CONFIDENTIAL

MEETING RECORD

Subject cc MASTER

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

20 March 1990

Dear Colin,

BROADCASTING BILL - CROSS-OWNERSHIP RESTRICTIONS

The Prime Minister held a meeting earlier today to discuss whether to modify the provisions in the Broadcasting Bill limiting to 20% the interests of satellite services not using United Kingdom frequencies in UK-based television and radio services. Those present were the Home Secretary, the Secretary of State for Trade and Industry, the Chief Whip, Mr Mawer and Mrs Bailey (Cabinet Office) and Professor Griffiths (No 10 Policy Unit). The meeting had before them the Trade and Industry Secretary's letters of 16 January and 7 February, the Home Secretary's letters of 25 January and 8 March, the Chancellor of the Exchequer's letter of 25 January, and the Chief Secretary's minute of 16 March.

The Home Secretary said that schedule 2 of the Broadcasting Bill provided inter alia that no operator of a non-DBS satellite service receivable in the UK would be permitted to have more than a 20% interest in a DBS, UHF TV or national radio licence. These arrangements were in accordance with decisions taken by the Ministerial Group on Broadcasting Services (MISC 128) and announced by his predecessor on 19 May 1989. The announcement had been generally welcomed at the time as meeting the recommendation of the Home Affairs Select Committee, in its report on The Future of Broadcasting, that it was imperative that ownership of extra-territorial services based outside, but receivable in, the UK be taken into account in provisions regarding ownership of UK-based channels.

The matter had been discussed at length by the Standing Committee considering the Broadcasting Bill. Simon Coombs MP had moved an amendment to delete the proposed 20% limit. He had been briefed by W.H. Smith, who, with two Astra channels and a 21% interest in the Yorkshire Television franchise, had existing interests which would not be permitted under the Bill. However, the pressure from the other Conservative members of the Committee was, if anything, for greater restrictions on cross-ownership arrangements. While he was not opposed in principle to some relaxation in the rules, to reopen the issue at this stage would be detrimental to the smooth passage of the Bill. A change in policy would be seized on by the Opposition as a dilution of the Government's proposals, and would provoke disquiet among Government supporters. It would also cause serious handling problems in the House of Lords.

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The Secretary of State for Trade and Industry said that a blanket 20% limit was very strict and likely to prevent much otherwise welcome commercial activity in the broadcasting field. This regulatory approach was inconsistent with the Bill's objective of liberalising the broadcasting industry as far as possible. He had identified a possible means of tackling undue concentration of ownership in the broadcasting industry using the existing MMC framework, similar to the special mergers arrangements for the water industry. This would be coupled with a discretion on the part of the ITC to decide initial bids on criteria consistent with those to be applied by the MMC. The Chancellor of the Exchequer had favoured some relaxation of the existing rules, although he had been opposed to extending the discretion of the ITC. An alternative approach might be to take power to vary the cross-ownership restrictions in the Bill by order. This would allow the rules to be altered in the light of experience, which should ease any immediate Parliamentary handling difficulties.

In discussion, the following main points were made:

a. The Bill's provisions must create the conditions necessary to extend competition in the broadcasting field. To proceed with the blanket 20% limit might risk undermining the Government's objective of maximising competition and hence choice in the broadcasting industry.

b. On the other hand, a relaxation in the cross-ownership rules would inevitably arouse opposition in Parliament. In particular, it would reopen the debate on the right of newspaper proprietors to hold controlling interests in non DBS channels. The Opposition had already pointed to the lack of symmetry between the rules applying to the ownership of domestic broadcasting interests, and those applying to non-UK based media. While it could be argued that the balance between these two groups should be redressed by removing all restrictions, this would be entirely counter-productive in Parliamentary terms.

c. Although they appeared to have accepted the position, W.H. Smith were understandably aggrieved that the Bill would prevent them retaining their controlling interests in two Astra channels and their 21% stake in the Yorkshire television franchise. They viewed the rules as a constraint on the ability of the Company to develop their home market prior to entering the wider European market. However, in practice the Company could, under the Government's proposals, own one large and one small Channel 3 franchise while retaining substantial non-DBS satellite television investments, provided that these did not amount to control. Alternatively, it was open to the company to reduce their shareholding in Yorkshire Television by just 1%, and to expand their involvement in non-DBS broadcasting when the second Astra satellite became available.

d. Any European competitor controlling a non-DBS satellite service receivable in the UK would, under the Government's proposals, be prevented from owning more than 20% of a DBS,

UHF TV or national radio licence. Any relaxation of the cross-ownership restrictions might, however, open the way for European competitor companies with interests in non-DBS channels to acquire significant interests in major UK broadcasting services. While there were no formal cross-ownership restrictions in most European countries, it was most unlikely that British companies would in practice be given similar opportunities to acquire major stakes in European broadcasting services.

The Prime Minister, summing up this part of the discussion, said that, with hindsight, it was perhaps unfortunate that the Government had agreed to the relatively strict arrangements for limiting cross-ownership involving satellite services not using UK frequencies now embodied in Schedule 2 of the Broadcasting Bill. There was a danger that those with the knowledge and resources to stimulate greater competition and choice in domestic broadcasting services would in practice be prevented from doing so. Nevertheless, it was clear that, in terms of the Parliamentary handling of the Bill, a relaxation in the cross-ownership rules at this stage would bring real difficulties. Against that background, it would be best to proceed on the lines envisaged in the Bill as drafted.

On a separate issue, the Prime Minister said that at a recent lunch with the Newspaper Society, concern had been expressed about the practical effect of the proposed restrictions on those with controlling interests in local newspapers to a maximum 20% interest in local broadcasting services where the newspaper circulation area and the area of the broadcasting service overlapped.

In a brief discussion, it was noted that the present wording of schedule 2 part IV paragraph 2(2) applied the cross-ownership restrictions to local newspaper proprietors in any circumstances where the newspaper and the service each served an area which was "to any extent" the same as that served by the other. This was unreasonably restrictive. It should, for example, be possible for a newspaper proprietor to acquire a controlling interest in a local radio station in a case where the overlap of services was not significant. The Prime Minister, summing up the discussion, said that the Home Secretary had indicated that he was looking again at the issue. He should take steps to ensure that the Bill's provisions gave a sufficient degree of flexibility at the local level.

I am sending copies of this letter to Martin Stanley (Department of Trade and Industry), Carys Evans (Chief Secretary's office), Murdo Maclean (Chief Whip's office), and to Sonia Phippard, Philip Mawer and Joan Bailey (Cabinet Office).

(PAUL GRAY)

Colin Walters, Esq.,
Home Office.

DRAFT LETTER TO COLIN WALTERS

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report on The Future of Broadcasting, that it was imperative that ownership of extra-territorial services based outside, but receivable in, the UK be taken into account in provisions regarding ownership of UK-based channels.

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concentration of ownership in the broadcasting industry using the existing MMC framework, similar to the special mergers arrangements for the water industry. This would be coupled with a discretion on the part of the ITC to decide initial bids on criteria consistent with those to be applied by the MMC. The Chancellor of the Exchequer had favoured some relaxation of the existing rules, although he had been opposed to extending the discretion of the ITC. An alternative approach might be to take power to vary the cross-ownership restrictions in the Bill by order. This would allow the rules to be altered in the light of experience, which should ease any immediate Parliamentary handling difficulties.

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b. On the other hand, a relaxation in the cross-ownership rules would inevitably arouse opposition in Parliament. In particular, it would reopen the debate on the right of newspaper proprietors to hold controlling interests in non DBS channels. The Opposition had already pointed to the lack of symmetry between the rules applying to the ownership

of domestic broadcasting interests, and those applying to non-UK based media. While it could be argued that the balance between these two groups should be redressed by removing all restrictions, this would be entirely counter-productive in Parliamentary terms.

c. Although they appeared to have accepted the position, W H Smith were understandably aggrieved that the Bill would prevent them retaining their controlling interests in two Astra channels and their 21% stake in the Yorkshire television franchise. They viewed the rules as a constraint on the ability of the Company to develop their home market prior to entering the wider European market. However, in practice the Company could, under the Government's proposals, own one large and one small Channel 3 franchise while retaining substantial non-DBS satellite television investments, provided that these did not amount to control. Alternatively, it was open to the company to reduce their shareholding in Yorkshire Television by just 1%, and to expand their involvement in non-DBS broadcasting when the second Astra satellite became available.

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on those with controlling interests in local newspapers to a maximum 20% interest in local broadcasting services where the newspaper circulation area and the area of the broadcasting service overlapped.

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