefully whether the safeguards referred to by the Home Secretary are sufficient to justify the cautious but not negative response which he favours. The Chancellor of the

Exchequer and the Secretary of State for Trade and Industry may have particular views on this proposal.

Regional cost variations: Channel 3

17. The Price Waterhouse report found very significant regional variations in the cost of transmission: for example in the independent television system, the cost per household in the Grampian area is about 20 times higher than that in London. If the smaller companies had to bear the full cost of transmission, it could put them into deficit and might well deter others from bidding for the franchise. The Group has already decided that Channel 3 should continue to be a universally available channel and that while it is not immutable, there should be a presumption that the present regional map of Channel 3 will continue at least initially. There was also a general feeling among members of the Group following the presentation by Mr Russell at the meeting on 11 May that the negative tender concept was not an acceptable way round the transmission cost problem. Accordingly, the Home Secretary proposes that the costs of transmission should be apportioned between all Channel 3 companies on the basis of a national tariff which would link the charge to the proportion of United Kingdom television households in the franchise area. Such an arrangement would mean that programme companies could not negotiate individually with privatised transmission operators. If, in the longer term, there are changes in the present regional arrangements, for example linking some of the larger with some of the smaller franchise areas, it would be possible to contemplate moving away from this arrangement. You may wish to invite the Home Secretary to confirm that there would be flexibility to alter his proposed system in future if a more competitive arrangement becomes feasible because of changes in the regional structure. The Secretary of State for Scotland and the Secretary of State for Wales will, of course, have a particular interest in the outcome of this part of the discussion.

## World Service

18. In his minute to you of 16 June, the Foreign Secretary proposed that the World Service transmission system should remain in the public sector and that the BBC should be asked to propose options for the cost effective operation of the World Service system in the new domestic transmission environment. This is in line with the conclusions of the Price Waterhouse report which found that any sale of the World Service transmission facilities would be unattractive because the Foreign Office could not guarantee funding of the World Service for more than 3 years at any one time. As the Official Group noted (paragraph 28 of MISC 128(89)9), the arguments advanced by Price Waterhouse do not rule out privatisation in principle. They do, however, present significant practical obstacles to privatisation. If privatisation of the transmission assets themselves is discarded, it would nevertheless be possible to contract out their management, operation and maintenance to one of the new transmission companies or to another private sector operator. Another possibility would be the establishment of a BBC World Service in-house short wave transmission group. The Foreign Secretary recommends that these options should be explored further with the BBC.

19. After inviting the Foreign Secretary to introduce this aspect of the discussion, you may wish to determine whether the Group agrees with the Foreign Secretary's conclusion that the World Service transmission assets should not be privatised but that the BBC should be invited to propose options for the cost-effective operation of the system in the context of the new domestic transmission arrangements previously agreed by the Group. Are there any conditions which the Group would wish to impose on this exercise (for example, should the BBC in-house option be ruled out)? And is the Group prepared to accept that if the BBC's domestic transmission system is privatised, this may result in increased costs to the World Service which would have to be found through the annual FCO grant-in-aid? The Chancellor



of the Exchequer may wish to comment particularly on this point.

#### Announcement of the Group's decisions

20. Paragraph 12 of the Home Secretary's paper (MISC 128(89)10) proposed that there should be an early announcement of the Group's decisions on future transmission arrangements. This seems sensible, given in particular the uncertainty among staff of the BBC and IBA. You will wish to establish that the Group is content for an announcement to be made by way of an arranged written Answer and in particular that the Foreign Secretary agrees that this should cover the position of the World Service. You may wish to invite the Home Secretary to circulate a draft of the proposed announcement to other members of the Group.

#### HANDLING

21. In addition to the usual membership of the Group, the FOREIGN SECRETARY will be present for the discussion of the World Service transmission arrangements. You may wish to begin the meeting by inviting the HOME SECRETARY to introduce his paper, and then follow the order of the conclusions set out in paragraph 9 of that paper (which corresponds with those in this brief). The CHANCELLOR OF THE EXCHEQUER will be concerned to ensure that the proposals put forward by the Home Secretary and the Foreign Secretary achieve, within the constraints of the practical, the maximum opening up of the transmission system to competitive disciplines and the optimum return on the transmission assets to the Treasury. The SECRETARY OF STATE FOR TRADE AND INDUSTRY will have a particular interest in the read-across from the present proposals to the telecommunications duopoly review. And the SECRETARIES OF STATE FOR WALES AND SCOTLAND will be concerned that any decisions taken do not damage the financial viability of the smaller regional production companies operating in high cost transmission areas.

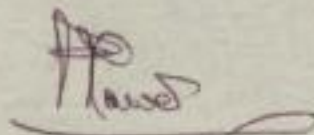
### BBC NIGHT HOURS

22. In his minute to you of 14 June the Home Secretary proposed the reversal of the Group's earlier decision that one set of night hours should be removed from the BBC and assigned to the ITC for allocation by competitive tender for the provision of new services. The Home Secretary argued that it would not make sense to deprive the BBC of a set of night hours at the same time as encouraging them to expand their subscription services, and that the Group's decision that there should not be a separate night hours licence for Channel 3 also points towards reversing the Group's earlier position. If both sets of night hours were left with the BBC it would be made clear to the Corporation that the review of the licence fee in 1991 would assume that the retention of both sets would enable them to earn significant amounts of subscription income.

23. The Home Secretary suggested that if colleagues saw any difficulty with his proposal, the matter could be discussed at the Group's meeting on 21 June. I understand that the Secretary of State for Trade and Industry may favour discussion of the issue, on the grounds that the case made by the Home Secretary is unconvincing and that awarding both sets of night hours to the BBC would be detrimental to competition.

### FUTURE MEETINGS

24. A further meeting of the Group has been provisionally arranged for 4 July. Provided that decisions on future transmission arrangements can be made at the meeting on 21 June, it is unlikely that this further meeting will be required. There are a number of other relatively minor issues still to be decided, but these should be capable of resolution through correspondence. If so, this may prove to be the last meeting of the Group.



P J C MAWER

16 June 1989



PRIME MINISTER

BBC NIGHT HOURS

Last year we decided that one set of night hours should be removed from the BBC and assigned to the ITC for allocation by competitive tender for the provision of new services.

We took this decision primarily with a view to creating the right balance in the White Paper between the requirements placed on the commercial system and those on the BBC. The proposal has been widely criticised on the grounds that if the Government is serious about the BBC expanding its subscription services, for which downloading in the night hours is well suited, it does not make sense to take away half the opportunity. In fact, the loss of one set of night hours means a reduction of more than half of the system of delivery since the BBC will need some portion of the night hours to carry out its normal public service functions, for example to cover elections, world sport (such as the Olympic and Commonwealth Games) and this will eat into the time available on the remaining channel.

I find these arguments persuasive. They were strongly put by the Home Affairs Select Committee. If we are to tie the BBC down to expanding its current subscription services in a meaningful way we must not allow it the excuse that we have given it a task while at the same time depriving it of the means of achieving it. But this case has been even further strengthened by our decision in MISC 128 on 6 June

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that there should not be a separate night hours licence for Channel 3 on the grounds that such licences would not be commercially viable. In view of that decision, there no longer appears to be a case for detaching the BBC night hours for tender on the open market. Furthermore, the decision to pass back the night hours to Channel 3 would be adequately balanced, so far as the overall package of proposals is concerned, if we were now to agree that the BBC should keep both sets of night hours.

This is what I now propose. As a corollary I would, of course, make it clear to the BBC that the review of the licence fee in 1991 would assume that the retention of both sets would enable them to earn significant amounts of subscription income. Indeed, if subscription goes well, the retention of both sets would increase our chances of being able to freeze, or even reduce, the licence fee and thus make faster progress to our longer term objective of replacing it altogether. If you or colleagues see any difficulty with this proposal, we might discuss the matter at the next meeting of the Group on 21 June.

I am copying this minute to colleagues in MISC 128 and to Sir Robin Butler.

*Douglas Hurd*

14 June 1989

Broadcasting

Play Feb



CONFIDENTIAL



10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

14 June, 1989.

Dear Duncan,

MISC 128: CHANNELS 3, 4 AND 5

The Prime Minister has seen your letter of 12 June to Catherine Bannister with which you provided comments on the Home Secretary's announcement, and in particular the Chancellor's preference to delete the suggestion that cash bonds would be returned to unsuccessful applicants. She has noted that the Home Secretary made this change to his statement, but that there were no questions on this issue during the ensuing exchanges in the House yesterday. The Prime Minister was, however, extremely concerned at the suggestion that bonds would not be returned; she has commented that this would be a new policy to which she sees major objections.

I am sending copies of this letter to the Private Secretaries to the Members of Misc 128 and to Sir Robin Butler.


Yours,  
Paul Gray

CH/EXCHEQUER	
REC.	15 JUN 1989
NOTE'S	MRS CASE
COPIES TO	CAT, MPT
	SIR P MEDLEY, MR FROST
	MR MOORE, MR PHELPS
	MR WELLS, MR SPENCER
	MR DEVLIN, MR FORTMAN
	MR PERFECT, MR CASE
	MR WISCH, MRS CHAPMAN
	MR THORPE, MR GILL


Duncan Sparkes, Esq.,  
HM Treasury.

CONFIDENTIAL

PRIME MINISTER <sup>2</sup>



The Home Secretary's statement this afternoon on Broadcasting went fairly well. The Opposition made predictable speeches of the "end of civilisation as we know it" variety. They made the mistake, however, of basing these on newspaper articles and had ignored the improvements to the quality safeguards contained in the Home Secretary's latest proposals. Their complaints were therefore fairly easily dealt with. More important, John Wheeler and other backbenchers who had hitherto had doubts about aspects of the proposal were strongly supportive. They raised a number of outstanding points of fine detail but seem now to have rallied behind the Government proposals, recognising that these meet the key concerns expressed during the consultation process.



DOMINIC MORRIS

13 June 1989

KKIARP

do with this outbreak of botulism. He also knows that, as a result of the consultation, we are seeking to resolve the conflicting scientific and other advice which we have received and will produce the regulations as soon as possible. I have already talked about Bristol, where the research station is not engaged in food safety research—

**Dr. David Clark** (South Shields): That simply is not true.

**Mr. Clarke:** That must be taken up with the responsible Ministers. My right hon. Friend the Minister of Agriculture, Fisheries and Food will have to deal with that—*[Interruption.]*

I remain reasonably confident—I look to my right hon. Friend for advice—that it is doing no research of any kind relevant to botulism.

I have already dealt with the question of the number of environmental health officers. The resources devoted to them are a matter for local government. We all appreciate that there is an increasing problem of food poisoning in this country, and local authorities, like everyone else, must address their priorities in that connection.

The hon. Gentleman began by saying that this was the worst outbreak of the decade. That sounds sensational until we recognise that there have been no deaths from botulism in that time, and that the country has a singularly good record on botulism in general. The hon. Gentleman should make sure that the points that he makes on this particularly difficult issue are well founded.

**Several Hon. Members** *rose*—

**Mr. Speaker:** Order. I shall take points of order after the statement by the Home Secretary.

## Commercial Television

3.55 pm

**The Secretary of State for the Home Department (Mr. Douglas Hurd):** With permission, Mr. Speaker, I should like to make a statement on the future of commercial television. I apologise for its length; a good many complicated matters need to be taken together.

The White Paper proposed a two-stage procedure for awarding licences for Channels 3 and 5 under which applicants would first have to pass a quality threshold—consisting of positive programme and consumer protection requirements—and would then go on to offer financial tenders. The Independent Television Commission would be required to select the highest bidder.

Many of those who commented on the White Paper expressed concern that those proposals might lead to a loss of quality in programming. We recognise that concern, and propose to strengthen the quality threshold. We do not consider that it would be right to do so by adding more detailed requirements in the legislation to supply specific types of programme. We therefore propose to strengthen the quality threshold by broadening the third positive requirement in paragraph 6.11 of the White Paper to read: "to provide a reasonable proportion of programmes (in addition to news and current affairs) of high quality, and to provide a diverse programme service calculated to appeal to a wide variety of tastes and interests."

It will be for applicants to interpret that combined quality and diversity test in drawing up their programme proposals. Those who fail to satisfy the ITC that they can meet the requirement will not have their financial bids considered.

A number of suggestions have been made about the form that the financial bid should take. The chairman of the IBA proposed that it should comprise a sum fixed by the ITC and a bid by the applicant of a percentage of advertising revenue. I support that combination of elements but, to make the bidding process clearer, propose that they should be reversed. Accordingly, the ITC will fix a percentage of net advertising or subscription revenue for each licence to form the minimum sale price. Applicants will then be required to bid a lump sum, which they will pay in addition if successful. For successful applicants, both sums will be paid annually over the period of the licence to avoid the imposition of debt burdens on licensees.

Applicants will also be required to post a bond with their tender applications. Successful bidders will be required to add to that an amount which, together with the first, will add up to a substantial performance bond. This requirement will strengthen the enforcement powers of the ITC, making them stronger and more flexible than those of the IBA now. Those who fail to meet their programme promises given at the quality threshold stage will stand to lose a proportion of the bond.

We have considered carefully the arguments about the criteria for deciding tenders. I do not believe that at the tender stage, before it is clear to whom the licences will be awarded and before the nature of any network arrangement is known, it will be possible for the ITC to make fine distinctions between the quality of programme service offered by different applicants, all of whom will have passed the strengthened-quality hurdle that I have



[Mr. Douglas Hurd]

announced today. We must avoid a return to the opaque and sometimes arbitrary selection procedures of the past, but some flexibility needs to be written into the procedure.

We propose, therefore, that the ITC should be required in the normal course to accept the highest bid, but that it should have a power, in exceptional circumstances, to select a lower bid. This power would operate only in exceptional circumstances, the ITC would be required to give its full reasons and exercise of the power would be subject to judicial review. In addition, there would be an exceptional power for the Home Secretary, acting on the recommendation of the ITC, to veto the selection of the highest bid if its funding came from a source that was undesirable in the public interest.

The White paper proposed that in addition to the sum bid at tender applicants would have to make a levy payment to the Exchequer. The proposals I have just announced for the fixing of a proportion of advertising or subscription revenue as a part of the tender price overtake our original proposals for a levy. Successful candidates will have only to pay the two-part tender price I have outlined. There will be no levy in addition.

Some people have wondered whether the Government would impose a moratorium on takeovers at the beginning of 1993 and whether they would insist on compulsory networking for Channel 3. The Government's view on both issues has not changed since the publication of the White Paper. I understand that the chairman of the IBA is considering permitting takeovers in the period from 1990 to 1993, subject to the normal anti-monopoly rules and bearing in mind our proposals for the régime after 1992. It would not in these circumstances be either sensible or necessary to impose a moratorium on takeovers thereafter. Networking will be a matter for the Channel 3 companies themselves to decide without Government compulsion. Basic fair trading laws should ensure that no companies are excluded unfairly from any networking arrangements. We shall consider whether any further provisions are needed in the legislation to regulate the operation of any new network system in the interests of free access and fair competition.

We have received a number of representations on behalf of the 4 million viewers who are deaf or hard of hearing. We agree that particular provision should be made for them. We have therefore decided that Channel 3 and Channel 5 licensees should be required to provide teletext sub-titling for some of the programmes in their schedules. They should provide more than is provided at present.

The White Paper proposed that Channel 5 should be shared between at least two licensees. In the light of the start-up costs of the new channel and the competition it will face from the established terrestrial channels, we have now decided that Channel 5 should form a single licence. It will thus be better equipped to compete with the existing terrestrial channels.

Similarly, the White Paper proposed that there should be a separate night hours licence for Channel 3. Many of those who responded to the White Paper doubted whether a separate night hours licence would be viable, so we have looked at this again. We want to ensure, so far as possible, that the night hours are fully used. I accept the argument that they may be better exploited commercially if they are

linked with services provided at a more commercially attractive part of the broadcasting day. We have therefore decided not to disturb the present situation under which the night hours may remain connected with the peak viewing period. However, we will review the position if we find that the night hours are not being fully used. Under our proposals, the ITC will be free to allocate licences for other times of the day, such as a breakfast time service.

The White Paper proposed that the ITC would be responsible for the map—for the geographical division of Channel 3 into regions. This has been generally welcomed. The Government have noted with understanding the statement of the chairman-designate of the ITC, Mr. George Russell, that he would see advantage, if possible, in retaining the existing regions.

I turn finally to Channel 4 and S4C, the Welsh channel. The White Paper made clear the Government's intention to maintain the remit of Channel 4 while at the same time providing for the selling of its advertising separately from that on Channel 3. We have considered the comments we have received on the three options in the White Paper, and in particular the helpful report by the Home Affairs Select Committee. I have written today to the chairman of the Committee expressing the Government's gratitude for its work on Channel 4 and setting out the Government's decisions. A copy of that letter has been placed in the Library.

The Government have decided that it would not be feasible at the present time for Channel 4 to become an independent commercial company competing with the other broadcasters if, as we think essential, it is to retain its remit. The financial outlook for Channel 4 remains uncertain with the prospect of new competition. We believe that the requirement in addition to provide a return for shareholders in a private company could put too much pressure upon Channel 4 finances and place its remit in jeopardy. But we see some difficulty in Channel 4 continuing to be owned by the authority which would be responsible for regulating its output—the ITC—and we believe that any financial underpinning given to the channel should be carefully circumscribed to provide clear incentives for cost-efficiency.

We have therefore decided that after 1993, if Parliament agrees, Channel 4 should become a public trust which will be licensed by the ITC and will continue to provide the service set out in the special remit. Channel 4 would sell its own advertising, and would be subject to a baseline budget of 14 per cent. per annum of terrestrial net advertising revenue. The baseline could be amended in secondary legislation. If the channel's revenue fell below the baseline, the difference would be funded by the ITC to a maximum of 2 per cent. of terrestrial net advertising revenue levied on the Channel 3 companies, but any surplus revenues above the baseline would be shared equally between Channel 3 and Channel 4. The trust would be required to hold its share of any surplus revenues to be used as a first call if there were deficits in later years. To reduce the need for a call on the guarantee, the ITC would be empowered to require cross announcement of programmes between Channel 3 and Channel 4. Complementary scheduling would be possible, but would not be a requirement. The Channel 4 licence would run for 10 years, but the arrangements would be reviewed after seven. I believe that is a satisfactory way of securing the future of Channel 4 with its present remit.

The White Paper concluded that the arrangements for the Welsh fourth channel should remain unchanged. Some have argued that it would not be consistent with the new and more free approach to regulation for the channel to be funded by a direct subscription on the commercial companies. The position is particularly anomalous in Scotland where the ITV companies are required to finance Welsh programmes as a first call on their resources even before they make provision for their own Gaelic speakers. The Government are sympathetic to these concerns, and have decided to make a small technical change to the funding arrangements for S4C. In future, S4C revenues will not be charged as a first call on the commercial companies but will be funded out of the proceeds of the tender through the ITC.

My statement covers most of the major decisions on the future commercial television system following the publication of the White Paper. We shall need to make announcements on the remaining issues, including the key question of transmission and the future of broadcasting in Gaelic, before long. They we shall draft the Bill.

**Mr. Robin Corbett** (Birmingham, Erdington): The Home Secretary and the House will understand if I do not respond in detail to the mini White Paper today. Clearly we shall return to the issue in the autumn when we consider the Bill.

The revised proposal for awarding the licences for Channel 3 and Channel 5 are no more than a figleaf behind which the Home Secretary seeks to cover his humiliation at the hands of the Prime Minister, aided by the Secretary of State for Trade and Industry. In most important respects, the bidding for the licences has barely changed from that set out in paragraph 6-9 of the White Paper which stated:

"there is no longer the same need for quality of service to be prescribed by legislation or regulatory fiat."

All that the Home Secretary has said today is that the ITC can have reserve powers to reject the highest bid, while explaining why. In my view that amounts to no more than a tiny teaspoon to bale out a well-holed ship. Is it not the very least that could be done to meet the statement made by Mr. George Russell that unless the ITC had these powers, he would find his position untenable? I commend Mr. Russell on his stand on behalf of the viewers' best interests.

The rewording of the so-called positive requirement in paragraph 6.11 does no more than express in 35 words what took just 16 words in the White Paper. Simply adding the phrase "high quality" does nothing to guarantee that it will be delivered, nor does anything else that the Home Secretary said today. In any event, what is a reasonable proportion and who will decide it?

The statement is light on what exact amounts of money are to be provided by bidders who deliver the range and types of programme which the bid promises. The Home Secretary went out of his way to make it clear that he did not regard that to be necessary. The changes in the financial arrangements at least acknowledge that Channel 4 are simpler and clearer than the original proposals.

I am still uncertain about what the term "financially sound" means. It seems that it will mean no more than checking on whether the cash behind the bid comes from ads or vice. That is the problem. The Home Secretary's statement, like the White Paper, is too much about cash

and not sufficiently concerned with ensuring that the cash on the table will deliver real choice and quality in terms of range and standards. Will the Home Secretary confirm that bidders will not have to guarantee to programme current affairs in main viewing programmes? Is it not the case that the same remains true of children's and religious programmes?

It is unacceptable to Opposition Members—and to some Conservative Members—that an individual should be able to own two Channel 3 licences. The Opposition believe that one person should be able to own only one franchise if there is to be real diversity in the new system.

I welcome the requirement for Channel 3 and Channel 5 licences to provide teletext subtitling for some programmes for the 4 million people who are deaf or hard of hearing. I hope that that will become mandatory for all news and current affairs programmes, and for most, rather than some, programmes eventually.

I also welcome the decision not to separate off the night hours. It was patently not sensible for the Home Secretary to propose in the White Paper to take the night hours away from the BBC while requiring it to maximise its subscription services.

Becoming a trust is the least worst option for Channel 4, although we would have preferred the status quo. What is disappointing is that despite the Government's tribute to Channel 4's "striking success" their proposals are unlikely to provide enough stability for it to meet its needs in the face of stiffening competition in terrestrial and satellite services.

Even after the statement, the Government's proposals will do no more than achieve lower quality, lower standards, less public responsibility and fewer regions within Channel 3. The proposals will not use technological change to bring about more real choice. The proposals are simply a route to undermining what the White Paper called—I hope not sarcastically—the "rich heritage" of British broadcasting. The statement reveals that the vandals have won—at least under this Government.

**Mr. Hurd:** The hon. Gentleman has fallen into the trap into which his right hon. Friend the Member for Birmingham, Sparkbrook (Mr. Hattersley) always falls. He has chosen to comment on inaccurate press reports about our proposals even though, by the conventions of the House, he has had a bit of time—not long. I admit—to study the proposals themselves. The hon. Gentleman has talked as though all the press reports were true. The next step, if precedent is to be followed, is that Mr. Des Wilson will write a learned article suggesting that I stimulated all the inaccurate press reports to lure the hon. Gentleman into the trap into which he has fallen.

The hon. Gentleman has ignored the three changes made on the quality threshold in response to comments on the White Paper. First, the quality threshold has been stiffened so that it is similar to the proposal in the Broadcasting Act 1981. Secondly, there will be the exceptional power of the ITC. It is exceptional—I have explained the circumstances—to award a franchise to other than the highest bidder. Thirdly, and most importantly, there will be the performance bond, which the hon. Gentleman did not mention. It will give the ITC a power that the present Independent Broadcasting Authority does not have, which is a flexible and powerful way to enforce the promises that have been made. The ITC will no longer face the criticism that all it can do is to



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Treasury Chambers, Parliament Street, SW1P 3AG  
01-270 3000

12 June 1989

Miss Catherine Bannister  
PS/Home Secretary  
Home Office  
50 Queen Anne's Gate  
LONDON  
SW1H 9BW

cc PS/Chief Secretary  
PS/Financial Secretary  
Sir P Middleton  
Mr Anson  
Mr Monck  
Mrs Case  
Mr I P Wilson  
Mr Parthing  
Mr Perfect  
Mr Cave  
Mr Symons  
Mrs Chaplin

*Dear Catherine,*

MISC 128: CHANNELS 3, 4 AND 5

The Chancellor has seen the draft announcement containing Ministers' decisions on the future arrangements for commercial television which the Home Secretary sent to the Prime Minister on 9 June. Subject to the points below on C4 and SC4, he is happy with the statement and agrees that an early announcement is desirable.

Although Ministers have agreed that C4 should become a public trust with a partially guaranteed income, detailed decisions have not been taken on the appropriate financial structure under which it will operate. In view of this the Chancellor believes that the description of the future arrangements in paragraph 17 should be kept to the minimum. He would therefore prefer the first two sentences to read:

"We have therefore decided that after 1993 Channel 4 should assume the status of a public trust, which would be licensed by the ITC and would continue to provide the service set out in the special remit."

So far as SC4 is concerned, the Home Secretary's proposal that the ITC should fix the level of subsidy to be paid as a first charge on the annual payments for C3 and 5 licences raises issues of public expenditure and Parliamentary accountability which are already under discussion with the Treasury but which have yet to be satisfactorily resolved. The Chancellor would therefore prefer to omit all references to the SC4 arrangements at this stage. However, if the Home Secretary judges this impossible, the statement should say no more than that the Government has decided that SC4 should be funded directly through the ITC. Similar



amendments will be needed to the letter to the Home Affairs Committee.

Treasury officials have also suggested the cash bonds posted by applicants be retained to pay the costs of clearing the airwaves for Channel 5. Until these discussions are concluded the Chancellor would prefer to see deleted the suggestion that cash bonds will be returned to unsuccessful applicants.

... I enclose a note of some further smaller drafting changes. In the time available it has not been possible for Treasury officials to discuss these with yours but they would be happy to do so.

The Chancellor was otherwise content with the draft letter to John Wheeler.

I am copying this letter to the Private Secretaries of members of MISC 128 and Sir Robin Butler.

*Yours sincerely,  
Duncan Sparkes*

DUNCAN SPARKES  
Assistant Private Secretary

BROADCASTING STATEMENT: PROPOSED AMENDMENTS

Para 4, third sentence: omit "and to reduce the risk of overbidding".

Para 4, fourth sentence: replace "with assistance from a merchant bank" by "after consulting the Secretary of State".

Para 5, last sentence: omit "a proportion of the", substitute "this".

Para 16, second sentence: omit "and rising costs".

Para 16, third sentence: amend to read "a private company could...".

CONFIDENTIAL



MBM

RAC

13/6

Prime Minister

MISC 128: CHANNELS 3, 4 AND 5

I am grateful to you and colleagues for your comments on the draft announcement I circulated on 9 June.

... I now attach a final version of the announcement which includes all of the drafting changes that we have been able to accept. There are two points of substance in this final version. I have decided to include a reference to our decision that the Home Secretary should be given an exceptional power to veto the highest bid if the funding is from an undesirable political source. Although this may divert attention from some of the other issues, I think on reflection it would be better to announce it now rather than introduce it separately later on. Secondly, I have attempted to shorten the announcement by deleting paragraph 8 of the earlier draft which dealt with the number of Channel 3 licences for which any applicant might apply. This will be swept up in a Written Answer which I hope will also be given tomorrow.

I am copying this minute and the attachment to MISC 128 colleagues and to Sir Robin Butler.

Douglas Hurd.

12 June 1989

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E.R.

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PCU  
✓  
Mr Office

COMPETITIVE TENDER AND CHANNEL 4 : DRAFT ANNOUNCEMENT

With permission, Mr Speaker, I would like to make a statement on the future of commercial television. I apologise for its length.

The White Paper proposed a two-stage procedure for awarding licences for Channels 3 and 5 under which applicants would have first to pass a quality threshold, consisting of positive programme and consumer protection requirements, and would then go on to offer financial tenders. The Independent Television Commission would be required to select the highest bidder.

Many of those who commented on the White Paper expressed concern that these proposals might lead to a loss of quality in programming. We recognise that concern and believe that a case has been made out for strengthening the quality threshold. We do not consider it would be right to do so by adding more detailed requirements in the legislation to supply specific types of programme. We therefore propose to strengthen the quality threshold by broadening the third positive requirement in paragraph 6.11 of the White Paper to read:

"to provide a reasonable proportion of programmes (in addition to news and current affairs) of high quality, and to provide a diverse programme service calculated to appeal to a wide variety of tastes and interests."

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It will be for applicants to interpret this combined quality and diversity test in drawing up their programme proposals. Those who fail to satisfy the ITC that they can meet this requirement will not have their financial bids considered.

A number of suggestions have been made to us about the form that the financial bid should take. The Chairman of the IBA proposed that it should comprise a sum fixed by the ITC and a bid by the applicant of a percentage of advertising revenue. I support this combination of elements but, in order to improve the transparency of the bidding process, propose that they should be reversed. Accordingly, the ITC will fix a percentage of net advertising or subscription revenue for each licence to form the minimum sale price. Applicants will then be required to bid a lump sum which they would pay if successful in addition. For successful applicants, both sums will be paid annually over the period of the licence to avoid the imposition of debt burdens on licensees.

Applicants will also be required to post a bond with their tender application. Successful bidders will be required to add to this an amount which, together with the first, will add up to a substantial performance bond. This requirement will

/strengthen the



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strengthen the enforcement powers of the ITC. Those who fail to meet their programme promises given at the quality threshold stage will stand to lose a proportion of the bond.

We have considered carefully the arguments about the criteria on which the tenders should be decided. I do not believe that at the tender stage, before it is clear to whom the licences will be awarded and before the nature of any network arrangement is known, it will be possible for the ITC to make fine distinctions between the quality of programme service offered by different applicants, all of whom will have passed the strengthened quality hurdle I have announced today. We must avoid a return to the opaque and sometimes arbitrary selection procedures of the past. But some flexibility needs to be written into the procedure. We propose therefore that the ITC should be required in the normal course to accept the highest bid, but that it should have a power in exceptional circumstances to select a lower bid. This power would operate only in exceptional circumstances and the ITC would be required to give its full reasons. Exercise of the power would be subject to judicial review. In addition, there would be an exceptional power by the Home Secretary acting on the recommendation of the ITC, to veto the selection of the highest bid if its funding came from a politically undesirable source.

/The White Paper

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E.R.

4.

The White Paper proposed that in addition to the sum bid at tender applicants would have to make a levy payment to the Exchequer. The proposals I have just announced for the fixing of a proportion of advertising or subscription revenue as part of the tender price overtake our original proposals for a levy. Successful candidates will have only to pay the two-part tender price I have outlined. There will be no levy in addition.

There has been some speculation as to whether the Government would impose a moratorium on takeovers at the beginning of 1993 and whether it would insist on compulsory networking for Channel 3. The Government's view on both issues has not changed since the publication of the White Paper. I understand that the Chairman of the IBA intends to permit takeovers in the period up to 1993, subject to the normal anti-monopoly rules and bearing in mind our proposals for the regime after 1992. It would not in the circumstances be either sensible or necessary to impose a moratorium thereafter. Networking will be a matter for the Channel 3 companies themselves to decide without Government compulsion. Basic fair trading laws should ensure that no companies are excluded unfairly from any networking arrangements. We shall consider whether any further provisions are needed in the legislation to regulate the operation of any new network system in the interests of free access and fair competition.

/We have

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# CONFIDENTIAL

E.R.

5.

We have received a number of representations on behalf of the four million viewers who are deaf or hard of hearing. We agree that particular provision should be made for them. We have therefore decided that 3 and Channel 5 licensees should be required to provide teletext sub-titling for some of the programmes in their schedules.

The White Paper proposed that Channel 5 should be shared between at least two licensees. In the light of the start-up costs of the new Channel and the competition it will face from the established terrestrial channels, we have now decided that Channel 5 should form a single licence. It will thus be better equipped to compete with the existing terrestrial channels.

Similarly, the White Paper proposed that there should be a separate night hours licence for Channel 3. Many of those who responded to the White Paper expressed doubts about the financial viability of a separate night hours licence. We have accordingly looked at this again. We want to ensure so far as possible that the night hours are fully used. I accept the argument that they may be better exploited commercially if they are linked with services provided at a more commercially attractive part of the broadcasting day. We have therefore decided not to disturb the

/present situation

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present situation under which the night hours may remain connected with the peak viewing period. This position will be reviewed if the night hours are not being fully exploited. Under our proposals, the ITC will be free to allocate licences for other times of the day, such as a breakfast time service.

The White Paper proposed that the ITC would be responsible for the geographical division of Channel 3 into regions. This has been generally welcomed. The Government has noted with understanding the statement of the Chairman-designate of the ITC, Mr George Russell, that he would see advantage in retaining the existing regions, if possible.

I turn to Channel 4. The White Paper made clear the Government's intention to maintain the remit of Channel 4 while at the same time providing for the selling of its advertising separately from that on Channel 3. The White Paper proposed three options ranging from a fully independent commercial service licensed by the ITC, through an option linking Channel 4 with the new Channel 5, to an arrangement whereby Channel 4 would continue as a subsidiary of the ITC with a possible minimum guaranteed income.

/We have

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We have considered the comments we have received on these options and in particular the helpful Report by the Home Affairs Select Committee. I have written today to the Chairman of the Committee expressing the Government's gratitude for its work on Channel 4 and setting out the Government's decisions. A copy of that letter has been placed in the Library of the House.

In considering the various options, the Government has decided that it would not be feasible at the present time for Channel 4 to become an independent commercial company competing with the other broadcasters if, as we think essential, it is to retain its remit. The financial outlook for Channel 4 remains uncertain with the prospect of new competition. We believe that the requirement in addition to provide a return for shareholders in a private company could put too much pressure upon Channel 4 finances and place its remit in serious jeopardy. But we see some difficulty in Channel 4 continuing to be owned by the authority who would be responsible for regulating its output; and we believe that any financial underpinning given to the Channel should be carefully circumscribed to provide clear incentives for cost-efficiency.

We have therefore decided that after 1993 Channel 4 should become a public trust, which would be licensed by the ITC, and

/would continue

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would continue to provide the service set out in the special remit. Channel 4 would sell its own advertising, and would be subject to a baseline budget of 14% per annum of terrestrial net advertising revenue. The baseline could be amended in secondary legislation. If the Channel's revenue fell below the baseline, the difference would be funded by the ITC to a maximum of 2% of terrestrial net advertising revenue levied on the Channel 3 companies. Any surplus revenues above the baseline would be shared equally between Channel 3 and Channel 4. The Trust would be required to hold their share of any surplus revenues to be used as a first call in the event of deficits in later years. To reduce the need for a call on the guarantee, the ITC would be empowered to require cross-announcement of programmes between Channel 3 and Channel 4. Complementary scheduling would be possible, but would not be a requirement. The Channel 4 licence would run for ten years, but these arrangements would be reviewed after seven. I believe this is a satisfactory way of securing the future of Channel 4 with its present remit.

The White Paper concluded that the arrangements for the Welsh Fourth Channel should remain unchanged. Some have argued that it would not be consistent with the new and more free approach to regulation for the Channel to be funded by a direct

/subscription

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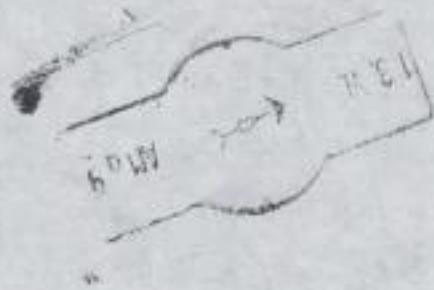
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subscription on the commercial companies. The situation is particularly anomalous in Scotland where the ITV companies are required to finance Welsh programmes as a first call on their resources before even they make provision for their own Gaelic speakers. The Government is sympathetic to these concerns, and has decided to make a small change to the funding arrangements for S4C. Henceforth, S4C revenues will not be charged as a first call on the commercial companies but will be funded out of the proceeds of the tender through the ITC.

My statement today covers most of the major decisions on the future commercial television system following the publication of the White Paper. We shall make announcements on the remaining issues before long. These decisions will be incorporated in new broadcasting legislation which the Government hopes to bring forward in due course.

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BEADON WITHNS: Policy  
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CONFIDENTIAL

SCOTTISH OFFICE  
WHITEHALL, LONDON SW1A 2AU

Colin Walters Esq  
Private Secretary to the  
Secretary of State for the Home Department  
Home Office  
50 Queen Anne's Gate  
LONDON  
SW1H 9AT

*MBM*

*Page*

*126*

12 June 1989

*Dear Colin.*

*WITH PG*

My Secretary of State has seen the draft statement attached to the Home Secretary's minute of 9 June to the Prime Minister and suggests only two minor amendments.

In paragraph 18 on S4C, he suggests that the sentence beginning "The situation is....." should be amended to read:- "The situation is particularly anomalous in Scotland where the C3 companies are required to finance Welsh programmes ....."

We need in paragraph 19 to make it clear that further decisions (eg, on transmission and Gaelic) have still to be taken and announced and we suggest that after "White Paper" in paragraph 19, a sentence is inserted as follows:- "We will make announcements on the remaining major issues as soon as possible. Our decisions will be incorporated in new broadcasting legislation ....."

I am sending copies of this letter to the Private Secretaries to the Prime Minister and other Members of MISC.128.

*Yours sincerely  
Ben Wright*

*pp* DAVID CRAWLEY  
Private Secretary



10 DOWNING STREET  
LONDON SW1A 2AA

JD  
file

THE PRIME MINISTER

12 June 1989

Dear Willie

Thank you for your note of 9 June. It was helpful, as always, to know of your concerns.

As you say, there has been a good deal of speculation in the Press about the outcome of our recent discussions on broadcasting. I can assure you that we are giving very careful consideration to the points you raise. Douglas Hurd hopes to be in a position to make a statement soon, and I hope you will agree that our approach fully meets your worries.

Lansdown  
Payant

The Rt. Hon. Viscount Whitelaw, C.H., M.C.

6



## 10 DOWNING STREET

LONDON SW1A 2AA

12 June, 1989.

*From the Private Secretary**Dear Catherine,***BROADCASTING ANNOUNCEMENT: CHANNELS 3, 4 AND 5**

The Prime Minister was grateful for the Home Secretary's minute of 9 June with which he enclosed a draft Parliamentary Statement and a draft letter to send to the Chairman of the Home Affairs Committee.

The Prime Minister is content for the Home Secretary to make a statement tomorrow, and to write to the Chairman of the Home Affairs Committee. She has a number of detailed comments on the proposed statement:

- At the end of paragraph 4 she thinks the drafting might be looked at to make clearer the distinction between the bidding process and the arrangements for payment by successful applicants.
- The first two sentences of paragraph 5 might be redrafted to make clear that the performance bond for successful applicants will be paid in two stages; the present reference at the end of the second sentence to "a further amount" strikes the wrong note. And is the reference to a cash bond correct?
- Shorten the penultimate sentence of paragraph 6 to read "This power would operate only in exceptional circumstances, and the ITC would be required to give its full reasons".
- In the final sentence of paragraph 11 delete "particularly in the early days".

I am sending copies of this letter to the Private Secretaries to the Members of Misc 128 and to Sir Robin Butler.

*Van.*  
*Pat*  
Paul Gray

Miss C.J. Bannister,  
Home Office.

CONFIDENTIAL



CCPA A

Prime Minister

MISC 128 : CHANNELS 3, 4 AND 5

At the close of the meeting of MISC 128 on 6 June I promised to circulate proposals for announcing the decisions we took on that day.

... I attach a draft announcement of our conclusions on the three papers which we discussed concerning competitive tendering, Channel 4 and the map and the clock on Channels 3 and 5. All the major decisions that we took on 6 June are included in this draft. The only addition is the technical change in the arrangements for funding the Welsh Fourth Channel which I included in paragraphs 24 and 25 of MISC 128(89)3 which we discussed on 24 April. Under this proposal, the S4C subscription would cease to be a first charge on the Channel 3 companies but would be taken directly out of the proceeds of competitive tender. This is in line with our general policy of freeing up commercial television and not placing unnecessary burdens on the commercial companies.

... I also attach a draft letter which I would propose to send to the Chairman of the Home Affairs Committee since our decisions on Channel 4 constitute a formal response to the Committee's Report of last March.

/This will

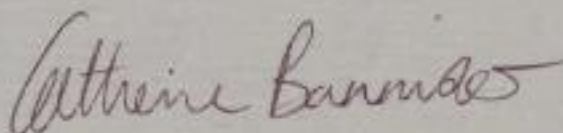
# CONFIDENTIAL

2.

This will be an important announcement both in terms of its wide scope and the significance of many of the decisions we have taken. It will be seen as the main Government statement on the future commercial television system following the White Paper and before the Broadcasting Bill. Although we have still to take decisions on transmission and BBC night hours, these are of less political significance to the broadcasting world and should not be allowed to hold up the present announcement.

If you and colleagues are content with the terms of the draft announcement, I would hope to make it by way of a Commons Oral Statement on 13 June; and write to John Wheeler the same day. Any comments on the draft will therefore need to reach me by mid-day on Monday 12 June.

I am copying this minute and enclosures to MISC 128 colleagues and to Sir Robin Butler.



Approved by the Home Secretary  
and signed in his absence.

9 June 1989

# CONFIDENTIAL

## COMPETITIVE TENDER AND CHANNEL 4 : DRAFT ANNOUNCEMENT

With permission, Mr Speaker, I would like to make a statement on our proposals for the future of commercial television in the light of the comments we have received on the White Paper on Broadcasting.

2. The White Paper proposed a two-stage procedure for awarding licences for Channels 3 and 5 under which applicants would have first to pass a quality threshold, consisting of positive programme and consumer protection requirements, and would then go on to offer financial tenders. The Independent Television Commission would be required to select the highest bidder.

3. Many of those who commented on the White Paper expressed concern that these proposals might lead to a loss of quality in programming. I recognise that concern and believe that a case has been made out for strengthening the quality threshold. I do not consider it would be right to do so by adding more detailed requirements in the legislation to supply specific types of programme. I therefore propose to strengthen the quality threshold by broadening the third positive requirement in paragraph 6.11 of the White Paper to read:

"to provide a reasonable proportion of programmes (in addition to news and current affairs) of high quality, and to provide a diverse programme service calculated to appeal to a wide variety of tastes and interests."

It will be for applicants to interpret this combined quality and diversity test in drawing up their programme proposals. Those who fail to satisfy the ITC that they can meet this requirement will not have their financial bids considered.

/4. A number

4. A number of suggestions have been made to us about the form that the financial bid should take. The Chairman of the IBA proposed that it should comprise a sum fixed by the ITC and a bid by the applicant of a percentage of advertising revenue. I support this combination of elements but, in order to improve the transparency of the bidding process and to reduce the risk of over-bidding, propose that they should be reversed.

Accordingly, the ITC, with assistance from a merchant bank, will fix a percentage of net advertising or subscription revenue for each licence to form the minimum sale price. Applicants will then be required to bid a lump sum in addition. For successful applicants, both sums will be paid annually over the period of the licence to avoid the imposition of debt burdens on licensees.

*These two sums will be paid in equal instalments over the period of the licence.*

5. Applicants will also be required to post a cash bond with their tender application. It will be returned to unsuccessful candidates, but retained by the ITC in the case of the successful bidder who will be required to add to it a further amount to form a substantial performance bond. This requirement will strengthen the enforcement powers of the ITC. Those who fail to meet their programme promises given at the quality threshold stage will stand to lose a proportion of the bond.

6. I have considered carefully the arguments about the criteria on which the tenders should be decided. I do not believe that at the tender stage, before it is clear to whom the licences will be awarded and before the nature of any network arrangement is known, it will be possible for the ITC to make fine distinctions between the quality of programme service offered by different applicants, all of whom will have passed the strengthened quality hurdle I have announced today. We must avoid a return to the opaque and sometimes arbitrary selection procedures that have operated in the past. But some flexibility needs to be written into the procedure. We propose therefore that the ITC should be required in the normal course to accept the highest bid, but that

/it should

*This is not a "lump" sum. It is a "cash bond" which will be paid in equal instalments over the period of the licence.*

*Size?*

*Sum in cash?*

*BG ✓*  
*correct*

it should have a power in exceptional circumstances to select a lower bid. This power would operate only in exceptional circumstances and [on grounds determined by] the ITC [which] would be required to give its full reasons. Exercise of the power would, of course, be subject to judicial review.

7. The White Paper proposed that in addition to the sum bid at tender applicants would have to make a levy payment to the Exchequer. The proposals I have just announced for the fixing of a proportion of advertising or subscription revenue as part of the tender price overtake our original proposals for a levy. Successful candidates will have only to pay the two-part tender price I have outlined, and will not be required to pay levy in addition.

8. Under the ownership proposals I announced on 19 May, an individual licensee will be able to own two Channel 3 licences as long as they are not both large or contiguous. Applicants for Channel 3 licences will be permitted to apply for any number of licences provided they make clear their order of preference. Those who are successful in the bidding for more than the two licences to which they are entitled will be awarded the relevant licence or licences on the basis of their declared preference.

*ITC?*

9. Following the submission of comments on the White Paper, there has been some speculation as to whether the Government would impose a moratorium on takeovers at the beginning of 1993 and whether it would insist on compulsory networking for Channel 3. The Government's view on both issues has not changed since the publication of the White Paper. I understand that it is the intention of the Chairman of the IBA to permit takeovers in the period up to 1993, subject to the normal anti-monopoly rules and bearing in mind our proposals for the regime after 1992. It would not in the circumstances be either sensible or necessary to impose a moratorium thereafter. Networking will be a matter for

/the Channel 3



the Channel 3 companies themselves to decide without Government compulsion. Basic fair trading laws should ensure that no companies are excluded unfairly from any networking arrangements. We shall consider whether any further provisions are needed in the legislation to regulate the operation of any new network system in the interests of free access and fair competition.

10. We have received a number of representations on behalf of the four million viewers who are deaf or hard of hearing. I see considerable force in the argument that particular provision should be made for them. We have therefore decided that Channel 3 and Channel 5 licensees should be required to provide teletext sub-titling for some of the programmes in their schedules.

11. The White Paper proposed that Channel 5 should be shared between at least two licensees. In the light of the start-up costs of the new Channel and the competition it will face from the established terrestrial channels, we have given further thought to this proposal. We have now decided that Channel 5 should form a single licence, and will as a result   particularly in the early days, be better equipped to compete with the existing terrestrial channels.

12. Similarly, the White Paper proposed that there should be a separate night hours licence for Channel 3. Many of those who responded to the White Paper expressed doubts about the financial viability of a separate night hours licence and we have accordingly looked at the matter again. We wanted to ensure so far as possible that the night hours were fully used. I accept the argument that they may be better exploited commercially if they are linked with services provided at a more commercially attractive part of the broadcasting day. We have therefore decided not to disturb the present situation under which the night hours may remain connected with the peak viewing period. This position will be reviewed after five years of the new

/licences if

licences if the night hours are not being fully exploited. Under our proposals, the ITC will be free to allocate licences for other times of the day, such as a breakfast time service.

13. The White Paper proposed that the ITC would be responsible for the geographical division of Channel 3 into regions. This has been generally welcomed. The Government has noted with understanding the statement of the Chairman-designate of the ITC, Mr George Russell, that he would see advantage in retaining the existing regions, if possible.

14. I turn to Channel 4. The White Paper made clear the Government's intention to maintain the remit of Channel 4 while at the same time providing for the selling of its advertising separately from that on Channel 3. The White Paper proposed three options ranging from a fully independent commercial service licensed by the ITC, through an option linking Channel 4 with the new Channel 5, to an arrangement whereby Channel 4 would continue as a subsidiary of the ITC with a possible minimum guaranteed income.

15. We have considered the comments we have received on these options following the publication of the White Paper, and in particular the helpful Report by the Home Affairs Select Committee which carried out a thorough review of this specific issue. I have written today to the Chairman of the Committee expressing the Government's gratitude for its work on Channel 4 and setting out the Government's decisions. A copy of that letter has been placed in the Library of the House.

16. In considering the various options, the Government has decided that it would not be feasible at the present time for Channel 4 to become an independent commercial company competing with the other broadcasters. The financial outlook for Channel 4 remains uncertain with the prospect of new competition and

/rising costs.

rising costs. I believe that the requirement in addition to provide a return for shareholders in a private company would put too much pressure upon Channel 4 finances and place its remit in serious jeopardy. But I see some difficulty in Channel 4 continuing to be owned by the authority who would be responsible for regulating its output; and I believe that any financial underpinning given to the Channel should be carefully circumscribed to provide clear incentives for cost-efficiency.

17. We have therefore decided that after 1993 Channel 4 should assume the status of a public trust, which would take over the shares of the present company and would be licensed by the ITC. Members of the trust would be appointed by the Government and would have as their sole objective the efficient running of the service and the maintenance of the remit. Channel 4 would sell its own advertising, and would be subject to a baseline budget of 14% per annum of terrestrial net advertising revenue. The baseline could be amended in secondary legislation. If the Channel's revenue fell below the baseline, the difference would be funded by the ITC to a maximum of 2% of terrestrial net advertising revenue levied on the Channel 3 companies. Any surplus revenues above the baseline would be shared equally between Channel 3 and Channel 4. The Trust would be required to hold their share of any surplus revenues to be used as a first call in the event of deficits in later years. To reduce the need for a call on the guarantee, the ITC would be empowered to require cross-announcement of programmes between Channel 3 and Channel 4. Complementary scheduling would be possible, but would not be a requirement. The Channel 4 licence would run for ten years, but these arrangements would be reviewed after seven. I believe this is a satisfactory way of securing the future of Channel 4 with its present remit.

18. The White Paper concluded that the arrangements for the Welsh Fourth Channel should remain unchanged. Some have argued

/that it

that it would not be consistent with the new and more free approach to regulation for the Channel to be funded by a direct subscription on the commercial companies. The situation is particularly marked in Scotland where the smaller companies are required to finance Welsh programmes as a first call on their resources before even they make provision for their own Gaelic speakers. The Government is sympathetic to these concerns, and has decided to make a small change to the funding arrangements for S4C. As proposed in the White Paper, the ITC, in consultation with the Welsh Fourth Channel Authority, will fix the level of S4C revenues, but these will be paid not as a first call on the commercial companies but directly out of the proceeds of the tender.

19. My statement today covers most of the major decisions on the future commercial television system following the publication of the White Paper. They will be incorporated in new broadcasting legislation which the Government hopes to bring forward in due course

John Wheeler Esq MP  
Chairman  
Home Affairs Committee  
House of Commons  
LONDON, SW1

for signature by: HOME SECRETARY

HOME AFFAIRS COMMITTEE REPORT  
THE FINANCING OF CHANNEL 4

I am writing to you to let you know the Government's response to your report of 15 March on the financing of Channel 4. I plan to make an announcement in the House of Commons on [13] June about our proposals for Channel 4 and other matters relating to Channels 3 and 5, but before doing so I wanted to provide you and your committee with a formal response to your report.

The Government greatly appreciates the work which you and your committee have devoted to the question of Channel 4. Your report was presented at a crucial point in the debate and has strongly influenced our thinking. We have carefully considered all the recommendations which you have made.

As you know, the White Paper set out three options for the funding of Channel 4. Your report recommended (paragraph 19)

that option 2 of the White Paper (Channel 4 as a subsidiary of the ITC) provided the best way forward. We too concluded that option 1 (full privatisation) and option 3 (linking Channel 4 to Channel 5) would not fulfil the Government's policy intentions. We felt, however, that it was important, if Channel 4 were to maintain its remit, that it should not be both owned and regulated by the same body. For this reason, we are proposing that Channel 4 should be wholly owned by a Trust, which will replace the present Channel 4 Board. Members of the Trust will be appointed by the Government and, apart from a salary, will have no financial interest in the profits or losses of Channel 4.

You recommended (paragraph 32) that Channel 4 should be funded to the level of 14% of terrestrial national advertising revenue, and in the event of Channel 4 achieving a surplus, it should retain that money as a reserve against future deficits. We agree that the baseline budget should be 14% of terrestrial NAR. If Channel 4's revenue fell below this baseline, we propose that the difference should be funded by the ITC, but never to an extent of more than 2% of terrestrial NAR. The ITC would impose a special levy on all Channel 3 companies to raise the required subsidy. Thus if advertising revenue fell to not less than 12% of terrestrial NAR, the amount would be made up to the full 14%. But if it fell below 12%, then only an additional 2% of terrestrial NAR would be added per annum. This arrangement will create a strong incentive to efficiency since Channel 4 can never be certain of a subsidy of more than 2%. Any surplus revenues above the baseline value would be shared equally between

Channel 3 and Channel 4. The Trust would be required to hold any profits to be used as a first call in the event of deficits in later years. The ITC will be empowered to require Channel 3 to cross-announce programmes on Channel 4. Complementary scheduling will be enabled but will not be a requirement.

You recommended (paragraph 23) that subject to amendments to take account of the change in structure of the Channel, the remit of Channel 4 should be fully restated in the Broadcasting Bill. I can confirm that the Government does intend that Channel 4 should continue with its present remit, and that the remit suitably modified to take account of the change in structure that we have proposed, will be fully restated in the Broadcasting Bill.

You recommended (paragraph 30) that the legislation should ensure that the ITC would be able to meet from its resources all its financial obligations in any one year. We shall certainly ensure that the ITC is able to discharge its financial obligations. As far as the funding of Channel 4 is concerned, you will see from the proposals set out above that any underpinning required for Channel 4 will be obtained by a special levy on Channel 3 licensees.

You recommended (paragraph 43) that a contractual arrangement between Channel 4 and the ITC should be enabled in the forthcoming legislation. This recommendation was put forward on the basis that Channel 4 would be a subsidiary of the ITC. In fact, as I have said, we are proposing that Channel 4 should be

wholly owned by a Trust which would be licensed by the ITC. The nature of the relationship between the ITC and the Channel 4 Trust will be fully specified in that licence. The duties of the Channel 4 Trust will be fully specified in the forthcoming Bill.

We have taken note of the comments of your Committee in paragraph 42 of the report about the relationship between the S4C subscription and the future viability of some of the Channel 3 companies. We have decided accordingly that S4C funding should not after 1993 be a first charge on the commercial companies but should be taken directly from the proceeds of competitive tender.

I would like to take this opportunity to thank you and the members of your committee for the very helpful report which you have prepared. You will see from what I have said in this letter that it has had an important influence on the formulation of our proposals for the future of Channel 4.

I am placing a copy of this letter in the Library of the House of Commons.

A:wheeler.



PRIVATE AND CONFIDENTIAL  
From: The Rt. Hon. Viscount Whitelaw, C.H., M.C.



HOUSE OF LORDS  
LONDON SW1A 0PW

9 June 1989.

Dear Margaret.

I apologise for bothering you

when you have so many major problems confronting you. But I feel I

would be letting you down if I did not

tell you at once of my deep anxieties about future Broadcasting Policy. If

the leaks about the Cabinet Committee

are correct, they are certainly widespread

I must stress that I would be  
horrified and daily antagonistic  
if franchising were automatically to  
be the highest bidder without clear  
safeguards. I am convinced that  
any such course would inevitably  
lead to a major loss of quality  
in TV. programmes. I cannot believe  
that it would be right to sacrifice  
quality in the hope of greater financial  
gain. It would certainly be very  
unpopular in many quarters. Sorry  
to bother you  
Yours ever  
Willie

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PRIME MINISTER

## BROADCASTING ANNOUNCEMENT

At the end of the last MISC 128 meeting you had a brief word with Douglas Hurd about the handling of announcements.

He has now minuted you (Flag A), proposing that he should make a Commons statement next Tuesday announcing the key decisions now reached. At the same time he proposes to write to John Wheeler as Chairman of the Home Affairs Committee. He attaches drafts both of the statement and the Wheeler letter.

I have discussed the handling with Brian Griffiths and the Cabinet Office. All are agreed that it would be right now quickly to announce the decisions reached - not least given the leaks in the press this week about what has been decided. A further consideration, not known by the Home Secretary, is that Lord Whitelaw has today written to you a personal letter expressing his concerns about the decisions reported in the press. His letter, together with a reply for your signature, is in the folder at Flag B. To judge from his letter, Lord Whitelaw does not seem to have appreciated the safeguards on ITV tenders that are built into the agreed approach - namely the initial quality threshold and the exceptional override.

On the details of the statement, Brian has only two small comments, which I have marked in red on pages 3 and 4.

- (i) Content to agree to Douglas Hurd's proposed statement and letter to John Wheeler, subject to Brian's drafting changes on the former?
- (ii) Content to sign the reply to Lord Whitelaw at Flag B?

*Recd.*

(PAUL GRAY)

9 June 1989

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CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 01-270 0189

K02203

7 June 1989

RA

Dear Chris,

BROADCASTING POLICY

As you know, there was a brief discussion in the margins of yesterday morning's meeting of MISC 128 about the arrangements for announcing the Group's eventual decisions on broadcasting policy.

The Home Secretary said that the Government owed the Home Affairs Select Committee a reply to their report on Channel 4 and that one possibility might be to broaden this to record also the decisions which the Government reached on other broadcasting matters. There would certainly be advantage in announcing decisions as soon as possible, and he would wish to reflect further on how this might best be managed.

The Prime Minister commented that it might be better to make a single comprehensive announcement than a series of piecemeal statements, and invited the Home Secretary to circulate a draft text after he had reflected on the best way forward.

I am copying this letter to Paul Gray (No. 10) and Trevor Woolley in Sir Robin Butler's office.

Yours sincerely,

P J C MAWER

C L Scoble Esq  
Broadcasting Department  
Home Office  
Queen Anne's Gate  
LONDON SW1H 9AT

5 June 1989

CCB/P

CHANNEL 4

This is likely to prove an extremely difficult decision.

The lobbying by the broadcasting industry in favour of continuing subsidies to C4 because of its public service broadcasting function has been intense.

The central issue is whether the remit of C4 can be protected if C4 is privately owned. I am very sceptical at the arguments used by the industry. Even if C4 cannot keep its remit, however, two clear alternatives exist:

- (a) the Home Secretary's proposal in which C4 would be owned by a public trust, have a basic guaranteed income and have continuing subsidies from C3 (in terms of cross-programming);
- (b) a private C4 - which Michael Grade and the Board accept is likely to be profitable for the next five years or so - which, if after that was unable to deliver its remit, would require a decision at the time as to whether it should be funded in part by an Arts Council of the Air.

The Home Secretary's Proposal

This has serious disadvantages:

- (i) it requires a restriction of competition between C3 and C4 and will set the tone for the new broadcasting regime;

- (ii) C3 are being asked to subsidise C4 in the medium term: C3 will almost certainly extract a quid pro quo from government for this - probably a restricting of competition among themselves. None of this is spelt out in the Home Office paper - but it should be explored;
- (ii) if C4 know that they have a guaranteed income, this will influence their behaviour: they will not have the same incentive to efficiency as they otherwise would;
- (iv) if the guaranteed income is targetted to be 14% of NAR but never more in absolute terms than 2% of NAR, as the Home Secretary suggests, we shall have constant lobbying from the whole of the British broadcasting industry to raise both figures (C4 is after all to them public service broadcasting).

If at the end of the day, the Home Secretary is determined to go down this route then it is important to devote much more attention to the particular numbers which are put forward in his paper: the present ones seem to have been put forward by C4 itself!

#### CONCLUSION

It is important that C4 does not set the tone for the new de-regulated broadcasting system. If at the end of this day C4 requires a public subsidy - this should be done through the most efficient means (Arts Council of the Air - straight subsidy) rather than the Home Secretary's proposal which affects so many other things as well.

*Brian Griffiths*

BRIAN GRIFFITHS

5 June 1989

CCBP

C3 and C5: COMPETITIVE TENDERING

The present proposals from the Home Secretary are a distinct improvement over the last. He rejects the worst features of George Russell's proposals but they still suffer from a number of weaknesses.

(a) Quality threshold

He has attempted to strengthen the quality threshold by inserting into the positive programming requirement for C3, the expression "of high quality" - this was not in the White Paper.

Taken at face value this could mean that the ITC would have a field day policing high quality. The Home Secretary does not want this. Yet in the next paragraph he has no proposal as to how the ITC could decide on quality. Instead he has an elaborate system by which the ITC can decide on diversity (something quite different) - namely through specifying proportions of broad programme types.

But this is not quality. He needs to be pressed as to how quality will be checked. I fear it will be impossible. In which case it is better to drop the expression "of high quality" and concentrate on achieving diversity.

(b) Highest bid wins

He suggests allowing the ITC the discretion to override the highest bid for two exceptional reasons:

- the finance may be unsound or come from a political source;
- the quality of programmes offered by the lowest bidder is suspicious.

Both of these need to be rejected. If the funding is unsound eg Ulster/South Africa, this can be handled through the quality of management who raise this kind of funding. One suspects however that unsound is really a back door route for the ITC to make the kind of judgement George Russell would like to see it make - namely to judge the quality of money.

The same is true of the second reason for allowing the ITC to overturn a bid - namely that the higher quality will mean a lower price. Of course higher quality will cost more, ceteris paribus, and therefore result in a lower bid. But this puts the ITC back in the position of the IBA, in which it is the judge of quality - precisely the situation we wished to avoid.

Reject giving the ITC power to override bids.

(c) Moratorium on takeovers

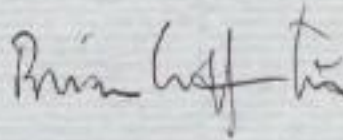
This is a curious proposal. From 1990-1992 takeovers will be permitted. During 1993 takeovers will not be permitted. From 1994 takeovers will once again be permitted.

It is far better to allow the market to work, within the very constrained ownership rules which we have already announced. The chances of the system being abused are extremely small.



(d) Substituting for the deaf

This is an excellent idea.

A handwritten signature in cursive script, appearing to read "Brian Griffiths".

BRIAN GRIFFITHS

PRIME MINISTER

MEETING OF MISC 128

You saw most of the papers for tomorrow's meeting over the weekend, as summarised in my earlier minute below.

The two new papers are briefs by Brian Griffiths on items 1 and 2 of the Agenda, which you will want to look at. I have flagged these up in yellow in dividers 1 and 2.

PRG.

Paul Gray

5 June 1989

PRIME MINISTER

## MEETING OF MISC 128: 6 JUNE

You may like over the weekend to look at the main papers for next Tuesday's meeting of Misc 128.

You will recall that at the last meeting George Russell gave a presentation of the JTC's proposals. The main purpose of Tuesday's meeting is to reach at least provisional conclusions on the two most important outstanding issues - the arrangements for competitive tendering and the future of Channel 4. If time permits, the group may also want to consider the paper (carried over from the last meeting) on "the map and the clock" for Channels 3 and 5.

The enclosed papers are:

Flag A      Steering brief from the Cabinet Office (immediately below this note)

## IN DIVIDER 1

Flag B      Douglas Hurd's paper on competitive tendering

Flag C      Cabinet Office brief on competitive tendering

## IN DIVIDER 2

Flag D      Douglas Hurd's paper on Channel 4

Flag E      Cabinet Office brief on Channel 4

## IN DIVIDER 3

Flag F      Douglas Hurd's earlier paper on "the map and the clock"

Flag G      Cabinet Office brief on "the map and the clock"

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- 2 -

Flag H      Brian Griffiths' earlier brief on this issue.

I have also enclosed at the back of the folder a copy of the White Paper (Flag I).

Brian Griffiths has not yet had the chance to consider the latest papers. I will let you have his briefs on competitive tendering and Channel 4 on Monday evening.

*PGG*

PG

2 June, 1989.

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PRIME MINISTER

cc: Mr Woolley

MINISTERIAL GROUP ON BROADCASTING SERVICES (MISC 128)  
MEETING ON 6 JUNE 1989

At its last meeting the Group was given a presentation by Mr George Russell, chairman-designate of the Independent Television Commission (ITC), on his proposals, particularly as regards competitive tender. In the wake of that presentation and of the preliminary discussion which followed it, the Home Secretary brings to the Group three papers with proposals on:

1. the arrangements for competitive tendering for franchises on Channels 3 and 5 (MISC 128(89)8);
2. the future structure and financing of Channel 4 (MISC 128(89)7);
3. Channels 3 and 5: the map and the clock (MISC 128(89)5).

The last of these papers was held over from the Group's previous meeting.

2. The discussion on 6 June will be a crucial one. The competitive tender arrangements and the future organisation of Channel 4 have been at the centre of comment on the Government's White Paper. These issues embody what many critics have claimed to be a tension within the White Paper proposals between the introduction of market disciplines and the search for quality in programming. The Home Secretary regards it as essential in order to secure the passage of the Broadcasting Bill that he be able to demonstrate that the Government's deregulatory approach, of which

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competitive tendering is a key feature, will not mean the end of quality programming. He therefore sees the two papers as intimately interrelated. The more he can be satisfied that the arrangements agreed on by the Group for the future organisation of Channel 4 will preserve its distinctive remit, the less anxious he is likely to be about the competitive tender arrangements. On the other hand, the Chancellor of the Exchequer will be concerned to ensure that market disciplines can operate successfully and that maximum return to the Exchequer is obtained. The discussion will therefore be about balances and trade-offs between, for example, the transparency of the competitive tendering process and the extent of discretion left with the ITC, and between the extent to which Channel 4 is exposed to market forces or its existing remit preserved.

3. It is essential that the Group reaches at least provisional conclusions on as many of the issues as possible. There remain a number of important matters to be considered by the Group—notably proposals on privatising the transmission arrangements—and as many of the issues interrelate, the Group may not want to reach final decisions on any of them until they can see the balance of the package as a whole. But the Bill which will embody the Group's conclusions will be long and complex, and it is important that final decisions should not slip much beyond the beginning of July so that instructions to Parliamentary Counsel can be prepared before the Summer Recess. Your aim, I suggest, should therefore be to reach conclusions if at all possible at least on the papers on competitive tendering and Channel 4. The paper on the map and the clock could at a pinch be held over until the Group's next meeting, which is arranged for 21 June, and be taken then with papers on transmission and BBC night hours. There are provisional arrangements for a further meeting of the Group on 4 July should this prove necessary.

4. Apart from the specific issues for discussion, you may wish to take advantage of the meeting to enquire of the Home Secretary

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what he proposes by way of announcement of the Group's eventual decisions. The Home Secretary took advantage of a recent debate on a Private Member's Motion to announce the Group's decisions on ownership and we understand that he may have in mind a series of announcements through Ministerial speeches etc as the Group's decisions are reached. Given the interrelationship of the issues, however, there might be something to be said for a comprehensive statement of the Government's conclusions, for example by means of an arranged Written Answer before the Summer Recess. It would be useful if the Group could establish towards what it is working in this respect.

5. On handling, you have agreed that in addition to the Group's normal membership, the Foreign Secretary and the Secretary of State for Education and Science may be present in view of their interest in the implications of the issues to be discussed for quality in programming and for educational programmes. You may wish to take the papers in the order:

- i. Channels 3 and 5: competitive tendering  
(MISC 128(89)8);
- ii. Channel 4:  
(MISC 128(89)7);
- iii. Channels 3 and 5: the map and the clock  
(MISC 128(89)5).

The Home Secretary could be invited briefly to introduce each one. Time is limited to one and a half hours so discussion will need to be brisk. Fuller advice on handling is given in the separate briefs on each of the agenda items, which I attach.



P J C MAWER

2 June 1989

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PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES

CHANNEL 4 (MISC 128(89) 7)

DECISIONS

The broadcasting White Paper made clear the Government's intention of maintaining Channel 4's special remit while providing that advertising on that channel should be sold separately from advertising from Channel 3 or other channels. At the Group's meeting on 24 April (MISC 128(89) 1st Meeting; Minute 3), you said that it would be wrong in principle to place Channel 4 under the direct supervision of the ITC, which will be a regulatory agency. The Group also agreed at that meeting that the Home Secretary's proposal that any shortfall in Channel 4's income should be met in full provided insufficient incentives to efficiency. The Home Secretary was invited to bring forward further proposals, taking account of those points.

2. The Home Secretary's Memorandum sets out four possible models for the future structure and financing of Channel 4.

(i) Privatisation: the Home Secretary has never favoured this, and he now suggests that it would be difficult to carry it through Parliament.

(ii) An independent Channel 4 trust would be formed to own the Channel 4 company. The channel would be subject to a baseline budget of 14% of terrestrial net advertising revenue (NAR) (though with provision for the baseline to be amended by secondary legislation) and if Channel 4's revenue

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fell below this baseline the difference would be funded by the ITC up to a maximum of 2% of terrestrial NAR. This is the Home Secretary's preferred option.

(iii) As a variant of (ii), the ITC would pay to Channel 4 a proportion (say 50%) of any deficit below 14% of terrestrial NAR and Channel 4 would keep a proportion of any profits.

(iv) The ownership of Channel 4 would be divided equally between a Channel 4 trust and the Channel 3 companies. There would be no budget baseline, but any excess of expenditure over revenue would be met by the Channel 3 companies.

3. If the Group were able to reach a decision of principle in favour of one of these options, the Home Secretary would need to return with detailed proposals for its implementation: none of the options have been worked up in any detail and a good deal of work will be needed to flesh out whichever scheme the Group prefers. The Home Secretary will also need to bring forward proposals on various second-order issues, including whether Channel 3 companies should be permitted to sell Channel 4's regional advertising, and the arrangements for funding the Welsh fourth channel. It may be possible to settle these matters in correspondence but otherwise they could be taken at the meeting which has been provisionally arranged for 4 July.

BACKGROUND

4. Channel 4 is at present a wholly-owned subsidiary of the IBA, financed by subscriptions levied on the ITV companies, who sell the advertising on Channel 4 and retain the revenue thus

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raised. Channel 4 has a special remit to cater for interests that would not otherwise be met by the independent sector.

5. One of the Group's main concerns during the discussions in the run up to the White Paper was the high cost of television advertising, and one of the Group's basic tenets was that Channel 4 should sell its own advertising in order to introduce more competition. At the same time, the Group fully accepted that maintaining the Channel 4 remit would be a very important component of the quality guarantees that needed to be built into the White Paper prospectus. On one side of the argument, the Chancellor of the Exchequer felt that full privatisation was the only means of exposing Channel 4 to the drive for efficiency that underlay the whole of this policy review, and that the maintenance of the Channel's distinctive remit could be achieved through rigorous policing by the ITC. On the other side of the argument, the Home Secretary and the Trade and Industry Secretary felt that profit-seeking under a full privatisation model would inevitably drive the Channel down-market in pursuit of a mass audience, and that the ITC would not in practice be able to prevent this.

6. It was not possible to resolve the evenly balanced views in the Group on this issue, and the White Paper accordingly committed the Government to maintain the Channel 4 remit and to provide for the Channel's sale of its own advertising but canvassed three possible options for the Channel's new financial structure. These were:

- (i) full privatisation;

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(ii) Channel 4 to become a wholly-owned subsidiary of the ITC, with some form of guaranteed minimum income;

(iii) a link to be established between Channel 4 and Channel 5 to establish a third force standing against both the BBC and Channel 3.

7. The consultation on the White Paper revealed no support for option (iii). The responses to the White Paper were heavily weighted in favour of option (ii); and this was the model which was recommended by the Home Affairs Committee who suggested that Channel 4's guaranteed income should be set at 14% of the total NAR of terrestrial channels.

8. The Home Secretary sought agreement at the Group's meeting on 24 April to a model based on the Home Affairs Committee's recommendations. However, in summing up the discussion you said that the Group believed that these proposals were too generous to Channel 4 and failed to incorporate sufficient incentives to efficiency. You also made clear that there were profound objections of principle to placing the Channel under the direct supervision of the ITC since it would be wrong to give a regulatory authority direct responsibility for the provision of services.

**MAIN ISSUES**

9. The Home Secretary has now come forward with four options for the future financial structure of Channel 4.

**(i) Privatisation**

10. The Home Secretary believes that the Group's decision on the future financial status of Channel 4 will hold the key to the

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overall reception of next Session's Broadcasting Bill. He and Lord Young both consider that a privatised service would inevitably go down-market and that, in practice, the ITC would not be able to prevent this since the remit is not capable of being drafted in such a way as to guarantee high quality programming. More importantly, perhaps, in the light of the responses to the White Paper and of the Home Affairs Committee's report, the Home Secretary does not believe that it would be politically sustainable for the Government to propose the privatisation of Channel 4.

11. There are two main points here which you may wish to probe.

(a) You will wish to seek the views of the Chancellor of the Exchequer and the Trade and Industry Secretary on the prospects of a privatised Channel 4 maintaining its remit.

(b) You will wish to probe with the Chief Whip the likely Parliamentary reaction to a proposal to privatise Channel 4, and in particular to test with him the Home Secretary's view that it would be difficult to carry such a proposal through Parliament.

(ii) and (iii) Non-profit making status with a guaranteed income

12. The Home Secretary's preferred alternative to privatisation would involve the creation of an independent Channel 4 trust to own Channel 4 and to operate it under licence from the ITC. The Channel would be subject to a baseline budget of 14% of terrestrial NAR (but with provision for this to be adjusted by means of secondary legislation) and if Channel 4's revenue fell below this baseline the deficit would be funded by the ITC up to a maximum of 2% of terrestrial NAR. The shortfall would be met

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by a special levy on all Channel 3 companies.

13. Under this scheme, the only spur to efficiency is that Channel 4's income would not be made up to the full 14% if its own advertising revenue dropped below 12% of terrestrial NAR; provided that it reached the target of 12%, however, any remaining deficit would be fully funded by the Channel 3 companies. The Group may accordingly feel that this scheme fails to provide sufficient incentives to efficiency and, if so, they may prefer the Home Secretary's third option. Under this option, Channel 4 would receive only a proportion of any deficit below 14% and, conversely, would retain a similar proportion of any profit above this level.

← 14. There is no indication in the Home Secretary's paper as to who would appoint a Channel 4 trust, who would be its members, whether it would be in the public sector etc. You may wish to invite the Home Secretary to provide some indication of his thinking on these issues.

(iv) Joint ownership by a Channel 4 trust and the Channel 3 companies

15. Under the Home Secretary's final option, the ownership of Channel 4 would be divided equally between a Channel 4 trust and the Channel 3 companies. There would be no budget baseline or any guaranteed revenue: any profits would be divided equally between Channel 3 and the trust, who would hold their share against any future deficits; and any losses would be funded initially by any accumulated reserves and otherwise by the Channel 3 companies.

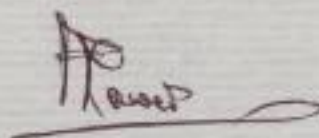
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16. The Home Secretary suggests that, under this model, Channel 3 would want Channel 4 to retain its remit. On the face of it, however, it seems likely that Channel 3 would instead prefer Channel 4 to switch to more popular programming since, under this model, the Channel 3 companies would retain 50% of any profits which Channel 4 accrued. The Group may also feel that an arrangement under which Channel 4 was partly owned by Channel 3 would mean that the two Channels would have a powerful incentive to act in tandem and that, taken together, they would provide an unfair challenge to Channel 5 and the DBS channels. Moreover, as the Home Secretary notes in his paper, such an arrangement might undermine the intended competition between Channels 3 and 4 for advertising revenue.

HANDLING

17. In inviting the HOME SECRETARY to introduce his Memorandum, you may wish to ask him to say a few words in turn about each of the four options set out in his paper. The CHANCELLOR OF THE EXCHEQUER and the TRADE AND INDUSTRY SECRETARY in particular will have comments about these options. You may wish to ask the CHIEF WHIP for an assessment of the likely Parliamentary reaction to a proposal to privatise Channel 4.



P J C MAWER

2 June 1989

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PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES  
CHANNELS 3 AND 5: THE MAP AND THE CLOCK  
(MISC 128(89)5)

DECISIONS

The Home Secretary is seeking decisions in principle that:

(i) the Independent Television Commission (ITC) should be responsible for the division of Channel 3 into regions, but the Government should endorse the IBA's view that there would be advantage in keeping to the present ITV regional structure;

(ii) there would be a strong case for a national licence which embraced Channel 3's night and breakfast hours, rather than for Channel 3's night hours to be licensed separately as the White Paper had proposed; and

(iii) the IBA should be permitted to divide Channel 5 by day of the week as well as time of the day.

2. The Home Secretary accepts that the Group will need to review any decisions in principle which they take at this meeting once decisions have been taken on related matters, including the competitive tender and transmission arrangements. However, he hopes that the Group will be prepared to reach provisional decisions so that work can proceed on the preparation of Instructions to Counsel.

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BACKGROUND

3. Under the present law, the IBA are responsible for the division of the ITV system by regions and by time slots. The IBA made only minor adjustments to regional boundaries during the last franchise round in 1980, but prior to that they had sometimes made some quite substantial alterations.

4. The White Paper (paragraph 6.16) said that the ITC would be responsible for the geographical division of Channel 3 into regions. It proposed that there should be a separate night hours licence, or licences, for Channel 3, and that the ITC should determine the exact boundaries and should decide on possible additional licences covering other times of the day (eg for a breakfast time service). As to Channel 5, the White Paper said that the Government believed that this should be a national service which should be split into two or more different licences covering different parts of the day and night, with the ITC being responsible for deciding on the boundaries between the time-slots.

MAIN ISSUES

(i) Channel 3 regions

5. The IBA's response to the White Paper states (at paragraph 4.8) that

"we would see advantage to both viewers and advertisers in keeping the present well-established ITV areas post-1992".

But they qualify this in the following sentence:

"However, the regional map on Channel 3 in the 1990s would depend to a large extent on decisions taken about night-

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hours, networking, transmission arrangements, negative tenders and S4C".

So the IBA have certainly not given any firm assurances about the future of the existing ITV regions. At the Group's previous meeting, Mr George Russell (chairman of the IBA and chairman designate of the ITC) said that he envisaged that, while the existing 15 franchise areas would be retained, the number of regionally-based companies might well be much reduced as a result of the competitive tender procedure and subsequent takeovers.

6. The Home Secretary suggests that the Government should itself make clear that it sees advantage in retaining the existing regional structure. Following Mr Russell's presentation at the Group's previous meeting, you asked whether the IBA were intending to preserve the existing regional pattern not because it was necessarily the most suitable arrangement but instead because existing ITV companies had lobbied very hard for the retention of the status quo. Mr Russell said that there had been some lobbying by the ITV companies but that much of the pressure had come from politicians. Viewers appear to have a good deal of attachment to their local regional service (a point which Mr Rifkind has previously emphasised in relation to the Scottish ITV services) and this is clearly a politically sensitive issue. Nevertheless, you may wish to probe with the Home Secretary whether it makes sense to preserve the existing regional structure.

7. The Chancellor of the Exchequer may argue that the Group should not take decisions on the future of the existing ITV regions until after they have reached decisions on transmission arrangements. The point here is that, at present, the regions

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with high population densities effectively subsidise the transmission costs of those with low population densities. Cross-subsidies between the regions may need to be abolished once the transmission system is privatised, and the Chancellor may suggest that one possible way of achieving this might be to amalgamate some of the smaller regions into larger regions. This is one of the most sensitive issues for Scotland, in particular.

8. Even if the Group are prepared to take a decision in principle at this meeting that there would be advantage in preserving the existing regions, they may have reservations about leaving decisions about the geographical division of Channel 3 entirely at the discretion of the ITC. If so, there are a number of possible options that the Home Secretary could be asked to explore. One possibility would be for the Act to spell out the criteria for regionalisation in a fair degree of detail. Another possibility might be to introduce an arrangement under which the Secretary of State would be required to seek advice from the ITC and then to put forward proposals for approval by Parliament (perhaps under the affirmative resolution procedure). This would guard against the risk of the ITC implementing unattractive arrangements. However, an important drawback would be that the Government, rather than the ITC, could be the focus of criticism from viewers aggrieved about the division of the Channel 3 map.

(ii) Channel 3 night hours

9. A number of independent analysts (as well as ITV interests) have criticised as commercially unrealistic the White Paper proposal that there should be a separate Channel 3 night hours licence. The Home Secretary is concerned that unless the night hours are packaged with some more lucrative part of the day, there may be no serious bids at all for the night hours licence

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and that these hours might accordingly remain fallow. He therefore suggests that the night hours should be linked with breakfast time and that these hours should be advertised as a single national licence.

10. The Scottish Secretary may suggest instead that Channel 3 companies should be allowed to retain their night hours so that these hours could be used for regional broadcasting rather than siphoned off into a national night hours channel. However, it seems doubtful whether there would be enough viewers during the night hours to make it viable for the Channel 3 companies to provide regional programmes at that time: the likelihood must be instead that each of the Channel 3 companies would provide essentially the same menu of films, repeats, overseas material, etc.

11. Before considering the Home Secretary's proposal, you may wish to seek the Trade and Industry Secretary's views on whether or not a separate national night hours licence would in fact be viable. If he believed that such a licence might be viable and the Group were therefore not convinced that the White Paper proposal for a separate night hours licence should be discarded, one possible compromise would be to advertise the night hours and breakfast hours as separate licences but enable a single company to hold both franchises if it were to put in the highest bid for each of them.

12. The division of the Channel 3 clock is a much less sensitive issue than the division of the map, and there is therefore a less strong case for suggesting Ministerial or Parliamentary approval. Nevertheless, the Group may feel that it might be prudent to include some such provision to guard against the risk of the ITC

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reaching perverse decisions. Again, however, this would suffer from the drawback that the Government rather than the ITC would become the focus for any complaints about the decisions reached.

(iii) Channel 5

13. No one has seriously questioned the White Paper proposal that Channel 5 (which is expected to be receivable by only around 65 per cent of the population, with most viewers requiring a new or additional aerial) should be licensed on a national basis. The White Paper suggested that there should be two or more licences for Channel 5, divided according to time of day. The Home Secretary is now proposing, as the ITC recommended in their response to the White Paper, that the ITC should also have the option of making a division by day of the week (eg a week-day/weekend split). This seems sensible.

14. Mr Russell suggested at the Group's previous meeting that it would be desirable for Channel 5 companies to be based outside London, with perhaps one being based in the North and the other in Scotland. You may wish to confirm with the Home Secretary, however, that the competitive tendering arrangements will simply take their course and that it will not be open to the ITC to arrange for the Channel 5 licensees to be based outside London.

15. If it were decided to impose Ministerial and Parliamentary approval on the ITC's proposals for the Channel 3 clock, then the same arrangements would probably need to apply to Channel 5.

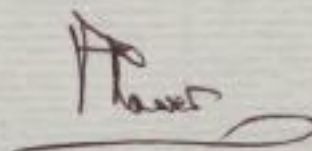
HANDLING

16. You will wish to invite the HOME SECRETARY to introduce his Memorandum. The CHANCELLOR OF THE EXCHEQUER will have comments, in particular on the arrangements for dividing Channel 3 into

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regions. The WELSH SECRETARY and the SCOTTISH SECRETARY will also have comments on this issue. The TRADE AND INDUSTRY SECRETARY will have general comments, and you may wish to ask in particular for his assessment of the viability of a separate night hours licence on Channel 3.

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P J C MAWER

2 June 1989

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PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES  
CHANNELS 3 AND 5: COMPETITIVE TENDERING (MISC 128(89)8)

DECISIONS

1. Following the presentation by the Chairman-designate of the Independent Television Commission (ITC), Mr George Russell, at the Group's meeting on 11 May and the preliminary discussion of the issues which followed it, the Home Secretary is seeking decisions on the main shape of the arrangements for awarding licences on Channels 3 and 5. He proposes that licences should be awarded under a two-stage tender process, broadly on the lines of that set out in paragraph 6.17 of the Broadcasting White Paper (copy attached), but subject to a number of refinements:

i. the positive programme requirements set out in paragraph 6.11 of the White Paper should be strengthened.  
Key issues: how specific should the enhanced requirements be? to what extent should they be embodied in legislation? how much discretion should rest with the ITC?

ii. Applicants for licences should bid a fixed sum to be paid in annual instalments. Successful applicants would also pay a proportion of net advertising revenue (NAR) or subscription revenue, to be predetermined by the ITC with advice from a merchant bank: this would replace the levy.  
Key issue: is the Group satisfied that these proposals meet the requirement for a transparent bidding process, which reduces ITC discretion to an unavoidable minimum and secures the best return to the Exchequer?

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iii. Applicants should also be required to post a substantial performance bond with their tender application, which in the case of the successful bidder would be retained by the ITC as an important element in the system for enforcing programme promises. Key issue: would the requirement to post a substantial bond put off potential applicants? Presumably the ITC would fix the bond and decide on the circumstances in which it would be forfeit. Against what criteria would it make these decisions? The Home Secretary proposes to bring forward detailed proposals for a graduated enforcement system and you may wish to invite him to clear these in correspondence.

iv. The highest bid should win, but the ITC should have an exceptional discretion to select a lower bid for reasons which it would be required to make public. Key issues: how would this discretion be framed in legislation and limited in order to avoid giving too wide a discretion to the ITC? Would it be sensible, given the possibilities of judicial review, for the ITC to avoid publishing its reasons for deciding to select a lower bid?

v. There should be no levy system in addition to the proposed tender arrangements. Key issue: is the Chancellor of the Exchequer satisfied that the arrangements proposed would secure a reasonable return to the Exchequer?

vi. The details of the tender arrangements are best left to the ITC to work out, but an applicant would be able to apply for any number of Channel 3 licences. If he was successful in bidding for more than the two licences he is permitted to own, the ITC should decide which licences to award him on the basis of the combination of bids that gives the highest return for the franchises taken together. Key issue: is there a need to lay down in legislation at least the principles to be followed, for example in establishing

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the mechanism for judging tenders? Where an applicant successfully bids for more than two licences, is the Chancellor satisfied that the ITC will be sensibly placed to judge which combination of bids will give the highest return to the Exchequer?

vii. There should be a 1-year moratorium on takeovers immediately after franchises have been let. Key issue: is the Group content to reverse its previous view that there should be no such moratorium?

viii. Licences should run for 10 years with scope for the ITC to award a fresh licence at the end of the period at a new price which it would determine. Key issue: is the Group content to confirm this aspect of the White Paper proposals?

ix. The ITC should not be able to require networking on Channel 3. Key issue: is the Group content to confirm this aspect of the White Paper proposals?

x. There should be a power to require subtitling for the deaf on Channels 3 and 5. Key issue: does the Group accept that such a requirement would not make it harder to resist the arguments of other groups lobbying for particular programme types?

BACKGROUND

2. Paragraph 6.17 of the White Paper on the future of broadcasting proposed a two-stage procedure for awarding licences for Channels 3 and 5 (and for Channel 4, if it were decided to privatise that channel). First, applicants would be required to pass a fairly rudimentary quality threshold. This would comprise:



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i. Consumer protection requirements (eg that news should be impartial and accurate; and that nothing should be included in programmes which offended against taste and decency);

plus the following positive programming requirements:

ii. To show regional programming;

iii. To show high quality news and current affairs dealing with national and international matters, and to include news coverage (and possibly also current affairs) in main viewing periods;

iv. To provide a diverse programme service calculated to appeal to a variety of tastes and interests;

v. To provide a minimum of 25% of original programming from independent producers;

vi. To ensure that a proper proportion of programme material is of EC origin.

*Schools?  
Educational  
programmes?*

In addition the White Paper indicated that the ITC should be required to ensure that there was adequate provision of schools broadcasting by the independent sector as a whole.

3. The White Paper proposed that applicants which satisfied the quality threshold would put forward financial tenders, which would take the form of a lump sum payable at the outset, with the ITC being required to select the highest bidder. Each licence-holder would be required to pay an annual levy in the form of a percentage of advertising revenue at progressive rates. (This would replace the present levy, which until recently has been based on profits, and is now based on a mix of profits and revenue.)

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4. The Government's object in proposing these arrangements was to open up the independent broadcasting sector to competitive market disciplines and to get away from the present paternalistic franchise-awarding arrangements under which a great deal of discretion rests with the Independent Broadcasting Authority (IBA). Much of the debate on the White Paper has focused on this aspect of the Government's proposals. The principal concern voiced has been that a system based on awarding franchises to the highest bidder would put a squeeze on quality. In particular, the IBA argued in its response to the White Paper that the highest bidder might not have the capabilities and resources to provide a viable service and proposed that the ITC should accordingly have some discretion in choosing between the various applicants.

5. Mr Russell presented the IBA's counter-proposals at the Group's last meeting. These would involve the ITC, after consultation with City advisers, prescribing a cash bond which all applicants for a particular franchise would be required to pay in advance as a token of serious intent. It would be refundable to all except the successful applicant. Applicants would be required to submit bids expressed not as a lump sum but as a percentage of NAR. There would be no separate levy. The Group found these proposals unsatisfactory in a number of respects. It was concerned, for example, about the extent of discretion which would still be retained by the ITC, by the suggestion that the ITC should employ merchant banks in an attempt to second-guess tenderers, and by the proposal that the Commission should publish reasons for its decisions.

MAIN ISSUES

6. The proposals brought forward by the Home Secretary on the tender process and on Channel 4 seek to guard against the criticism that the White Paper jettisons quality, while avoiding the main deficiencies of the Russell proposals. The Home

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Secretary rejects Mr Russell's proposal that the ITC should be empowered to assess an applicant's quality of money and proposes instead that the ITC should (subject to certain exceptions - see paragraphs 11 and 12 below) be required to accept the highest bid. To meet the concerns expressed about quality, however, the Home Secretary proposes (paragraph 11 of his paper):

- a. that the quality threshold should be enhanced;
- b. that there should be an exceptional veto on the highest bid wins principle; and
- c. that the tenderer should be required to put up a performance bond.

Quality threshold

7. The establishment of a quality threshold is one of the key means by which the White Paper proposes to secure programme quality. The threshold must be sufficiently rigorous to represent a real hurdle, but not so demanding as to fetter individual enterprise. There is bound to be considerable pressure during the passage of the Bill to implement the Government's proposals to strengthen the threshold by including in it particular programme requirements. Recognising this, the Home Secretary proposes that the Government should set its face against adding more positive programme requirements in the legislation but that the third positive requirement set out in paragraph 6.11 of the White Paper should be amended to read:

"To provide a reasonable proportion of programmes (in addition to news and current affairs) of high quality, and to provide a diverse programme service calculated to appeal to a wide variety of tastes and interests."

The additions proposed by the Home Secretary are underlined. The additional requirement suggested by the Home Secretary is

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cast in fairly subjective terms and it may be difficult to frame satisfactorily in legislation. It runs the risk of being inadequate on the one hand to satisfy the Government's critics and yet so broadly framed as to leave considerable discretion in the hands of the ITC. As the Group recognised at its meeting on 11 May, there is a trade-off between the degree of specificity of programme requirements and the amount of discretion which is to be left to the ITC. You may wish to probe whether the Home Secretary's proposals get that balance right. In particular you may wish to establish:

i. whether the Group accepts the Home Secretary's proposal that the quality threshold should be strengthened;

ii. if so, whether it is content with the particular form of words he proposes and that there should not be any more specific programming requirement framed either in the legislation itself or in subordinate instruments under the Bill;

iii. whether the Group is content that the ITC should be required to re-formulate the quality threshold in specific programming terms as part of the franchise allocation procedure.

Form of bid

8. The White Paper proposed that the ITC should be required to select the highest bidder from among applicants for licences who had passed the quality threshold. The bid would be made in the form of a lump sum. In addition, each successful applicant would be required to pay levy in the form of a percentage of advertising revenue at progressive rates, the initial level of which would be prescribed when licences were advertised. This arrangement would replace the present levy. Under the IBA proposals, applicants' bids were to be expressed as a percentage

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of NAR. The Home Secretary proposes that bids should be a combination of a proportion of NAR or subscription revenue (representing the minimum franchise price) to be predetermined by the ITC with advice from a merchant bank, and a fixed sum offered by the applicant. Both would be paid annually, to avoid debt burdens on licensees. The Home Secretary argues that such a system would achieve a transparent bidding process, limiting risks to bidders while securing a reasonable return to the Exchequer. You will wish to invite the Chancellor of the Exchequer and the Secretary of State for Trade and Industry to comment in particular on this aspect of the proposals.

Ch. 7-  
Kirkham

Performance bond/Sanctions

9. At the Group's last meeting Mr Russell proposed that bidders should have to post a performance bond as a means of deterring frivolous applications. The Home Secretary proposes to build on this suggestion by making the bond an important element in the process of enforcing programme standards. It would presumably be for the ITC to set the level of the bond and to decide the circumstances in which part or whole of it should be forfeited. You may wish to explore with the Home Secretary the criteria against which the ITC would be expected to make these judgements. Should the Commission be given any guidance on the criteria to be followed and, if so, how should this be set out? You may also wish to establish that the Chancellor of the Exchequer is satisfied that the requirement to post a substantial bond will not put off some potential tender applicants. If this is thought to be a risk it would be possible for the initial bond to be small, with the successful applicant being required to lodge a more substantial bond later.

What level?

10. In paragraph 27 of his paper, the Home Secretary notes that the IBA has offered a number of proposals which would supplement those in the White Paper on sanctions. The Home Secretary suggests that he should give further thought to these proposals

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with a view to working up possible intermediate sanctions in addition to the yellow and red card system proposed in the White Paper. At its meeting on 11 May the Group recognised that sanction arrangements were a vital part of the quality assurance process, and that the development of a graduated enforcement system was desirable. An effective system will be important in securing acceptance of the Government's proposals as a whole. You may wish to invite the Home Secretary to submit his proposals on sanctions to the Group at a later date for clearance through correspondence.

Highest bid wins

11. The Home Secretary proposes that while the ITC should normally accept the highest bid, it should have discretion, as recommended by the Peacock Commission, to select a bid lower than the highest for exceptional reasons which the Commission would be required to make public. The Home Secretary envisages that this discretion would be used only on very rare occasions, eg where the finance underpinning the bid was unsound or came from a politically undesirable source, or where the programmes on offer by the lower bidder were so clearly superior to that of the leading bidder, that it would be perverse to ignore that fact. The proposal has obvious advantages in meeting the criticism that the highest bid wins formula is too inflexible. But the latter example given by the Home Secretary underlines in particular the width and subjective nature of the discretion which is proposed. It may be difficult to frame the discretion satisfactorily in legislation. You may wish to explore with the Home Secretary whether the proposal does not again involve giving too wide a discretion to the ITC.

12. The Home Secretary's proposal also envisages that the ITC would make public its reasons for exceptionally selecting a lower bid. At its last meeting, the Group expressed concern at the proposal that the ITC should give its reasons for accepting

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successful bids, on the basis that this would open the Commission's decisions to judicial review. Presumably, similar considerations would apply in the even more fraught circumstances of the ITC rejecting the highest bidder. You may wish to explore with the Home Secretary whether this aspect of his proposals is not in conflict with the inclination expressed by the Group at its previous meeting.

The levy

13. The White Paper envisaged that each licensee would be required, in addition to his financial tender, to pay levy in the form of a percentage of advertising revenue at progressive rates, the initial level of which would be prescribed when licences were advertised. The Home Secretary suggests that, since the tender which he now proposes would consist of a proportion of NAR or subscription income, there would be no need for a levy in addition. This seems right but you will wish to establish whether the Chancellor of the Exchequer is content.

Tendering process

14. The Home Secretary suggests that the details of the tendering process are best left to the ITC to decide. Some of these details will be of considerable importance, but it is probably inevitable that they be left to the ITC's discretion if the proposed Bill is not to become too detailed and unwieldy. You will wish to establish whether the Group is content, or whether it feels that there are any principles which it would wish to see enshrined in legislation.

15. One issue on which the Home Secretary proposes that guidance should be given to the ITC is the number of Channel 3 licences for which an individual company can apply. The IBA proposed that this should be restricted to one licence application per company, but the Home Secretary recommends that a company should be

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permitted to bid for any number of Channel 3 licences, and to state its preference for each franchise when doing so. At its meeting on 24 April the Group decided that a company should be allowed to own one large and one small franchise, or two small franchises, but not two large franchises; and that a company should be precluded from owning the franchises for two contiguous areas. The Home Secretary suggests that if an applicant was successful in bidding for more than two licences, the ITC should decide which licences to award him on the basis of the combination of bids that gives the highest return (to the Exchequer) for the franchises taken together. You may wish to establish that the Chancellor of the Exchequer is content that the ITC would be satisfactorily placed to form such a judgement.

Moratorium on takeovers

16. At its meeting on 24 April the Group agreed that there should be no moratorium on takeovers merely to allow the new commercial system to settle down. Mr Russell suggested at the meeting on 11 May, however, that there should be a moratorium of one year after the award of franchises in order to deter speculative tendering. The Home Secretary proposes to accept Mr Russell's approach. You will wish to ensure that the Group is content to reverse its earlier decision in this way.

Licence period and renewal

17. The White Paper suggested that the licence period should be for 10 years and that the ITC should have discretion to award a fresh licence without a further tendering process but at a new price which it would determine. The Home Secretary recognises that there is some logical inconsistency between this renewal process and the initial tender arrangements but recommends that, since the White Paper proposals on this score have been generally accepted, they should not be altered. You will want to establish



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whether the Group is content to confirm this aspect of the White Paper proposals.

Networking

18. The Home Secretary notes that commentators on the White Paper have suggested that, if the ITC had power to require networking arrangements on Channel 3, higher quality programmes would result. The certainty that licensees would have access to a networking arrangement might also enhance the value of franchises at the tender stage. The Home Secretary concludes, however, that, as envisaged in the White Paper, the development of networking arrangements should be left to emerge naturally from the new arrangements. This would be firmly in line with the Government's deregulatory approach.

Subtitling for the deaf

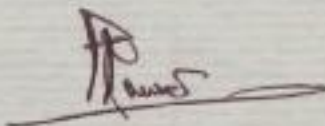
19. The Home Secretary takes the opportunity of his paper to seek the Group's agreement that there should be a power to require Channel 3 and Channel 5 licensees to continue to provide a teletext subtitling facility for the deaf. You will wish to establish that the Group is content for such a requirement to be included and that its inclusion will not make more difficult the task of resisting proposals for the inclusion in legislation of other particular programme requirements.

HANDLING

20. You may wish to invite the HOME SECRETARY briefly to introduce his paper and then to work through the proposals in the order set out in this brief. The CHANCELLOR OF THE EXCHEQUER and the SECRETARY OF STATE FOR TRADE AND INDUSTRY will have particular points to make on the Home Secretary's proposals on the form of bids and on the levy. Other Ministers, including the FOREIGN SECRETARY, will be particularly concerned about the

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balance which the Home Secretary seeks to strike between the achievement of quality and the opening up of the arrangements to market disciplines. The EDUCATION SECRETARY has indicated his interest in the implications of the proposals for the proposed requirement that Channel 3 companies continue to provide schools programmes. You may wish at the conclusion of the discussion to check that the CHIEF WHIP is content that the overall balance of the decisions which emerge will be acceptable to the Government's supporters in the House.

A handwritten signature in dark ink, appearing to read 'P J C Mawer', with a long horizontal flourish extending to the right.

P J C MAWER

1 June 1989

~~in exchange would have the opportunity to own shares in it. However, whereas at present all ITN shares are held by ITV contractors, under the new provision some shares would be held externally, by bodies without licences on any television channel. Eventually a majority of shares should be held by non-licensees. The detailed arrangements need further study and consultation, but one approach would be as follows. Initially the Channel 3 licensees might hold the majority, or all, of the shares in the news organisation or organisations. The supply of news to Channel 3 would be governed by a service contract which would, unlike the funding for ITN at present, include a profit element to establish the organisation's commercial value. The ITC would be under a duty, at the right time, to ensure that some, perhaps the majority, of shares were sold to non-licensees. No external investor should hold more than 5 per cent of the shares.~~

6.14 Although not having general control of scheduling, the ITC would have powers to ensure that the news service provided by one or more of the news organisations was shown by Channel 3 stations and, as already indicated, that this should include exposure during peak viewing times. As a necessary safeguard, the ITC would have power to withdraw, after adequate notice, its approval of a news organisation established under the arrangements discussed in the previous paragraph which failed to deliver an acceptable service.

*Other responsibilities of licensees*

6.15 The Government envisages that the Channel 3 programme service should be provided with the same universal coverage as at present, but by the companies rather than being provided, as now, by a broadcasting authority. It follows from this that, subject to what is said above about news coverage, the ITC would not have the IBA's responsibility for detailed approval of scheduling or prior clearance of particular programmes. It should be for the operators to decide what to show and when to show it, subject to the general law and the regulatory requirements described in paragraphs 6.10-6.11. It would also be their responsibility to decide on commercial grounds on any arrangements for networking or syndicating programmes among themselves. This means that much of the detailed supervisory work now done by the IBA would come to an end. The operators will also be free to decide their own mix between advertising and subscription.

*Division of Channel 3 licences*

6.16 In order to create more opportunities for entry to the broadcasting market and competition within it the Government proposes that there should be a separate night hours licence, or licences, for Channel 3. It will be for the ITC to determine the exact boundaries, and to decide on possible additional licences covering other times of day—eg for a breakfast time service. The ITC will also be responsible for the geographical division of Channel 3 into regions, whose particular interests licensees will need to cater for, as envisaged in paragraph 6.11 above. The Government envisages that the extent to which the regional and any schools programming obligations apply to any night time or breakfast time licensees would be determined by the ITC taking account of the basis on which ~~the Channel 3 licences were being divided up.~~

*Allocation of licences*

6.17 The present arrangements for awarding ITV contracts have been conscientiously applied, and in some respects reformed, by the IBA. But they have been widely criticised as arbitrary and opaque. The Home Affairs Committee saw advantage in introducing a more commercial element into the allocation of ITV franchises, and recommended that a suitably regulated tendering process should be introduced (paragraph 134). The Government agrees and proposes that the ITC should operate a two-stage procedure. In the first stage applicants for licences would have to pass a quality threshold. They would have to satisfy the ITC that they would meet the programming requirements set out in paragraphs 6.10 and 6.11 above—in other words that they were qualified to take on a Channel 3 licence. They would also have to meet whatever ownership tests are eventually imposed: this subject is discussed in paragraphs 6.48-6.53. All applicants passing this threshold would go on to the second stage in which they would

offer financial tenders for the licence. The ITC would be required to select the applicant for each licence who had submitted the highest tender. Both stages of the procedure will be open to public scrutiny. This two stage procedure will provide a more objective method of licence allocation which will be fairer to all applicants, and will at the same time secure a proper return for the taxpayer for the use of a public resource. In order to ensure that the tender procedure meets the latter objective and that there is a fair sharing of risks between Channel 3 operators the Government envisages that each licensee will also be required to pay levy in the form of a percentage of advertising revenue at progressive rates, the initial level of which will be prescribed when licences are advertised. This will replace the present ITV levy.

*Takeovers* 6.18 ~~The ITC will not have or need the IBA's present powers to block takeovers, which reflect the discretionary nature of the present contract allocation process. But those buying into companies will have to satisfy the proposed programming tests and the ownership rules discussed in paragraphs 6.48-6.53 below. Subject to these tests and rules, takeovers can be a useful way of bringing new ideas and talent into television and re-inforcing pressures for efficiency.~~

*Performance reviews* 6.19 The quality tests set out in paragraphs 6.10 and 6.11, which would be reflected in licence conditions, would not cease to apply when operators had been selected. They would continue throughout the licence period. The ITC would be responsible for monitoring performance and following up complaints by the public. The ITC would undertake formal reviews of the performance of licensees at intervals or as needed. As recommended by Peacock (paragraph 657), the ITC will have power, after a review, to issue a formal warning (a yellow card) and to remove a licensee (a red card) one year later if performance remains unsatisfactory—for example in failing to deliver a sufficiently diverse programme service. The Government is considering whether, as an additional sanction, the ITC should be able to impose financial penalties. This enforcement machinery will be designed for effective use if necessary.

*Licence terms* 6.20 The Government has carefully considered the arguments for and against fixed term or unlimited licences for UHF independent television services. It could be argued that the new flexibility as regards takeovers (paragraph 6.18 above) will ensure against the inefficiency or rigidity which an indefinite licence might otherwise produce, and that an indefinite licence would avoid the risk of failing interest or involvement towards the end of a fixed term. Against this, under an entirely open-ended system competitive tender would benefit the Exchequer only once. It might also be difficult for the ITC to secure agreement to any necessary future structural changes either in licence conditions or in the system more widely, such as changes to the geographical framework of Channel 3. Taking account of these considerations, the Government proposes that the licences for UHF independent television services should be for a fixed term of ten years (as recommended in paragraph 658 of the Peacock Report), but that it should be open to licensees, during the final years (perhaps the last four) of their licences, to apply for licence renewal for further 10 year terms. The licensee would have to satisfy the ITC that he was continuing to meet his programming obligations and otherwise sustaining a satisfactory performance, and the ITC would retain the ability to make structural changes in the system. The licensee would also have to pay a licence renewal fee to the ITC, which would be calculated on a formula based on the licensee's advertising, subscription and sponsorship revenue. Where the ITC was not satisfied that the licence should be renewed it would be open to it to proceed to competitive tender on the basis proposed in paragraph 6.17, or else to invite the licensee to re-apply for renewal after a further period during the currency of the existing licence.

(ii) *Channels 5 and 6* 6.21 The Government proposes that, subject to what is said below, the same regulatory regime (although without the regional programming obligations) and the same licence allocation and review arrangements should apply equally to Channel 5. ~~The Government proposes that Channel 5 should come on stream~~

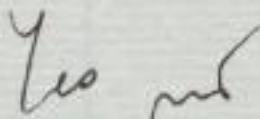
PRIME MINISTER

BROADCASTING WHITE PAPER

You agreed that the "Half Members" on your Broadcasting Committee, Misc 128, should receive papers but should only attend when they have a strong departmental interest in doing so. The next meeting on 6 June is to consider procedures for allocating licences for Channel 3 and the future structure and funding of Channel 4. Both the Foreign Secretary and Mr. Baker have asked to attend the 6 June meeting. Mr. Baker on the basis that the allocation of licences and funding will affect the requirement to provide programmes for schools and educational programming; the Foreign Secretary argued that the quality of British broadcasting, which the 6 June proposals will bear on, has a strong foreign affairs interest.

Content for Mr. Baker and the Foreign Secretary to attend?

  
DM



1 June, 1989.



Foreign and Commonwealth Office

London SW1A 2AH

30 May 1989

*John Paul*

Broadcasting White Paper

As you know the Foreign Secretary is not a member of MISC 128, but has attended in the past when the agenda has included matters with implications for foreign affairs. He would like to attend the meeting on 6 June which we have been told will discuss a Home Office paper on tendering procedures for Channels 3 and 5, and the future structure of Channel 4.

One of the areas that the meeting will clearly discuss will be maintaining the quality of British broadcasting. This is the Foreign Secretary's key concern. Our news and current affairs programming has a high reputation around the world. British broadcasting causes its fair share of problems for our dealings with foreign countries, but overall it is an asset to us. Our entertainment programmes are a profitable and influential export. There is therefore a strong foreign affairs interest in ensuring that the quality of our broadcasting can be maintained and improved under the new proposals.

I am copying this letter to Trevor Woolley (Cabinet Office).

*Townsend*  
*R N Peirce*

(R N Peirce)  
Private Secretary

Paul Gray Esq  
10 Downing Street



Paul Gray Esq  
Private Secretary  
10 Downing Street  
London SW1A 2AA

ELIZABETH HOUSE  
YORK ROAD  
LONDON SE1 7PH  
01-934 9000

30 MAY 1989

*Dear Paul*

MISC 128. BROADCASTING

I understand that at the next meeting of MISC 128 on 6 June there will be two papers - one dealing with the allocation of licenses for Channel 3 and the other presenting further options for the funding of Channel 4 following the rejection by MISC 128 of the Home Secretary's earlier proposals.

Mr Baker has a substantial interest in both these papers. It has already been agreed that Channel 3 companies will be required to provide programmes for schools; he is likely to want to contribute to discussion on how the proposed arrangements for the allocation of licenses will bear on this requirement.

Mr Baker is also concerned that broader educational programming should be maintained on Channel 4. The way in which this Channel is funded bears directly on this issue.

Mr Baker has already indicated his interest in these topics through his letter of 17 April to the Home Secretary, copied to the Prime Minister and members of MISC 128. I would be grateful if arrangements could be made for an invitation to be issued for him to attend on 6 June.

*Yours,*  
*Tom*  
T B JEFFERY  
Private Secretary



10 DOWNING STREET

LONDON SW1A 2AA

*From the Private Secretary*

23 May 1989

*Dear Chris,*

BBC BUSINESS AND FINANCIAL INFORMATION SERVICES

Thank you for your letter of 19 May which the Prime Minister has seen. She welcomes the proposed extension of BBC subscription services, on the clear understanding that - as you indicated - the BBC should not enter into commitments that would make it difficult for them to surrender one set of night hours in due course if Ministers finally so decide.

I am copying this letter to the Private Secretaries of MISC 128 and Trevor Woolley (Cabinet Office).

*Yan  
Paul*

PAUL GRAY

Miss Catherine Bannister,  
Home Office.

*2*



*ceff*



HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

19 May 1989

*Prime Minister*  
*I told the Home Office*  
*I thought you would*  
*welcome this extension of*

*Dear*

*Agent* BBC *subscriptions on the clear understanding*  
*that X below was observed.*

*Agreed* *not* *ALG*

BBC BUSINESS AND FINANCIAL INFORMATION SERVICES

*2/5*

We had a word about the request which the BBC have made to the Home Secretary for approval to provide a daily business and financial information service for downloading during the night hours on to video. As I mentioned, Mr Renton intends to use the opportunity of the debate initiated by Mr Roger Gale on 19 May to announce that the service was to be allowed to go ahead. You suggested that it might be helpful if I were to write setting out a little of the background.

Under the Royal Charter the BBC requires the Home Secretary's approval to provide any service on a subscription basis. Last year he gave approval for a medical information service for a two year experimental period (which expires in late 1990). This approval was ring-fenced, and it was made clear that the BBC would have to seek approval afresh for any other service which they wished to transmit. The main reason why this approval was so circumscribed is that at that time the Government had not announced any decisions about the BBC night hours, in general.

Now that it has been agreed that the BBC should retain one set of night hours, the Home Secretary saw no reason not to approve this second service. We are however reminding the BBC that they should not enter into any commitments which would make it difficult to surrender one set of night hours in due course if Ministers finally so decide. We would not want the BBC to give up one set of night hours, only to find that contractual commitments entered into in respect of the other set made it difficult for them to transmit the occasional night hours programmes which flow from their public service obligations.

Like the medical service, the new business and financial service will carry some advertising to supplement the subscription income. The advertising will be sold by ~~Business~~

*Broadcast*

/Communications plc,

Paul Grey, Esq  
Private Secretary, No 10

Communications plc, the BBC's commercial partner in the venture. The BBC will not themselves receive advertising revenue direct. We are pursuing with the BBC the arrangements that will need to be made to ensure that the content of the advertisements on the service is properly regulated. The Home Secretary's approval to the service is conditional upon his being satisfied that these arrangements are adequate.

The Home Secretary welcomes the initiative of the BBC in proposing this further subscription-based service. He understands that the BBC intend, if these initial services are successful, to introduce other similar services in due course.

I am copying this to the Private Secretaries to other members of MISC 128.

*Yours*

*At Home*

MISS C J BANNISTER

file

BRIAN GRIFFITHS

LORD BUXTON:ITV

As you know there was not time at your bilateral with the Prime Minister this morning to discuss Lord Buxton's letter of 17 May. But as you will see she has briefly looked at it and initialled it. I think you can therefore assure Lord Buxton that you have done all he asked of you - "show this to the Prime Minister" - and tell him that she has duly noted his views. As I mentioned to you when we spoke about this I see remarkably little merit in Lord Buxton's arguments!

PAUL GRAY  
19 MAY 1989


BROOK HOUSE · PARK LANE

LONDON W1Y 4DX

Telephone: 01-406 2188

from LORD BUXTON

Professor Brian Griffiths  
10 Downing Street  
London SW1

 17th May 1989

*Brian Griffiths*

Following our discussion yesterday I attach a note of the points made about working shareholders in ITV, and the difficulty that could arise in Parliament over "legalised theft".

I am aware from my personal contacts that some Ministers seem to be unclear about the modern structure of the ITV industry and cling to obsolete notions which are dangerously misleading.

As a loyal back-bencher I dread being put in the undeserved position of having to move an amendment against the highest bid factor. I have discussed the issue at length with Willie and assessed the prospects carefully, and I feel fairly certain that the highest bid factor would be defeated, because of its unfairness, injustice and betrayal of Conservative principles.

I would be grateful if you would show this to the Prime Minister, to whom I owe much, as I am still haunted by my failure to be sufficiently persuasive on occasions in the past when I knew I was right (as for instance over HMS Endurance). I feel sure the difficulty can be avoided on this issue.

*Tansin*

*Audrey*

## THE HIGHEST BID FACTOR

1. The franchise affair in ITV has always been comprehended by shareholders and the risk accepted. The risk was related to performance or promise of performance. This provided an incentive and a challenge for shareholders and staffs, who invariably believed that their best endeavours would be rewarded (until the disastrous Government appointment of Bridget Plowden, one academic matched with another, Brian Young, neither of whom understood commerce or the facts of life. It has been an unfortunate error to blame the system, when the real cause was a bad Government appointment).

2. Since those days, the shareholder pattern in ITV has been transformed in that all staffs are now worker shareholders in the large majority of companies, especially in the regions in England, Scotland and Wales.

As Chairman of Anglia, ITN and the ITV industry during thirty years, I took a strong initiative about the introduction of share participation schemes, urging the benefits of conservative policies and the PM's call for popular capitalism.

3. I have had the clear impression before and since the White Paper, that ministers think of ITV contractors solely in terms of big shareholders and moguls. In fact my personal exchanges with them, apart from debates, proved this. They seem uninterested in the fact that the industry now belongs partly to its 20,000 workforce, who now have their personal assets and nest eggs for retirement locked up in their jobs.

4. The goal posts have been moved, and moved substantially by the White Paper. The worker shareholders, encouraged to invest in their own companies by Government, always accepted the risk to their livelihood if they did a poor job; but they felt that by doing a good job, they would have as good a chance as any rivals.

Now (under the White Paper) the risk no longer relates to performance, but to money. The staffs and worker shareholders can have no influence whatever on the outcome of the franchise affair, and overnight they might lose their entire investment.

5. In all other circumstances, whether take-overs or whatever, including nationalisation, it is the cardinal principle that shareholders get paid for their shares, even if the compensation is disappointing. Even Labour

Governments have never confiscated workers' assets.

In this case, a Conservative Government, having encouraged 20,000 citizens to hold shares in their own companies, will grab all the proceeds for the Treasury and may leave working shareholders penniless after years of service.

This is legalised theft, of such a spectacular nature that it is sure to cause deep discomfort in Parliament. The reason why it has not done so yet is because the ministers' campaign that "ITV belongs to greedy moguls who deserve to lose their franchises" has been largely successful and the worker/shareholder factor has been ignored.

Ministers have been pressured and persuaded by advertisers, agencies, and vested interests and on the issue of company structure seem to be living in the past.

6. The only honest and fair step for the Government to take (if it endeavours to force through the highest bid factor) would be to advise the 20,000 citizens in ITV to sell their shares without delay, because if they wait till 1992 they may lose the lot.

This might look strange for a government that encouraged them to take up shares in the first place, but it would be the only course that was honest and fair.

7. It will be argued that ITV share prices are holding up well today after the White Paper. This is because of the City's expectation of take-overs and wheeler-dealer opportunities in the interim.

It will be argued that ITV contractors who lose their franchises will continue in business in diversified roles. Maybe, but probably only after moving, with substantial shedding of staff, etc.

There may be lots of such arguments, but the unalterable fact will remain that ITV working staff might lose their investments overnight and the fruits of their careers will be robbed by the Treasury.

8. The introduction of share participation schemes had a dramatic effect on the ITV industry. The last decade has been almost trouble free, restrictive practices have been dispelled and ITV is now as lean as the rest of industry. The process will continue.

The main contributing factor to the above has been the establishment of a share-owning workforce.

The highest bid factor would overturn and destroy that concept. To be fair and honest, the Government would be

*A to London & the SE.*

obliged to warn staff shareholders to get out and sell their shares while the going is good.

9. However much most of the proposals in the White Paper are welcomed or accepted in Parliament, the highest bid factor will become a serious stumbling block, for the simple reason that it is unfair, unjust, and contrary to everything the Government stands for. When its implications are fully understood it will be seen to be repugnant and to betray Conservative principles.

10. I have concentrated in this note on staff shareholders, but all the points apply just as much to the public who have invested widely in ITV.

In theory, according to the White Paper, hundreds of thousands of shareholders in ITV could be reduced by the highest bid factor to only 15. What sort of Conservative policy is that?

AB

17.5.89

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Handwritten initials and marks in the top right corner, including what appears to be 'PC' and some illegible scribbles.

10 DOWNING STREET  
LONDON SW1A 1AA

*From the Private Secretary*

18 May 1989

*Dear Catherine*

**MISC 128: BROADCASTING OWNERSHIP**

The Prime Minister was grateful for the Home Secretary's further minute of 17 May and is content for him to proceed on the basis now proposed.

I am copying this letter to the Private Secretaries to members of MISC 128 and to Sir Robin Butler.

*Yours,  
P.G.*

PAUL GRAY

Miss Catherine Bannister  
Home Office

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Handwritten mark or signature in the bottom right corner.



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CCPU

Yes  
No



Prime Minister  
Brian Griffiths has no comments  
on this. Contact for Mr. Hurd now  
to proceed with his announcement as  
proposed?

Prime Minister

MISC 128: BROADCASTING OWNERSHIP

Proc 6  
17/5 att/lay

I am grateful for your private secretary's letter of 15 May recording your comments on the draft announcement on ownership that accompanied my minute of 5 May; and for David Young's letter of 11 May.

att/lay  
Proc 6

I am happy to accept the main point which you and David Young raise concerning the need for a restriction on newspaper holdings in DBS. This can be covered in the statement by adding a reference to DBS in the second sentence of the fourth paragraph of the text. That passage would then refer to DBS franchises (along with UHF TV and national radio franchises) which would meet David's point about not, at least initially, restricting the number of DBS channels in which a national newspaper could have a 20% interest, since a DBS franchise can be expected to cover a package of channels.

I can also accept the drafting changes proposed by David Young. The second of these, relating to the reference in the sixth paragraph to the MMC, is however overtaken by the need to review the whole of that paragraph in the light of the consideration we still need to give to the question of a moratorium on takeovers. At the last meeting of MISC 128, George Russell argued in favour of a short moratorium, possibly of one year, on all takeover bids for the new licensees in order to avoid speculative tendering. I see considerable attraction in this proposal, which I hope we can discuss at the meeting of

/the Group

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# CONFIDENTIAL

2.

the Group arranged for 6 June, in the context of the paper on competitive tendering which I will shortly be putting forward. In the meantime we should, I think, simply delete the sixth paragraph of the draft announcement on ownership which is not essential to the main argument.

You have, finally, asked for clarification of the takeover regime that will be in force between the date of the announcement and January 1993 (not 1992), when the new ownership rules come into force. The regime for takeovers during this period will be a matter for the IBA, subject to the provisions of the Broadcasting Act 1981. George Russell indicated to us last week that he had told the chairmen of the ITV companies that he proposed to relax, from the end of this year, the restrictions on takeovers currently maintained by the IBA, in order to sharpen competitive efficiency and help reduce the turbulence which might otherwise arise at the end of the present franchise period. The IBA will, however, be bound to satisfy themselves that the conditions on which the existing franchises were awarded (including the regional character and coverage of the services) continued to be met after any takeover, and there should therefore be no question that the regional system that we wish to see continued post 1993 will have been pre-empted by takeovers of existing companies before that date. There is no need for the ownership statement to go into this issue; and for the reasons explained above it needs also to be silent about the takeover regime after 1993.

If you and other colleagues agree, I propose to make the announcement on ownership on Friday 19 May. Roger Gale has secured a debate that day on a private members motion on

/broadcasting,

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3.

broadcasting, and it would be helpful if Tim Renton, who will be replying to the debate, could refer to our proposals on ownership in that context.

I am copying this minute to MISC 128 colleagues and to Sir Robin Butler.

*Coltraine Bennet*

Approved by the Home Secretary  
and signed in his absence.

17 May 1989

CONFIDENTIAL

Broadcasting

Broadcasting Policy

Pt 8





FCS/89/089

HOME SECRETARY


NBPM

R26

16/5

Privatisation of the Broadcasting Transmission System

1. Thank you for your letter of <sup>flap PT7</sup> 25 April about the Price Waterhouse study on options for privatising the television and radio transmission system.
2. I agree that early publication of the report could be useful in promoting an informed debate about its conclusions and I look forward to our discussion on this subject in June.
3. The principal point of interest in the report to my Department is the potential impact of the proposals on the operation and cost to public funds of the BBC World Service transmission network in Britain and overseas. We shall need to consider carefully the report's recommendation that management, operation and maintenance of the World Service transmission should be contracted out. The report recognises that the World Service operation is separate from the domestic transmission system and recommends that the World Service assets should remain in the public sector.
3. I understand our officials are in touch about some minor points of presentation detail in the report.
4. I am sending copies of this minute to the recipients of yours.

  
 (GEOFFREY HOWE)

Foreign and Commonwealth Office

16 May 1989

CONFIDENTIAL

BROADCASTING: BBC finances PTE



CONFIDENTIAL

File  
Prime



10 DOWNING STREET  
LONDON SW1A 2AA

From the Private Secretary

15 May 1989

cc HO  
NO  
HM  
FR  
BT  
CWO  
NIO  
SO  
CO  
P.U.

*Dear Catherine,*

MISC 128: BROADCASTING OWNERSHIP

The Prime Minister was grateful for the Home Secretary's minute of 5 May. She has also seen the letter of 11 May from the Secretary of State for Trade and Industry.

The Prime Minister is content with the announcement the Home Secretary suggests, subject to two points. First, she agrees with the point raised by the Secretary of State for Trade and Industry concerning the restriction on national newspapers' shareholdings in DBS. Second, she would be grateful for clarification of what takeover regime will be in force between the date of the announcement and January 1992, when she understands that the new ownership rules come into force.

I am copying this letter to the Private Secretaries to members of MISC 128 and Trevor Woolley (Cabinet Office).

*Paul Gray*

PAUL GRAY

Miss Catherine Bannister,  
Home Office.

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*JB*

PRIME MINISTER

## BROADCASTING OWNERSHIP

At the last but one meeting of MISC 128 you invited Douglas Hurd to prepare a revised draft announcement of the conclusions on ownership in the light of the changes agreed to his earlier proposed package.

His minute at Flag A fulfils that remit.

Lord Young's letter at Flag B broadly accepts the proposed statement, subject to:

- some detailed drafting comments;
- a more substantive comment that a similar restriction on national newspapers' shareholdings in non-terrestrial broadcasting (DBS) should be imposed as is proposed for their shareholdings in UHF frequencies.

Brian Griffiths (Flag C) supports Lord Young's proposal on newspaper shareholdings in DBS, and also recommends that you ask Douglas Hurd to clarify the takeover regime that will be in force between the date of the announcement and January 1992 (when the new ownership rules come into force).

Content to agree Douglas Hurd's proposed statement subject to the Lord Young/Brian Griffiths point on DBS and to clarification of the takeover regime between the date of announcement and January 1992?

PRG.

(PAUL GRAY)

12 May 1989

DA2AAY

Yes not



12 May 1989

MISC 128: BROADCASTING OWNERSHIP

The proposed draft announcement by the Home Secretary reflects closely the discussion in a previous meeting on the subject and should be accepted subject to two caveats.

One issue is the restriction on newspaper holdings in non-terrestrial channels, and in particular DBS. The Home Office have made great play of the contrast between DBS and other satellite channels (eg Astra). David Young is quite right to insist that because we treat DBS as more like terrestrial broadcasting, similar ownership rules should apply. This is a fair point though I doubt if it will make much difference in practice.

Another issue, which is not dealt with in his minute is the policy on take-overs which the IBA will pursue between now and the time when the new ownership rules come into force, January 1992. This needs clarification. Hopefully take-overs will be permitted as soon as possible.

Recommendation

Agree to this proposed draft but suggest changes to ownership of DBS and also ask him to clarify the take-over regime which will be in force after the announcement.

*Brian Griffiths*

BRIAN GRIFFITHS

dti

the department for Enterprise

B

CCPT

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The Rt. Hon. Lord Young of Graffham  
Secretary of State for Trade and Industry

The Rt Hon Douglas Hurd CBE MP  
Secretary of State for the  
Home Department  
Home Office  
50 Queen Anne's Gate  
LONDON  
SW1H 9AT

Department of  
Trade and Industry

1-19 Victoria Street  
London SW1H 0ET

Switchboard  
01-215 7877

Telex 8811074/5 DTHQ G  
Fax 01-222 2629

Direct line 215 5422  
Our ref PB3BAW  
Your ref  
Date 11 May 1989



Thank you for copying me your minute of 5 May to the Prime Minister on broadcasting ownership.

Your draft statement seems accurately to reflect the conclusions of the meeting of MISC 128 on 24 April and, as such, I am generally content for it to be issued. As you acknowledge, the statement does not cover all the details of the proposed legislation and I am grateful for your offer to involve my officials where appropriate in the further work that is required. There is, however, one main issue I should like to take up. I also have some more detailed points on the draft text.

Our meeting on 24 April concluded that the need for a restriction on newspaper holdings in non-terrestrial broadcasting should be considered further. Whilst I can understand the wish to give DBS service providers every opportunity to compete fairly with Astra, I think we should be clear that to exclude satellite services from our otherwise strict cross-media ownership rules would be seen as inconsistent. It could, of course, also lead to Mr Maxwell, or any other newspaper proprietor except Mr Murdoch, being able to buy up to five, or more, channels with potentially national coverage. It is, naturally, difficult to predict the future of DBS, but if it is successful then the proposed regime could look particularly one-sided.

I would therefore prefer to see a similar restriction on national newspaper shareholdings in DBS as we are proposing for UHF frequencies. I would propose a limit of a 20% shareholding in any DBS operation but, bearing in mind the



The  
Enterprise  
Initiative

different organisation of DBS channels, I do not think it possible, or even necessary, to restrict at this stage the number of DBS channels in which a national newspaper could have a 20% interest. I would favour, however, ensuring that the Government retained the power to limit the number of DBS channels any one organisation could control or in which any national newspaper could have a significant stake, should the number of such channels proliferate.

The transitional arrangements referred to in the draft statement would need to ensure that the present shareholdings in BSB were not affected by these or any other cross-ownership restrictions for the length of the present BSB franchise.

If you and colleagues agree, I shall ask my officials to liaise with yours to decide the exact text for the statement.

Turning to the detail of your draft statement may I suggest three amendments:

- First, in the fourth paragraph, the words "These limits would be reciprocal" could be read incorrectly. May I suggest "These limits would also apply reciprocally to the holders of such franchises investing in groups controlling national newspapers.";
- Secondly, I should like "and the Monopolies and Mergers Commission" omitted from the end of the sixth paragraph. Mention of the MMC could be read as implying that the ITC will have the power to refer matters to the MMC. In practice, the OFT is the body which the ITC will need to consult on questions of competition and fair trading;
- Finally, in the seventh paragraph, "political authorities" should surely read "political bodies".

Subject to these comments, I am content for you to issue the statement. I am copying this letter to the Prime Minister, other members of MISC 128 and Sir Robin Butler.

*Y. L.*  
*David*

PRIME MINISTER

## MEETING OF MISC 128

Happily, we have retrieved the earlier papers from the Chequers study.

In fact, I think you had not had a chance to do very much reading over the weekend, so I fear there is a daunting pile of paper in the folder.

Membership and Attendance

Following the talk we had earlier in the week, I have made clear that you do not want the Foreign Secretary and Mr. Baker as full members of the Committee.

Unfortunately, a number of other members cannot attend tomorrow's meeting:

- Norman Lamont is deputising for the Chancellor.
- Malcolm Rifkind is tied up in Scotland.
- Jeffery Sterling has laryngitis. He sends his apologies, but has asked me to stress that he strongly agrees with Brian Griffiths' views - see below.

Papers

The papers are:

Flag A (immediately below this note) - a very helpful summary note by the Cabinet Office setting out the remaining issues the group will need to settle in the timetable.

## DIVIDER 1

Flag B - the main paper for the meeting by Douglas Hurd concerning the presentation by George Russell. The plan is for Mr. Russell to attend the first part of the meeting, and

then to withdraw.

Flag C - Cabinet Office brief on that paper. Douglas Hurd is reluctant for the group to have a substantive discussion tomorrow after Mr. Russell leaves; he would prefer to put in a further paper later. But, since we have nearly one and a half hours for the meeting, you may want to use the time available to reach provisional conclusions on the central issue of the competitive tendering arrangements for ITV, so that Douglas Hurd is given a clearly defined remit to carry the issue forward. This brief provides some material you could use for such a discussion.

Flag D - Note by Brian Griffiths on the crucial competitive tendering issue, which you will want to study closely.

Flag E - A further note by Brian, attaching an interesting analysis prepared by Tim Bell on the extent of "quality" (or lack of it) in existing public service broadcasting.

#### DIVIDER 2

Flag F - A further paper by Douglas Hurd on Item 2 of the agenda - the regional and time divisions by which Channels 3 and 5 franchises should be divided (the "map and the clock").

Flag G - Note from Malcolm Rifkind. His main concern is to avoid any changes that would threaten the continued viability of the existing three regional ITV companies in Scotland.

Flag H - Cabinet Office brief on the "map and the clock".

Flag I - Brian Griffiths' brief on the same subject.

#### Handling

I suggest you start by welcoming George Russell, but by making clear that he is attending only for the first part of the meeting to make a presentation and to answer questions; you will then ask him to leave so the group can continue its

discussions. I suggest you aim to complete the presentation in 45 minutes, and certainly not allow it to go on for more than one hour. You might also want to open by emphasising that the group is interested primarily in George Russell's view on the central competitive tendering issue - not in his views on the White Paper at large.

After George Russell leaves, you may want to move on to a substantive discussion on competitive tendering, and give Douglas Hurd a clear remit for the sort of paper he should prepare for a subsequent meeting detailing the way forward. Brian Griffiths' brief at Flag D is particularly relevant.

If possible, you will want to leave some time at the end for discussion on the "map and the clock" papers.

You should aim to close the meeting by 1050, so that you have time for a brief talk with Cecil Parkinson before Cabinet (see a separate meeting folder).

One final point, following the discussion at the last meeting, Douglas Hurd has circulated a further minute setting out revised proposals on broadcasting ownership. I have not included this in the papers; Brian Griffiths is still looking into it, and has not yet prepared advice. If the issue comes up tomorrow, you might say that you hope the issue can be sorted out in correspondence before the next meeting (currently scheduled for 6 June).

*Dk*  
PG *Duty Clerk*

10 May, 1989.

H  
CONFIDENTIAL

PRIME MINISTER

10 May 1989

MISC 128

CHANNELS 3 AND 5: THE MAP OF THE CLOCK

Douglas Hurd seeks endorsement on three major issues:

(a) ITC and Responsibility for the Channel 3 Regional Map

The ITV map can be drawn on the basis of either political or commercial considerations. The major political consideration is not to preserve the existing 15 regions but to ensure that the major regions of the country (SE, Midlands, NW, NE, SW, Scotland, Wales and NI) all have adequate access to regional broadcasting.

Commercial considerations however are also important. No purpose would be served if the existing 15 regions were enshrined in law, and then a few years some of them prove commercially unviable.

Recommendation

The ITC should be given discretion to permit changes to the map if in their judgement and because of commercial considerations, viewers in certain regions would be better served through mergers of weak companies with strong ones.

(b) Night Hours and Breakfast Time

Night hours are a valuable resource and companies will pay for their use. By comparison with prime time and

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day time, they are clearly much less valuable. But if the night hours are auctioned separately, it will introduce more enterprise and innovation into broadcasting. Breakfast time is already a profitable franchise and there is no particular reason to strengthen it.

## Recommendation

The case for linking night hours to breakfast time is not strong. It will not be possible to create a third force this way, but it will be possible to have more smaller, newer companies who might as a result gain experience and strength.

## Channel 5: the Clock

The great attraction of Channel 5 is that it is a possible third force, or with C4 separated from C3, a fourth force in broadcasting. Yet it covers only 70% of the country and will take time to develop.

Over the period of the next franchise, it seems doubtful if anything will be gained by dividing it up in any way - either by night/day hours or by week/week-end. If we wish to see it as a potential third force, it is best not to break it up.

The argument here is different from that for Channel 3. In C3 we already have powerful ITV companies and by separating the night hours we can offer scope to small new ones. But if the prime attraction of C5 is as a third force, then we should not allow this route to produce 3 relatively weak companies.

BG

BRIAN GRIFFITHS



10 May 1989

BRITISH BROADCASTING: DIVERSITY, QUALITY AND  
PUBLIC SERVICE BROADCASTING

I enclose an analysis by Tim Bell of his breakdown of existing programmes on BBC1, BBC 2, ITV and C4 (a) during peak hours and (b) during the whole day, for a random week 6 - 12 May this year.

It is an interesting insight into the meaning of quality, diversity and public service.

BBC regard public service as

- in peak time (5.30 - 11.00 pm)
  - 1/2 hour of Arts
  - 4 hours 40 minutes of Soaps
  - 1 hour 20 minutes of Game Shows
  - 8 hours 35 minutes of Sport
  - 10 hours 30 minutes of Films
  - Nil Educational
  - 7 hours 50 minutes of Comedy
  
- in total throughout the week
  - 1 hour - Arts
  - 12 hours 40 minutes - Soaps
  - 26 hours - Sport.

ITV's interpretation of their public service remit is:

- in peak time (5.30 - 11.00 pm)
  - 1 hour - Arts
  - 3 hours 55 minutes - Soaps

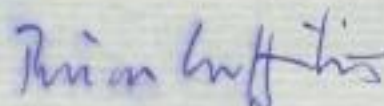
5 hours 15 minutes - Game Shows  
11 hours - Films  
1/2 hour - Education  
8 hours 15 minutes - Comedy.

- in total throughout the week
  - 2 hours 15 minutes - Arts
  - 15 hours 45 minutes - Soaps
  - 12 hours 25 minutes - Game Shows
  - 13 hours 40 minutes - Sport.

CONCLUSION

"Public Service broadcasting" would appear to be whatever BBC and ITV executives decide it should be, but it patently bears little resemblance to Lord Reith's high ideals.

The suggestion that de-regulation will lead to a slump in quality becomes more and more difficult to sustain.



BRIAN GRIFFITHS

Hours of programming on terrestrial television  
in the week 6 - 12 May, 1989 from c. 5.30 pm to c. 11.00 pm

SUMMARY

<b>Arts</b>	BBC 1	:	Nil
	BBC 2	:	30 minutes
	ITV	:	Nil
	C4	:	1 hour
<b>Soaps</b>	BBC 1	:	4 hours 40 minutes
	BBC 2	:	Nil
	ITV	:	2 hours
	C4	:	1 hour 55 minutes
<b>Game Shows</b>	BBC 1	:	1 hour 20 minutes
	BBC 2	:	Nil
	ITV	:	4 hours 45 minutes
	C4	:	30 minutes
<b>Sport</b>	BBC 1	:	1 hour 40 minutes
	BBC 2	:	6 hours 55 minutes
	ITV	:	40 minutes
	C4	:	2 hours 15 minutes
<b>Film</b>	BBC 1	:	1 hour 40 minutes
	BBC 2	:	8 hours 50 minutes
	ITV	:	1 hour 45 minutes
	C4	:	9 hours 35 minutes
<b>Of which, non UK element is</b>	BBC 1	:	1 hour 40 minutes
	BBC 2	:	8 hours 50 minutes
	ITV	:	1 hour 45 minutes
	C4	:	3 hours 45 minutes
<b>Non UK Programming of any category</b>	BBC 1	:	6 hours 5 minutes
	BBC 2	:	10 hours 25 minutes
	ITV	:	2 hours 40 minutes
	C4	:	7 hours 15 minutes

<b>Educational</b>	BBC 1	:	Nil
	BBC 2	:	Nil
	ITV	:	Nil
	C4	:	30 minutes
<b>Business</b>	BBC 1	:	Nil
	BBC 2	:	1 hour 10 minutes
	ITV	:	30 minutes
	C4	:	30 minutes
<b>Comedy</b>	BBC 1	:	3 hours 45 minutes
	BBC 2	:	4 hours 5 minutes
	ITV	:	5 hours 45 minutes
	C4	:	2 hours 30 minutes
<b>Documentary</b>	BBC 1	:	55 minutes
	BBC 2	:	2 hours 35 minutes
	ITV	:	2 hours 15 minutes
	C4	:	2 hour 45 minutes
<b>News</b>	BBC 1	:	8 hours
	BBC 2	:	45 minutes
	ITV	:	5 hours
	C4	:	4 hours 45 minutes
<b>Current Affairs</b>	BBC 1	:	3 hours
	BBC 2	:	5 hours 45 minutes
	ITV	:	3 hours 30 minutes
	C4	:	2 hours 30 minutes

Hours of programming of selected subjects broadcast  
in total during the week 6 - 12 May, 1989

<b>Arts</b>	BBC 1	:	Nil
	BBC 2	:	1 hour
	ITV	:	Nil
	C4	:	2 hours 15 minutes
<b>Soaps</b>	BBC 1	:	12 hours 40 minutes
	BBC 2	:	Nil
	ITV	:	10 hours 30 minutes
	C4	:	5 hours 15 minutes
<b>Game Shows</b>	BBC 1	:	1 hour 5 minutes
	BBC 2	:	Nil
	ITV	:	7 hours 55 minutes
	C4	:	4 hours 30 minutes
<b>Sport</b>	BBC 1	:	12 hours 45 minutes
	BBC 2	:	13 hours 20 minutes
	ITV	:	4 hours 5 minutes
	C4	:	9 hours 35 minutes

**Hours of programming on terrestrial television  
in the week 6 - 12 May, 1989 from c. 5.30 pm to c. 11.00pm**

	<b>BBC 1</b>	<b>BBC 2</b>	<b>ITV</b>	<b>C4</b>
Game Shows	1hr 20m	-	4hr 45m	30m
Sport	1hr 40m	6hr 55m	40m	2hr 15m
Soaps	4hr 40m	-	2hr	1hr 55m
News	8hr	45m	5hr	4hr 45m
Current Affairs	3hr	5hr 45m	3hr 30m	2hr 30m
Comedy	3hr 45m	4hr 5m	5hr 45m	2hr 30m
Documentary	55m	2hr 35m	2hr 15m	2hr 45m
Arts	-	30m	-	1hr
Film	1hr 40m	8hr 50m	1hr 45m	9hr 35m
Non-UK	6hr 5m	10hr 25m	2hr 40m	7hr 15m
Chat	1hr 55m	-	-	-
Business	-	1hr 10m	30m	30m
Education	-	-	-	30m
Childrens	55m	-	55m	-
Religion	35m	-	-	1hr
Gardening	-	30m	-	30m
Wildlife	1hr 55m	1hr 40m	-	-
Youth	1hr	3hr 25m	-	2hr 30m
Drama	2hr 30m	3hr 15m	-	-
Police Drama	45m	-	1hr	-
Travel	-	30m	-	-
Ethnic	-	1hr 5m	-	-
Consumer	45m	30m	-	30m
Light Entertainment	2hr 45m	-	-	-

G      *copy*

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Prime Minister

**MISC.128 IMPLEMENTING THE BROADCASTING WHITE PAPER**

As you know, I am speaking at the Scottish Conservative Conference at Perth on Thursday so I am unable to attend the meeting of MISC.128 then. Later on Thursday, also at the Conference, Tim Renton is replying to a debate on a motion on broadcasting which calls upon the Government "to ensure that regional programming, reflecting the distinctive cultural, educational and religious life of Scotland, is able to be maintained".

✓ As Douglas Hurd has already recorded, the issues for discussion - in particular the franchise map - are very sensitive ones for Scotland and there has been considerable public concern that the effect of our proposals would be to result in a single C3 franchise for the whole of Scotland (there are at present 3).

*with PL*

I therefore very much welcome George Russell's view (recorded at paragraph 9 of paper MISC.128(89)6) that there would be advantage in keeping the present ITV regional map. Scottish responses to the White Paper argued very cogently for preserving in broadcasting terms the cultural and historical map of Scotland as it is currently drawn - the areas served by Grampian and Border see themselves as culturally (and politically) distinct from that served by Scottish Television (central Scotland). I therefore strongly agree with Douglas's suggestion (at paragraph 9b of 89(5)) that we should endorse the idea of preserving the present regional structure. I also agree with the IBA that applicants should be able to apply for only one C3 (or C5) franchise (paragraph 9b of paper 89(6)).

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It is very important that our new regime does enable the smaller franchise holders to compete and provide a service with significant local content. So a general intention to retain the present structure may not be sufficient. The issue for Scotland (and for a number of other smaller franchises) is whether the various commercial pressures will be such as to make the small franchises commercially unattractive or even untenable. One aspect of this is the proposed separation of night hours from the C3 franchises. I am unhappy with the proposition in MISC.128(89)5 (paragraph 7) that night hours be linked with breakfast time. No doubt that could be commercially viable but it would have an adverse effect on the viability of the independent regional companies who will, under our new regime, have very strong commercial incentives to maximise their revenue by making better use of the night hours. The loss of a significant regional dimension to night hours will reduce opportunities for minority broadcasting and a useful low-cost service to local advertisers and replace it by yet another national channel. I see considerable advantage therefore in underpinning the regional companies by allowing them to keep the night hours, rather than replacing them by another London-based channel, with minimal regional inserts.

No doubt we will wish to return to these matters in the context of discussions on competitive tendering and transmission arrangements, but for the moment I would wish to reiterate my concern that we strengthen rather than prejudice the viability of the regional franchises, in relation to the national franchises.

I am copying this minute to other MISC.128 members, Sir Robin Butler and John Wakeham.

*Lynn Shanickand*

M R

Approved by the Secretary of State and  
Signed in his absence

Scottish Office  
10 May 1989



Broadcasting - Policy -



Note recorded by Mr. George  
Russell at Misc 128 meeting on 11 May.

Rec'd  
11/5

### SELECTING LICENSEES - CHANNEL 3

#### Government Proposal

ITC determines map

ITC advertises licences

#### IBA Proposal

ITC determines map and clock

ITC ascertains public's view on  
'quality threshold'

ITC advertises licences including  
'minimum lease price' payable  
in annual amounts'

# SELECTING LICENSEES - CHANNEL 3 (CONTINUED)

## Government Proposal

## IBA Proposal

<p><b>Applications received</b></p> <p><u>Stage I</u></p> <p>Applications assessed on 'quality threshold' and ownership test.</p> <p>Public scrutiny and comment</p>	<p><b>Applications received</b></p> <p>Two 'envelopes' and a bond</p> <p><u>Open dossier</u></p> <ul style="list-style-type: none"> <li>- ownership</li> <li>- Co structure</li> <li>- programmes</li> </ul> <p>'quality threshold'</p> <p><u>Sealed dossier</u></p> <ul style="list-style-type: none"> <li>- confidential parts of business plan</li> <li>- bid expressed as percentage of applicant's annual NAR</li> </ul> <p>Public scrutiny and comment</p> <p>ITC considers both 'envelopes'</p>
<p><u>Stage II</u></p> <p>Applicants passing successfully through Stage I submit financial tender for licence.</p>	

ITC selects licensees "highest bid wins"

Merchant Bankers/panel of independent professional advisers assists the ITC

ITC selects licensees "quality of money"

soundest business plan against defined ITC criteria giving highest value to ITC/Exchequer (in tender and corporate tax over time) and staying power to provide programme service of quality

## SELECTING LICENSEES - CHANNEL 3 (CONTINUED)

### Government Proposal

No need to publish reasons

Lump sum tenders

Levy of % of NAR at progressive rates

Multiple applications possible

No moratorium on takeovers

### IBA Proposal

ITC publishes reasons for selection of successful applicants

Tenders (minimum lease price and bid of % of NAR) spread over 10 years

Provision for negative tenders

No levy

Applications limited to one Channel 3 licence only

2-3 year moratorium on hostile takeovers

Channel 3 and 5 licences

D ✓

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PRIME MINISTER

9 May 1989

MISC 128

ITV LICENCES: COMPETITIVE TENDERING

The White Paper Proposal

This was in two parts:

- (a) The first stage involved applicants passing a quality test, consisting of a) positive programme requirements (ie showing high quality international news, producing and broadcasting regional programmes, and the diversity of proposed schedules) and b) consumer protection requirements.
- (b) In the second stage applicants who had successfully completed the first stage would put forward financial tenders and the ITC would choose the highest bid.

Criticisms Made During the Consultation Process

The White Paper proposal came under heavy criticism during the consultation process, especially from the ITV companies. The four major criticisms were:

- (i) allocating licences to the highest bidder would reduce the diversity and quality of programmes;
- (ii) payments for the licence should not be in a lump-sum form but should be spread over the entire licence period, otherwise small firms would find themselves at a disadvantage;

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- (iii) the quality test (ie programme quality) needed strengthening (ie the ITC should have powers similar to the existing IBA system of regulation);
- (iv) another hurdle, namely a "quality of money" test should be introduced to allow the ITC not to have to allocate the franchise to the highest bidder.

## The IBA Proposal

One particular proposal, which the Home Office found attractive, was that put forward by the IBA. It consists of the following elements:

- (a) the ITC decide what licences it is prepared to offer on Channel 3 and Channel 5;
- (b) payment for the licence would be spread over the duration of the licence period;
- (c) when making a bid the applicant would publish an open dossier with company information as well as programme schedules;
- (d) at the same time the sealed bid would consist of a 5 year business plan, plus a financial tender, consisting of:
  - a fixed sum payable in annual amounts
  - a proportion of net advertising revenue (NAR) calculated annually
  - a prescribed cash bond (which would be returned to all but the successful applicants).

The importance of this proposal is that assessment would be made

in a single and not a two-stage process, and that the ITC would not necessarily award the licence to the highest bidder.

### Criticisms of the IBA Proposal

The suggestion that payments should be over the term of the licence is a useful one.

But the two central features of the proposal - the "quality of money" test, and the strengthening of the quality hurdle raise difficulties.

#### 'Quality of Money' Test

Some assessment of the quality of management backing individual bids is essential to judging alternative proposals. It was because of this that the first hurdle in the White Paper proposal involved the ITC assessing the management competence of applicants and their ability to deliver their proposed schedule of programmes.

But the 'quality of money' test now proposed by the IBA would be far more than this. It would involve a detailed examination of:

- the 'quality' of each applicant's money;
- the 'realism' of the expected increase in net advertising revenue to the applicant;
- the cost of each applicant's operations in relation to its bid for a percentage of NAR;
- the allocation of costs between different programme areas relative to the expected schedule of programmes.

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In short, it would be an attempt by the ITC to second-guess every conceivable commercial judgement made by applicants.

This, however, is precisely what a free market is all about. Any applicant wishing to raise funds from investors would already have had to convince merchant bankers of the strength of their case. Involving merchant bankers as advisers as part of this comprehensive second-guessing by the ITC is a duplication and waste of resources. Not only that, but it assumes an arrogance little short of staggering - is the ITC really better qualified to assess the commercial judgements not only of the Murdochs, Bernsteins, Bransons and Maxwells of this world, but also of their merchant bankers? I very much doubt it.

This is a totally unnecessary government interference with the disciplines of the market itself.

#### **Raising the Quality Hurdle**

The existing quality hurdle in the White Paper already poses some difficulty. In addition to consumer protection requirements (impartial and accurate news, not offending taste and decency, the content of advertisements, etc) the quality hurdle would involve successful applicants

- showing high quality news and current affairs during the main viewing period;
- broadcasting and producing a certain amount of regional programmes;
- providing a diverse selection of programmes, and
- ensuring a minimum of 25% production from independent producers.



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Achieving high quality news can be dealt with by specific restrictions which involve the continuation of ITN or a successor company. The 25% requirement can be easily verified. The amount of regional programming can be guaranteed by specifying a given percentage. But this still leaves the problem of defining quality and diversity.

Diversity was introduced originally to ensure that Channel 3 did not become a pop-music or quiz-show channel. It would be important to avoid defining diversity in the Bill in terms of given minimum percentages for arts, drama, wildlife, films, etc. This would be more restrictive than the present system and a rejection of viewer choice. If the expression in the White Paper regarding diversity were changed to "in addition to providing high quality news and current affairs to provide a diverse selection of programmes" this would almost certainly achieve the objective.

To go further than this and insist on a 'pure' quality test is impossible. Quality in the White Paper is particularly relevant to current affairs and regional programmes. Here we must and should rely on the good sense of the average viewer to register complaints in various ways, should the quality of these programmes fall.

Any attempt to raise the quality hurdle by adding some expressions such as "and to provide high quality diverse programmes" would not only give the ITC enormous discretionary power, but as it would relate to comedy, light entertainment, drama, films etc, would be impossible to assess objectively.

The White Paper positive programme requirements are sufficient to ensure quality in certain key areas and diversity in others. For the rest we must rely on the tastes and interests of viewers who will not be prepared to put up with a simple diet of quiz-

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shows and police films. Certainly the advertisers have no vested interest in seeing this result.

## The Way Forward: A Proposal

We should accept the useful suggestions made during the consultation process and build on the strength of the White Paper proposals. We should also view with scepticism the intense lobbying by existing companies to reduce competition in the Bill.

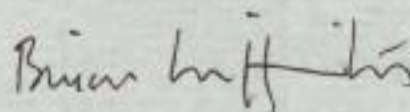
One sensible scheme might therefore be as follows:

- (a) retain the basic structure of the White Paper;
- (b) but modify it as follows:
  - (i) make the licence fee payable over the full period of the licence;
  - (ii) divide the payment into two parts - an initial lump sum and a percentage of NAR;
  - (iii) ensure that diversity refers to programmes other than just news and current affairs.

## Recommendations

Retain the basic structure of the White Paper proposal on competition tendering but modify it as above.

This will ensure adequate checks on applicants. It will also reduce the discretionary power of the ITC. This is of critical importance as the ITC could easily be the back-door way by which the companies limit competition.



BRIAN GRIFFITHS

PA

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PRIME MINISTER

MISC 128 PAPERS

We had a word earlier this afternoon about the whereabouts of the papers you saw over the weekend. They have now been found in the Study at Chequers, and we will be getting them back before Thursday's meeting.

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Rec.

PAUL GRAY

8 May 1989

*CP*PRIME MINISTER

## MISC 128: BROADCASTING OWNERSHIP

At its meeting on 24 April 1989 MISC 128 invited me to circulate revised proposals on ownership taking account of points by the Group in discussing MISC 128(89)2. *attached*

2. I attach a draft announcement of our broad conclusions on ownership in the light of the consultative process on the White Paper. It reflects all the conclusions reached by MISC 128, and in particular makes clear that:

- (a) the ITC and Radio Authority would not be given discretionary powers for dealing with ownership questions;
- (b) national newspaper proprietors would be debarred from holding more than 20% of a UHF TV or national radio franchise;
- (c) we see a strong case for limiting still further any investment by a national newspaper proprietor in more than one franchise of this sort;
- (d) a company or group would not be allowed to hold two large or contiguous regional Channel 3 franchises;
- (e) broadcasting cross-interests would be clearly limited on the same basis as newspaper/broadcasting cross-interests;

/(f)

- (f) the rule would be abolished which has precluded non-EC ownership of cable operators;
- (g) advertising agencies would be precluded from holding commercial television or radio licences;
- (h) the ITC and Radio Authority would not have discretion to block takeovers which satisfied the ownership rules and programming requirements.

3. In addition, the terms of the draft announcement would not

- (i) imply any restriction other than general competition legislation on newspaper holdings in non-terrestrial broadcasting. As the Group recognized, there is a strong case for having a level playing field in this respect between DBS services and other satellite services such as those from Astra;
- (j) apply the proposed disqualification of advertising agencies to record manufacturers, music publishers, record promoters or artists' agents. If the ITC and Radio Authority are not to have a discretion here, a rigid disqualification could hold back desirable and innovative ventures. The programme and advertising content controls proposed in the White and Green Papers should provide some safeguard against any abuse.

4. On takeovers, the draft announcement reflects the Group's conclusion that there should be no moratorium of the sort proposed by George Russell. (In paragraph 6 below I propose that the announcement should not be made until after George Russell's presentation to MISC 128 on 11 May). This disposes of the

/problem of

problem of the ailing company which seeks to protect itself against takeover by acquiring a broadcasting franchise. Mergers which were not precluded by the proposed ownership rules would continue to be subject to existing provisions in fair trading and competition legislation.

5. The White Paper's proposal to continue the restriction on non-EC control of broadcasting licences other than local delivery franchises would not preclude substantial US and Australian investment in British broadcasting which did not amount to control. As regards reciprocity, the main concerns expressed recently about restrictions encountered by British broadcasters seeking to invest abroad have related to France and Spain rather than the USA and Australia. My officials will consider further with those of the Secretary of State for Trade and Industry how these instances, and wider questions of reciprocity of investment opportunity, might best be pursued.

6. If you and colleagues are content with the terms of the draft announcement I hope that a further MISC 128 discussion on ownership will not be necessary. It will be for my Department to work up our broad conclusions into draft legislation, consulting other Departments on the detail as necessary. My preference would be to make an early announcement, bearing in mind the prominence with which arguments about ownership featured in the Parliamentary Debates on the White Paper, and the need to clarify our intentions to those intending to bid for franchises. I propose that we should await George Russell's presentation to MISC 128 on 11 May, but I would like to announce our conclusions as quickly as possible after that.

7. I am copying this minute and enclosure to MISC 128 colleagues and to Sir Robin Butler.

*D. G. → A. W.*

5 May 1989

**DRAFT ARRANGED PQ ON OWNERSHIP**

To ask the Secretary of State for the Home Department, if he will make a statement about the proposals in the broadcasting White Paper on ownership.

DRAFT REPLY

The White Paper made clear our determination that ownership in the independent broadcasting sector should remain widely spread, and that unhealthy concentrations of ownership and excessive cross-media ownership should be prevented. We are grateful to those who responded to the invitation to comment on the scope and formulation of the rules needed to achieve this objective.

The White Paper envisaged (paragraph 6.51) that the same group would be permitted to hold two, but not more than two, regional Channel 3 licences. Many of those commenting thought it would be undesirable if the same group could control two large or contiguous Channel 3 regions. It has also been argued that some flexibility is needed to take account of the ways in which independent terrestrial television might develop.

In the light of these responses we propose to strengthen the rules envisaged in the White Paper in the following way. Power would be taken to prescribe in subordinate legislation limits on the number of Independent Television Commission or Radio Authority licences within each main licence category which any one body or group would be permitted to hold or control. In the case of regional Channel 3 licences the initial limit would be set at two, as envisaged in the White Paper. But these limits would be capable of further restriction by reference to audience share and contiguity of licence area. The Government

does not envisage that the same group should be allowed to own two large franchises or two franchises for contiguous areas.

Paragraph 6.53 of the White Paper proposed clear reciprocal limits on broadcasting and newspaper cross-holdings. Taking account of comments on the White Paper, we propose that no proprietor of a national newspaper should be allowed to have an interest exceeding 20% in any UHF TV (including regional Channel 3) or national radio franchise. We also see a strong case for debarring national newspaper proprietors from having a significant financial interest in more than one such franchise. These limits would be reciprocal. No regional or local newspaper would be allowed to have more than a 20% interest in any regional or local ITC or Radio Authority licensee with whose area it substantially overlapped, and vice versa.

Paragraph 6.53 of the White Paper proposed, following a recommendation by the Home Affairs Committee, that ownership of satellite channels not using UK broadcasting frequencies but receivable in the UK (whether based here or abroad) should be capable of being taken into account by the ITC and the Radio Authority in operating their controls. We propose that no operator of such a service should be permitted to have more than a 20% interest in a DBS, UHF TV (including regional Channel 3) or national radio licensee, and that cross-interests exceeding 20% between DBS, UHF TV and national radio licensees should not be permitted. Similarly, cross-interests exceeding 20% would not be permitted between regional Channel 3, local delivery operator and local radio licensees whose areas substantially overlapped. These limits would be expressed in subordinate legislation and would be capable of variation. We envisage that legislation would also leave open the possibility of limiting other forms of cross-holding.

Paragraph 6.48 of the White Paper envisaged that takeovers would not be restricted provided they satisfied the qualifying criteria, such as the ownership rules and programming requirements. The Government considers that, subject to these



criteria, takeovers can be a useful way of bringing new ideas and talent into broadcasting and of re-inforcing pressures for efficiency. The broadcasting ownership rules would not preclude the operation of existing provisions in fair trading and competition legislation. We envisage that the ITC and Radio Authority would liaise closely with the Office of Fair Trading and the Monopolies and Mergers Commission.

In line with paragraph 6.49 of the White Paper, local authorities and bodies whose objectives are wholly or mainly of a political or religious nature (and also bodies which are affiliated to or controlled by such bodies) would be disqualified from holding any ITC licence. Local authorities and political authorities would similarly be disqualified from holding any Radio Authority licence : as envisaged in paragraph 7.10 of the radio Green Paper, religious bodies would be allowed to have a financial interest in radio stations provided this did not lead to bias or editorialising on religious or controversial matters.

We propose that no ITC or Radio Authority licence may be held or controlled by a non-EC company or individual not ordinarily resident in the EC, with the exception of local delivery licences and any operators licensed under the Cable and Broadcasting Act 1984. In the case of these exceptions, concerns about editorial and cultural influence, which are less applicable to local service delivery, are outweighed by the advantages for investment which the possibility of non-EC control would bring about.

While the Government does not envisage that the ITC or Radio Authority would have a wide discretion in dealing with ownership questions, it does propose that they should be given the enforcement powers needed to police the rules effectively. These would include the ability to include licence conditions requiring licensees to give advance notice of, and seek prior consent for, changes in shareholdings. The ITC and Radio Authority would also be able, for the purposes of enforcing the

ownership rules, to require changes in a company or group as a condition of its being awarded, or retaining, a licence, and to withdraw licences if declarations to them proved false.

Transitional account will be taken, in framing the rules, of the position of shareholders in franchises awarded under existing legislation.

# Broadcasting Policy

pt 8



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PRIME MINISTER

MEETING OF MISC 128: 11 MAY

The next meeting of your Broadcasting Committee, MISC 128, is next Thursday. You may like to glance over the weekend at some of the papers; there is also the membership issue on which I should be grateful for your guidance.

Papers for 11 May Meeting

The papers enclosed are:

- Flag A - A very helpful summary note by Anthony Langdon setting out the issues the Group will need to settle and the timetable.
- Flag B - The main paper by Douglas Hurd for the meeting, concerning the presentation by Mr. George Russell. The plan is for Mr. Russell to attend the first part of the meeting, and then to withdraw.
- Flag C - Cabinet Office brief on that paper. Mr. Hurd seems reluctant for the Group to have a substantive discussion on 11 May after Mr. Russell has withdrawn; he would prefer to put in a further paper later. But this brief provides material you could draw on if you would prefer to use the time available on 11 May to reach provisional conclusions (we have earmarked one and a half hours in total for the meeting).
- Flag D - A further paper by Douglas Hurd on the regional and time divisions by which Channels 3 and 5 franchises should be divided (the "map and the clock").
- Flag E - Cabinet Office brief on the "map and the clock".

I will let you have briefing from Brian Griffiths before the meeting. I also hope on the same time scale to let you have the papers following up discussions at the last meeting on Broadcasting Ownership.

### Membership

The core membership of MISC 128 is the Home Secretary, the Chancellor and Secretaries of State for Trade and Industry and Wales. You may recall that when you discussed the issue with the Home Secretary a few weeks back you decided to add Mr. Rifkind as a full member of the Committee. It was decided that three others - the Foreign Secretary and Messrs. Baker and King - would receive papers but only attend meetings if they expressed a strong wish to do so on a particular occasion.

The position of the three "half members" is causing some difficulty. Mr. Baker turned up unannounced at the last meeting of the Committee, without his office having consulted the Cabinet Office or me in advance. And now the Foreign Secretary, apparently following conversations with the Home Secretary, is pressing to be made a full member of the Group (we have heard nothing, however, from Mr. King).

I should be grateful for advice please on how we should handle the three "half members":

- i - Are you content for any or all of them to attend meetings when they wish - in effect to become de facto members of the Committee?
- ii - Do you wish us to resist their attending except where the agenda includes an item of particular departmental interest to them?

*PCC*  
P. GRAY  
5 MAY 1989

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Note  
Discussed with P.M.  
She said she favoured  
option (ii). I told Anthony  
Langdon (Cabinet Office) and  
asked him to advise Deparments  
accordingly. PCC 9/15

C ccBlhp  
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PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES

PRESENTATION BY THE CHAIRMAN-ELECT OF THE INDEPENDENT  
TELEVISION COMMISSION (MISC 128(89) 6) - *ult/s*

OBJECTIVES AND DECISIONS

1. At the Group's previous meeting the Home Secretary made it clear that, in the light of the response to the White Paper, he saw adequate guarantees of quality as lying at the heart of the prospects for next Session's Broadcasting Bill, although he acknowledged that concern about quality would be exploited by those who simply wish to preserve the status quo.
2. The question of quality arises at various points across broadcasting policy, and in various ways. The perception of the BBC's role, and Channel 4's ability to discharge its distinctive remit are clearly crucial. In relation to the ITC's operations, however, the main points are the scope of any positive broadcasting requirements that are imposed on Channels 3 and 5; and the process of competitive tendering for allocating franchises on these channels. Although these are intellectually distinguishable issues, they have become entwined in consultation on the White Paper, since much of the debate has been about the ITC's ability to satisfy itself on the likelihood that applicants would fulfil whatever positive programming requirements might be imposed by statute. (The White Paper's use of the phrase "quality threshold" in this context may, in

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fact, have helped to confuse the issues.) At the Group's previous meeting you were strongly of the view that the ITC should operate in a very different way from the IBA, and that it should not be given discretionary powers unless this was unavoidable.

3. The second way in which the competitive tender procedures impact on perceptions of quality is in their possible effect in driving some of the existing ITV contractors out of the market. In particular, the bigger lump sum payment that is required at the beginning of the franchise, the more serious is the likely effect on the smaller contractors.

4. Against that background, you will doubtless wish Mr Russell's presentation to concentrate on competitive tendering, and not to stray into other issues (although, as paragraph 9 of the Home Secretary's Memorandum points out, there are a number of topics of less political importance on which the ITC will have a perfectly legitimate interest).

5. The main points on which you may wish to probe Mr Russell's thinking are

(i) the operation of the quality threshold. How will the ITC satisfy itself about an applicant's future fulfilment of any positive programming requirements?

(ii) the IBA's proposal that the ITC should assess applicants' business plans and the quality of their money. Does this idea simply amount to second-guessing the market?

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(iii) the IBA's proposal that the ITC should award the franchise to the applicant whose bid in terms of the percentage of net advertising revenue (NAR) was expected to generate the highest revenue for the Exchequer. Is not this proposal a licence for discretion and subjective judgement?.

6. After Mr Russell has withdrawn from the meeting you may wish the discussion to continue to focus on these three issues. The Home Secretary will wish to bring forward a considered set of proposals in the light of the discussion and you may wish to consider how firm a steer to give him both on these specific competitive tendering issues and on the ITC's more general role and character.

BACKGROUND

7. The White Paper proposed (at paragraph 6.17) a two stage procedure for awarding licences for Channels 3 and 5 (and for Channel 4, if it were decided to privatise that channel). First, applicants would be required to pass a fairly rudimentary quality threshold. This would comprise

(i) consumer protection requirements (eg. that news should be impartial and accurate; and that nothing should be included in programmes which offended against taste and decency).

Plus the following positive programming requirements;

(ii) to show regional programming;

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(iii) to show high quality news and current affairs dealing with national and international matters, and to include news coverage (and possibly also current affairs) in main viewing periods;

(iv) to provide a diverse programme service calculated to appeal to a variety of tastes and interests;

(v) to provide a minimum of 25 per cent of original programming from independent producers;

(vi) to ensure that a proper proportion of programme material is of EC origin.

In addition, the White Paper indicated that the ITC should be required to ensure that there was an adequate provision of schools broadcasting by the independent sector as a whole.

8. The White Paper proposed that applicants which satisfied the quality threshold would put forward financial tenders, which would take the form of a lump sum payable at the outset, with the ITC being required to select the highest bidder. Each licence holder would also be required to pay an annual levy in the form of a percentage of advertising revenue at progressive rates. (This would replace the present levy, which until recently has been based on profits, and is now based on a mix of profits and revenue.)

9. In their response to the White Paper, the IBA argued that there was a risk that the highest bidder might not have the capabilities and resources to provide a viable service and

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proposed that the ITC should accordingly have some discretion in choosing between the various applicants.

10. Under the IBA's proposals, the ITC, after consultation with City advisers, would prescribe a cash bond which all applicants for a particular franchise would be required to pay in advance as a token of serious intent. This would be refundable to all except the successful applicant. Applicants would be required to submit bids expressed not as a lump sum but as a percentage of NAR. There would be no separate levy.

11. We understand that Mr Russell is himself the architect of the IBA's proposals. It is not clear to what extent the Home Secretary supports them.

MAIN ISSUES

12. The White Paper indicated that the Government intended that the BBC should provide the cornerstone of public sector broadcasting and that the Channel 4 remit would be preserved. As to Channels 3 and 5, it said that

"As viewers exercise greater choice there is no longer the same need for quality of service to be prescribed by legislation or regulatory fiat... When there was only one television channel it was natural and right for the BBC to take great care about the balance between different types of programmes on that channel. When there are 10 or more channels within the reach of the average viewer he or she can increasingly sort this out for themselves provide that the choice before them is sufficiently varied." (paragraph 6.9)

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13. Much of the debate on the White Paper has nevertheless centred on the need to preserve quality programming. New television services, including the various satellite channels, will draw viewers away from the present independent television sector and the White Paper's critics argue that this will inevitably apply a squeeze on advertising revenue and create a risk that licence holders will go down market. Many of the respondents to the White Paper have accordingly suggested that further positive programme requirements should be imposed (eg. that licence holders should be required to provide educational, religious or children's programmes); and that the ITC should be given discretion to choose other than the highest bidder.

14. The question of positive programme requirements and the ITC's discretion in the tendering process are, in fact, different questions. Any positive requirement for programmes of a particular character must imply some standard of quality, or else it could be vitiated by a contractor showing programmes that ostensibly were concerned with the prescribed subject area but were no more than rubbish. This implied quality criterion is indeed made explicit in the White Paper requirement for a high quality news service on Channel 3. But the exercise of judgement that the ITC will have to make in policing contractors' performance in fulfilling any positive programme requirements does not necessarily mean that the ITC should be given an extensive discretion to refuse franchises simply on the grounds that it distrusts the promises that applicants make about their future intentions. It is quite possible to envisage a franchise-letting machinery that did not try to make too many guesses about quality, followed by vigorous policing of the franchise-holders' performance in practice.

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15. Your starting point is likely to be that the White Paper model set out at paragraph 12 above is conceptually right, and that it would be wrong to load further quality requirements on to Channels 3 and 5. Even if it should prove necessary to allow something further on that front, however, you will doubtless be most reluctant to concede any increased discretion for the ITC in letting contracts. One of the attractions of the White Paper proposals was that franchises would be awarded on a clear and open basis. You will no doubt be reluctant to return to arrangements under which the ITC would effectively be given the discretion to choose between rival bids, like a reincarnated IBA.

16. In questioning Mr Russell on his proposals, and in the subsequent discussion, you may wish to concentrate on the three main areas discussed below.

Quality threshold

17. The quality threshold described in paragraphs 6.10-6.12 of the White Paper was intended to provide basic consumer safeguards and to provide some minimum positive requirements in terms of regional programming, high quality news and current affairs programmes, diversity, and independent productions. Before the White Paper was finalised, the Group considered whether the quality threshold should also include requirements to show religious, educational etc programmes, but specifically decided that it would not be right to fetter Channels 3 and 5 companies in this way, especially since no such obligations would apply to satellite services. The Home Secretary may say that it will be difficult to hold the line on this when the Bill comes before Parliament, and you may well wish to seek the Business Managers' assessment of this nearer the time. But any requirements which

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cause companies to include programming against their commercial judgement will inevitable reduce their expected profitability and hence their tender bids.

18. The IBA's response to the White Paper states (at paragraph 4.29 which is not attached to the Home Secretary's paper) that they regard the positive programme requirements in the White Paper "as a minimum" and (at paragraph 4.30) that

"We assume that the ITC will consider including requirements for other kinds of programming, for instance children's programming or religious or arts programming in the licences it will advertise for Channels 3 and 5".

This seems totally misconceived. The Group do not intend that the ITC should be able to interpret the diversity requirement in this way, and the legislation should certainly not permit the ITC to lay down conditions of this nature.

19. However, the IBA's comments do expose a genuine dilemma. It seems inevitable that some guidance will need to be given on what is meant, for example, by an adequate supply of regional programming and by a diverse programme service or companies will not know how to shape their bids. The question is whether such guidance should be laid down by Parliament (possibly in the form of secondary legislation) which might seem rather heavy-handed or whether this should be left entirely to the ITC (which might give them an unwelcome amount of discretion). You will wish to probe with Mr Russell how he envisages that the ITC would interpret and apply the quality threshold, and you may wish to return to this issue after Mr Russell has withdrawn from the meeting.

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Quality of an applicant's money

20. The IBA are worried that the highest bidder would not necessarily be able to deliver the services which it had undertaken to provide and they propose that the ITC should accordingly be required to form a judgement of the relative soundness and durability of applicants' financial plans (ie their "quality of money"). They envisage that the ITC would be assisted in this task by merchant bankers and by three independent professional advisers. Notwithstanding the involvement of independent advisers, any assessment by the ITC of an applicant's quality of money is bound to be subjective. The ITC's merchant bankers would in effect be second-guessing the applicants' own financial advisers and the Chancellor of the Exchequer may well feel that this would represent an unwelcome distortion of market disciplines. Any selection process based on this criterion would clearly place a great deal of discretion in the hands of the ITC but you may nevertheless wish to ask Mr Russell whether he believes that such an assessment could be made in an objective manner.

21. The Chancellor may however accept that the ITC should have a much more limited reserve power to disqualify applicants who appeared to have misrepresented the extent of their financial backing.

(iii) The financial tender

22. The IBA propose that successful applicants should be required to forfeit a cash bond, the magnitude of which the ITC would prescribe in advance, and that applicants' bids should be expressed not as a lump sum but as a percentage of NAR. They further propose that the ITC should not necessarily select the

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applicant who had made the highest bid in terms of the percentage of NAR but instead the applicant who in their view would generate the highest revenue for the Exchequer. Again, it would seem difficult for such an assessment to be carried out in an objective manner, and you will wish to probe this with Mr Russell.

23. A possible halfway-house between the White Paper proposals and the IBA's proposals would be to require applicants to offer bids in terms of a percentage of NAR but to oblige the ITC to select the applicant who had put in the highest bid. We understand that Treasury officials think that such an arrangement might be acceptable and, after Mr Russell has left the room, you may wish to ask the Chancellor of the Exchequer for any preliminary views on this.

HANDLING

24. You may wish to open by explaining the arrangements for the meeting. Mr Russell has been invited to attend in order to give a presentation on his approach to the work of the Independent Television Commission. After Mr Russell's opening remarks, the Group will have an opportunity to question him on his proposals. Mr Russell will then be asked to withdraw from the meeting so that the Group can resume their deliberations. In inviting MR RUSSELL to speak, you may wish to say that the Group would find it helpful if he could concentrate in particular on his proposals for the operation of the competitive tender.

25. After Mr Russell has given his presentation, you may wish to ask the HOME SECRETARY if he has anything to add at that stage. You may then wish to raise some of the points identified in the Main Issues section of this brief. Other members of the Group

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will have questions to raise with Mr Russell.

26. After Mr Russell has left the meeting, you may wish to invite the HOME SECRETARY to comment. The CHANCELLOR OF THE EXCHEQUER, in particular, will also have points to make.

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A J LANGDON

5 May 1989

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PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES (MISC 128)

*with 10*  
MEETING ON 11 MAY

At the last meeting, on 24 April, the Group took decisions on the restrictions that should be applied to the ownership of independent broadcasting franchises under the new legislation. There was also an initial discussion on Channel 4, on which the Home Secretary will need to put in a further paper.

2. The remaining issues that the Group will need to settle before the Bill can be drafted are

(i) the arrangements for competitive tendering for franchises;

(ii) the regional and time divisions by which Channel 3 and Channel 5 franchises should be defined (ie the "map and the clock");

(iii) whether the BBC should retain night hours on both of its Channels;

(iv) the timetable and structure for privatising the transmission system.

3. Most of these issues interact with each other and you will probably not wish to reach final decisions on any of them until you and the Group can see the whole package in the round. That will not be possible until the end of June, which is the earliest date for the Group to consider the privatisation of the

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transmission system, on which officials need to do more work in the light of the recent Price Waterhouse report. It is, however, important that decisions should not slip much beyond the end of June, so that instructions to Parliamentary Counsel can be prepared before the Summer Recess, and you may therefore wish to encourage the Group at least to take provisional decisions wherever they can. The following meeting of the Group is arranged for 6 June, which is the earliest practicable date.

4. For the meeting on 11 May the Home Secretary is bringing Mr George Russell to make a presentation of his views, and he has also circulated a short paper on the "map and the clock". The Home Secretary rightly seeks no more than provisional decisions on the "map and the clock" at this stage, and that issue should not prove too difficult. Mr Hurd is also very keen, however, that the Group should not take immediate decisions on anything arising from Mr Russell's presentation - especially on the question of competitive tendering - and that he should put in a further paper. Given the timetable for decisions described above, however, you will presumably wish the meeting to have some substantive discussion of Mr Russell's suggestions after he has withdrawn from the meeting. The main handling issue you will wish to consider, therefore, is how long to allow Mr Russell and how firm a steer to give the Home Secretary in the ensuing discussion.

5. I attach separate briefs for the two items on the agenda.

A.J.L.

A J LANGDON

5 May 1989

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PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES  
CHANNELS 3 AND 5: THE MAP AND THE CLOCK  
(MISC 128(89)5) *with 10*

DECISIONS

The Home Secretary is seeking decisions in principle that:

(i) the Independent Television Commission (ITC) should be responsible for the division of Channel 3 into regions, but that the Government should endorse the IBA's view that there would be advantage in keeping to the present ITV regional structure;

(ii) there would be a strong case for a national licence which embraced Channel 3's night and breakfast hours, rather than for Channel 3's night hours to be licensed separately as the White Paper had proposed; and

(iii) the IBA should be permitted to divide Channel 5 by day of the week as well as time of the day.

2. The Home Secretary accepts that the Group will need to review any decisions in principle which they take at this meeting once decisions have been taken on related matters, including the competitive tender and transmission arrangements. However, he hopes that the Group will be prepared to reach provisional decisions so that work can proceed on the preparation of Instructions to Counsel.

BACKGROUND

3. Under the present law, the IBA are responsible for the division of the ITV system by regions and by time slots. The IBA

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made only minor adjustments to regional boundaries during the last franchise round in 1980, but prior to that they had sometimes made some quite substantial alterations.

4. The White Paper (paragraph 6.16) said that the ITC would be responsible for the geographical division of Channel 3 into regions. It proposed that there should be a separate night hours licence, or licences, for Channel 3, and that the ITC should determine the exact boundaries and should decide on possible additional licences covering other times of the day (eg for a breakfast time service). As to Channel 5, the White Paper said that the Government believed that this should be a national service which should be split into two or more different licences covering different parts of the day and night, with the ITC being responsible for deciding on the boundaries between the time-slots.

MAIN ISSUES

(i) Channel 3 regions

5. The White Paper proposal that the ITC should be responsible for the division of Channel 3 into regions has been generally welcomed. Viewers appear to have a good deal of attachment to their local regional service (a point which Mr Rifkind emphasised in relation to the Scottish ITV services at the Group's previous meeting) and this is clearly a politically sensitive issue.

6. The IBA's response to the White Paper states (at paragraph 4.8) that

"we would see advantage to both viewers and advertisers in keeping the present well-established ITV areas post-1992".

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But they qualify this in the following sentence:

"However, the regional map on Channel 3 in the 1990s would depend to a large extent on decisions taken about night-hours, networking, transmission arrangements, negative tenders and S4C".

So the IBA have certainly not given any firm assurances about the future of the existing ITV regions.

7. The Home Secretary suggests that the Government should itself make clear that it sees advantage in retaining the existing regional structure. The Chancellor of the Exchequer, however, may argue that no such statement should be made until the Group has had an opportunity to review the matter in the light of the decisions they reach on transmission arrangements. The point here is that, at present, the regions with high population densities effectively subsidise the transmission costs of those with low population densities. Cross-subsidies between the regions may need to be abolished once the transmission system is privatised, and the Chancellor may suggest that one possible way of achieving this might be to amalgamate some of the smaller regions into larger regions. This is one of the most sensitive issues for Scotland, in particular.

8. Even if the Group are prepared to take a decision in principle at this meeting that there would be advantage in preserving the existing regions, they may have reservations about leaving decisions about the geographical division of Channel 3 entirely at the discretion of the ITC. If so, there are a number of possible options that the Home Secretary could be asked to explore. One possibility would be for the Act to spell out the

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criteria for regionalisation in a fair degree of detail. Another possibility might be to introduce an arrangement under which the Secretary of State would be required to seek advice from the ITC and then to put forward proposals for approval by Parliament (perhaps under the affirmative resolution procedure). This would guard against the risk of the ITC implementing unattractive arrangements, though one drawback would be that the Government, rather than the ITC could be the focus of criticism from viewers aggrieved about the division of the Channel 3 map.

(ii) Channel 3 night hours

9. A number of independent analysts (as well as ITV interests) have criticised as commercially unrealistic the White Paper proposal that there should be a separate Channel 3 night hours licence. The Home Secretary is concerned that unless the night hours are packaged with some more lucrative part of the day, there may be no serious bids at all for the night hours licence and that these hours might accordingly remain fallow. He accordingly suggests that the night hours should be linked with breakfast time and that these hours should be advertised as a single national licence.

10. Before considering the Home Secretary's proposal, you may wish to seek the Trade and Industry Secretary's views on whether or not a separate night hours licence would be viable. If the Group were not convinced that the White Paper proposal for a separate night hours licence should be discarded, one possible compromise would be to advertise the night hours and breakfast hours as separate licences but enable a single company to hold both franchises if it were to put in the highest bid for each of them.

11. The Trade and Industry Secretary may suggest that the ITC should be given discretion to divide Channel 3 night hours and

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breakfast time into three or four large regions, rather than for these time slots to be allocated on a national basis. While it seems unlikely that night hours programming, in particular, would have any significant regional component, there seems no reason why the legislation should preclude the division of night hours and breakfast time on a super-regional basis.

12. The division of the Channel 3 clock is a much less sensitive issue than the division of the map, and there is therefore a less strong case for suggesting Ministerial or Parliamentary approval. Nevertheless, the Group may feel that it might be prudent to include some such provision to guard against the risk of the ITC reaching perverse decisions.

(iii) Channel 5

13. No-one has seriously questioned the White Paper proposal that Channel 5 (which is expected to be receivable by only around 65 per cent of the population, with most viewers requiring a new or additional aerial) should be licensed on a national basis. The White Paper suggested that there should be two or more licences for Channel 5, divided according to time of day. The Home Secretary is now proposing, as the ITC recommended in their response to the White Paper, that the ITC should also have the option of making a division by day of the week (eg a week-day/weekend split). This seems sensible.

14. If it were decided to impose Ministerial and Parliamentary approval on the ITC's proposals for the Channel 3 clock, then the same arrangements would probably need to apply to Channel 5.

HANDLING

15. You will wish to invite the HOME SECRETARY to introduce his Memorandum. The CHANCELLOR OF THE EXCHEQUER will have comments, in particular, on the arrangements for dividing Channel 3 into

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regions. The WELSH SECRETARY and the SCOTTISH SECRETARY will also have comments on this issue. The TRADE AND INDUSTRY SECRETARY will have general comments, and you may wish to ask in particular for his assessment of the viability of a separate night hours licence on Channel 3.

A.J.L.

5 May 1989

A J LANGDON

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File KK

10 DOWNING STREET  
LONDON SW1A 2AA

*From the Private Secretary*

2 May 1989

*Dear Gareth,*

**THE CHOICE OF FREQUENCIES FOR MVDS**

The Prime Minister has seen your Secretary of State's letter of 24 April to the Home Secretary, and has noted the terms proposed for the Home Secretary's statement on local services.

I am copying this letter to the Private Secretaries to Members of MISC 128 and to Trevor Woolley (Cabinet Office).

*Yours  
Paul*

(PAUL GRAY)

Gareth Jones, Esq.,  
Department of Trade and Industry.

MEM

PART 7 ends:-

Home sec to SS/DTI 27.4.89

PART 8 begins:-

PG to DTI 2.5.89

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