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12 October 1989

Dear Nicholas,

ANCILLARY USE OF BROADCASTING SIGNALS

I am writing to seek your agreement, and that of colleagues, to proposals for a new legislative framework for the ancillary use of spare capacity on broadcasting signals.

There is a certain amount of spare capacity on television and radio signals besides that which is required to convey the visual and sound information which makes up the television or radio service. Under the present law, the IBA is empowered to appoint teletext contractors to use some of the spare capacity on the ITV and Channel 4 signals. This is the basis on which the Oracle teletext service is provided. As you know, Oracle mainly consists of a generally available advertising-financed teletext service; but it also provides a subscription service through its agent, Air Call. Similarly, the BBC provide a free teletext service (Ceefax), and a subscription service (Datacast). The IBA is also empowered to appoint DBS teletext contractors, and has awarded the contract to BSB. As regards radio, the main emerging use of spare capacity on radio signals is RDS, a system which automatically retunes a radio to the strongest available frequency.

The legislative framework for the use of spare capacity on independent broadcasting signals needs to be changed for two reasons. First, spare capacity is a valuable resource, and the method of allocating it should ensure that the public purse receives a proper economic rent for it. Secondly, although teletext is the only permitted use of spare capacity at the moment, several other uses which have emerged. A number of interesting, enterprising proposals for the use of spare capacity have been thwarted by a regulatory structure which has become outdated. A new, more flexible framework is needed, which will allow operators to experiment and find out which uses have most commercial value.

/I therefore

The Rt Hon Nicholas Ridley, MP  
Secretary of State for Trade and Industry

I therefore propose that the ITC should be empowered to allocate by competitive tender spare capacity on the Channel 3, 4 and 5 signals, and also on any future DBS channels. The licence period would be ten years for terrestrial channels, and fifteen years for DBS. It would be for the ITC to decide how to divide up the available spare capacity into different licences (eg by channel, by region or by time). The Channel 3 and 5 licensees would be free to bid for this capacity, as would the privatised transmission operator; but none of them would have an inside track. The licences would not place restrictions on the type of services which could be provided using spare capacity. In practice, some restrictions would flow from the telecommunications duopoly policy; but the intention is that the new framework should not prevent operators moving into new areas in due course if that policy were relaxed. The Radio Authority would similarly be empowered to allocate licences by competitive tender for use of the spare capacity on the three INR channels. In doing so, it would leave the radio licensees with sufficient capacity to provide RDS, which is likely to become an integral part of radio services. I judge that it would not be worth providing for the spare capacity on local radio signals to be separately licensed. Our Green Paper strongly implied that it would be allocated to the radio licensees, thus giving them an additional source of potential income. In addition, I do not think it would be sensible to put the Radio Authority in the position of having to issue a large number of additional licences (possibly several hundred), especially since the commercial attractiveness of spare capacity on signals covering only a limited area is doubtful. The licensing function I am proposing here for the ITC and the Radio Authority would not, of course, cut across DTI's licensing responsibilities under the Wireless Telegraphy Act 1949.

I also propose that some of the spare capacity on BBC television and radio signals should be removed from them and assigned to the ITC and Radio Authority for allocation. Although the BBC use a considerable part of the spare capacity on their television signals for Ceefax and Datacast, there will be some additional capacity available for allocation. This is partly because new techniques are enabling previously unusable capacity to be brought into use. Given our objective of lessening the BBC's reliance upon the licence fee there would be an argument for allowing them to retain this capacity and exploit it commercially. However, there is clearly a risk that, not having had to acquire their spare capacity in a competitive tender, they would be able to compete unfairly with other operators. I therefore propose that the BBC should be allowed to retain the capacity currently used by Ceefax, on condition

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that it is used to provide a free public teletext service; and also that they should be allowed to retain the capacity used by Datacast. I would take powers in the Broadcasting Bill to assign the remaining spare capacity to the ITC for allocation. The position would be reviewed in the run up to the expiry of the Charter in 1996. This proposal would enable the BBC to continue to discharge their public service obligations, and would also ensure that they did not lose an existing source of non-licence fee income. As to radio, I propose to take powers to assign to the Radio Authority spare capacity on the signals of the BBC's network radio services. In doing so I would ensure that they had sufficient capacity to provide RDS. As with independent radio, I see no real point assigning spare capacity on the BBC's local radio services to the Radio Authority for allocation by competitive tender.

It follows from these proposals that the BBC will be required to transmit spare capacity services on behalf of other operators (since the transmission of services on spare capacity cannot be separated from the transmission of the main service). This will therefore imply an exception to the general policy that the BBC should not be allowed to provide transmission facilities for others. The terms on which they transmitted spare capacity services would fall to be regulated by Oftel.

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

Yours,  
Douglas.