

Impey for Independent Broadcasters' Association Inc., W. D. Baragwanath for Hauraki Enterprises Ltd., J. F. Timmins for Radio I Ltd.

DECISION

Direction—Following a public inquiry into the introduction of FM broadcasting in New Zealand by the Tribunal and a report to the Minister of Broadcasting, dated 31 August 1981, a direction was given by the Minister of Broadcasting, dated 27 October 1981. Subsequently, directions were given to the Tribunal on 14 April 1982 and to the Broadcasting Corporation of New Zealand on 14 April 1982. For ease of reference these directions are attached to this decision.

The Tribunal called for applications for 2 commercial FM warrants for Auckland, for which the provisional coverage objectives were to provide a stereophonic service to most of the areas directly served by television transmissions from Waikarua.

Applications by Hauraki Enterprises Ltd. and Hauraki FM Ltd., formerly Mount (Auckland) 1981 Ltd. (Bro 110A/81, 110/81, 115/81).

These companies made applications, sought and received a waiver which permitted some delay in the filing of programme material, but elected to withdraw their applications when the Tribunal indicated it would not grant an adjournment. Hauraki Enterprises Ltd. wished to remain an objector and was given this status by the Tribunal.

Applications—There were some common features to all applications. Transmitters would be sited at and broadcast from the Waikarua television transmitter facility of the Broadcasting Corporation of New Zealand, provided satisfactory arrangements could be made. There was, therefore, no question of a difference between the applicants as far as coverage area was concerned and it is accepted that both proposed stations should carry the same signal strength.

Stereo Frequency Modulation Ltd. (Stereo FM) proposes to transmit a programme, aimed to meet the needs of those whose lifestyle was typified by most people in the 18–39 years age group. The company proposed an initial album content of its programmes of 60 percent of the music content, of which about 40 percent would be material from older golden classic albums. It was proposed to have an extensive play list.

The company provided programme schedules describing the format, the relationship with commercials and news, weather and other information.

FM Radio Enterprises Ltd. (Enterprises) proposes a largely automated station producing middle of the road music comprising easy listening albums, light classical, country and western, popular classical, popular modern solo and group vocal. Selection was to be based on sales surveys of record companies over the past 10 years. Use would be made of package programmes from overseas. It was also proposed to play concerts of musical groups such as the Auckland Symphonia, brass bands, choral groups, opera societies, instrumental groups and bands.

The company's studios in Jervois Road would be associated with the Stebbing Recording Studios which the Tribunal inspected.

Metropolitan FM Broadcasting Ltd. (Metropolitan) proposes to cater for Auckland's 25–44-year olds. The station was described as being more contemporary than Radio I and would provide a continuous musical image.

The Broadcasting Corporation of New Zealand (BCNZ) propose to operate an FM radio station directed to attracting a target audience of 15–35 with a core of around 20–30 age group. Its programme was to be popular in appeal with selection ranging from contemporary adult top 40 to mainstream rock, with a wide variety of gold material for each day part. It would incorporate many elements of the existing IZM programme but would be broadened to reflect the tastes of a wider target audience and to utilise the full benefits of FM broadcasting. It would feature personalities but it was not intended to duplicate extensive news broadcasts carried by existing Auckland stations. It would, however, carry community information and would in the evening, provide music specials, simulcasting of FM stereo and television and the showcasing of New Zealand and Auckland talent.

Number of Warrants—At the direction of the Minister applications were called for 2 warrants. It was later contended by Hauraki Enterprises Ltd. that there was insufficient revenue in the area to support 2 new stations and it advocated that only 1 should be granted.

The Tribunal has declined to accept that argument for a number of reasons.

The applicants based their applications on there being 2 stations and made their programme submissions in that light. It was clear that many of them expected to be in a situation that would be complementary to that other station as far as programme material was concerned.

As far as the applicants were concerned, they had made their own assessment of the situation and clearly did not expect a highly profitable situation to emerge immediately.

The development of FM broadcasting in Auckland would benefit from the impact of 2 stations starting FM broadcasting together and the grant of 2 warrants was supported by Radio Pacific Ltd. We were satisfied the introduction of FM radio would be inhibited by the grant of only 1 warrant.

The Direction to the BCNZ, dated 14 April 1982, made it clear that the Government accepted as its policy the recommendation of the Tribunal that without IZM's withdrawal from the market, it would not be possible adequately to develop popular FM broadcasting on an economic basis. Thus the IZM position had been taken into account after directing that the Tribunal call for 2 warrants.

It would therefore be remarkable for the Tribunal now to grant only 1 warrant. By Hauraki's reasoning, without IZM's change of status, no warrants ought to have been granted.

The withdrawal of station IZM from full commercial AM broadcasting would release considerable revenue.

The Tribunal was satisfied, on the evidence, that there would be sufficient revenue to support 2 commercial FM stations in addition to the commercial stations, Radio Pacific, Radio I, Radio Hauraki and IZB, although there would be a difficult period for the new entrants.

All parties accepted that the Tribunal was directed to call for 2 warrants and that it had to comply with that direction. It is clearly part of Government policy to have 2 stations. While the Tribunal must have regard to the criteria laid down in section 80 it must equally have regard to Government policy under section 68.

The Tribunal accepted that it had to apply the criteria in section 80 in considering this question. But it had to balance the weight it could give to those economic factors against the existence of Government policy. Nor would the Tribunal be inhibited from refusing to grant 2 warrants if it considered any matters related to the applicants themselves raised doubt as to their ability to perform to the required standard in any of the respects such as programme, financial ability, commercial ability and so on.

The Tribunal considered that there was sufficient justification on normal criteria for the grant of 2 warrants having regard to the general policy of the New Zealand Government that an FM broadcasting service be developed as an integral part of sound-radio broadcasting. (Regulation 15A and paragraph 2 (a) direction, 27 October 1981). The Tribunal was satisfied that on the evidence, the economic effect on other stations did not outweigh the other factors which the Tribunal had to take into account.

Considerations—The Tribunal received detailed schedules to the applications, lengthy evidence and full submissions. We have carefully reviewed them all. We do not consider we need traverse the evidence. We have tried to set out the reasons for our decision, having to weigh a number of factors and to indicate the importance we placed on them.

The Tribunal first considered each of the applications by applying the provisions of section 80 of the Act to those applications. Our conclusions are set out under each paragraph of the section.

The Tribunal then had to make some assessment as to whether it should choose the best 2 applicants in the light of some principle of complementarity in the programme services provided.

We considered that some complementarity was desirable even though it could not and would not be complete.

It was clear to us that there would be an advantage to the listener if both successful applicants did not attempt to cater for an identical audience.

Looking first at the older demographic we considered the Metropolitan application as superior to that of Enterprises for several reasons set out under each heading of section 80.

As Mr Maclaren submitted, this station was the only one targeting the 25–44 age group, had a depth of broadcasting, sales and financial experience and the benefit of Mr McKay's experience.

Of those aiming for the younger audience, Stereo FM and IZM were closer competitors. We came to the conclusion that neither of these stations would satisfy the older age group and so only one of them could succeed. Our conclusion was that, on balance, Stereo FM should be granted the warrant.

In saying this we recognise that there will be a considerable overlap between the Stereo FM audience and Metropolitan. We do not consider this to be undesirable. It will give a number of people a first choice and a second choice of FM programmes. To have Enterprises and either IZM or Stereo FM would have provided no such benefit.

Despite a very capable and comprehensive summing up of his client's case and, indeed, of the whole position by Mr Shale, we are not satisfied that a format still to be developed