

B. H. Slane, Chairman; Lionel R. Sceats, Member; Janet C. Somerville, Member; Murray J. Henshall, Co-opted Member.

Hearing: At Napier, March 1, 2, 3, 4 and 5. At Wellington, March 23.

DECISION

Application—Radio Hawke's Bay Ltd. applied to operate a commercial AM radio broadcasting station to serve the cities of Napier and Hastings, Havelock North, Waipukurau, Waipawa, southern and central Hawke's Bay areas and to Takapau. It was proposed to establish a primary station of 1 kW operating on 1125 kHz to provide a primary coverage of Hastings and Napier with a relay station of 1 kW operating on 1584 kHz at Takapau. The station would broadcast 24 hours a day originating programmes from its own studios, which would be located either in Hastings or Napier. The applicant emphasised the regional nature of the station proposing a "full service" programme using music as an ingredient of programming but with primary emphasis on news, information, current affairs and community involvement.

The applicant set out all proposed programme services in detail. It set out particulars of the news and current affairs programmes to be provided and its community service proposals. The music, it was proposed, would be approximately 50-50 "golden oldies" and current music, varying according to the needs of its audience at different times of the day.

The applicant proposed a format that would avoid a "top-forty sound" and would provide a warm, intimate, human type of presentation without resort to the beautiful music approach. The applicant considered the format would provide a real alternative to the music programmes currently being heard from stations 2ZC Napier and 2ZK Hastings, which it described as predominantly top-forty disco and rock 'n' roll music with a small percentage of easy listening included at times in the format of 2ZC and with occasional oldies not older than the early 70's, in the case of 2ZK.

The application was opposed by the Broadcasting Corporation of New Zealand (BCNZ), the warrant holder for 3 stations, 2ZC, 2ZK and 2YZ. 2YZ is a national programme station. 2ZC (Bay Radio) studios are in Napier and 2ZK's in Hastings. 2ZK (Radio Apple) also doubles as a repeater for the concert programme at night and on Sundays.

Besides the material in the schedules to the application, we heard a considerable volume of evidence, both from the applicant and from the Corporation as well as submissions from other interested persons, and letters of support were submitted by the applicant and the BCNZ. The Tribunal listened to a tape prepared by the applicant to indicate in an abbreviated form, an extract from a half hour of the breakfast session.

The Tribunal considered that it was in a very good position to assess the application and the opposition as a result of a most thorough presentation of evidence and cross-examination. We were also able to assess the weight to be given the evidence, often conflicting, from "expert" witnesses called by both parties.

The Tribunal does not intend to traverse or summarise all the evidence it heard in 6 days of sittings or that which was submitted in writing later by consent.

The Tribunal first considered the evidence under the various headings of section 80, Broadcasting Act 1976. We propose, therefore, to discuss the evidence and our conclusions within the context of that section. For convenience in some instances, the discussion takes place under one heading and the evidence itself may be relevant to several headings.

At the conclusion of that analysis the Tribunal had to decide the weight it would give to the various factors which it must apply when deciding whether or not to grant the application.

The Tribunal concluded that the application should be declined.

Considerations—Section 80 requires that, in considering any application for a warrant, the Tribunal, before determining whether or not to grant the application, shall have regard to the following matters (which we have underlined), so far as they are applicable:

(a) *The extent to which the proposed service is desirable in the public interest.*

The applicant gave evidence of its distinctive "sound".

The applicant (quite properly) emphasised also the full-time nature of the local programming and origination, the self-imposed restriction on advertising and the aim of emphasising the region instead of the Napier and Hastings rivalry. (We discuss some of these points later.)

An emphasis was also placed on the desirability of having a private operator as this was the largest area in which there was no competition for the BCNZ.

That argument has to be treated with some caution. The Act itself does not lay down the merits of competition as such in the considerations which the Tribunal must take into account. However, we have previously noted some of the advantages of competition and the fact that people generally respond favourably to the idea of there being some competition. (We discuss the survey material separately.)

Another commercial service would be offered where only 2 services were available for part of the day and 1 for the rest of the day for the commercial radio listeners of the area.

We did not conclude, despite our assessment of the standard of the executives of the new company as high, that there would be any substantial difference in the overall programme standards between the new station and the BCNZ stations. There is, however, a smartening up effect on the BCNZ arising from the introduction of competition and this would operate not just in the sales area but also in programming and presentation. On balance therefore we would see it as desirable in the public interest to be introducing viable new services to provide radio listeners with as many choices as possible. (Under another heading we consider the viability of existing services.) Indeed, if there has been a philosophy or policy of the Tribunal, that has been it.

Much time was spent on the question of a regional rather than a Napier and/or Hastings approach and the effect that the station could have on reducing rivalry. We found there was some conflict in the evidence as to the rivalry and the consequences of it. We content ourselves with observing that a new entrant has little choice in the light of the existing radio services but to take a regional approach and this the applicant has done. It has also quite properly turned this requirement to its advantage and put it forward as a virtue of the application. We think it is a factor to be taken into account. But we do not think the regional political argument is one on which we should put great importance in this application. It is not for the Tribunal to decide the extent to which a united province is more in the interest of the people of Hawke's Bay than strong competition between Napier and Hastings.

We heard a great deal of evidence about programmes, much of it conflicting. We deal separately with the question of current affairs. So far as music is concerned we are satisfied the music proposed to be played by Radio Hawke's Bay and that which is played by the 2 existing stations (excluding the Concert Programme content of Radio Apple), will not prove to be significantly different. Although there will be formatting and music choice differences which arise from different persons making the selections, we do not believe that the selections will be made from disparate sources. They will have to pitch like against like. We are satisfied that they will have as their targets the same audience. Each would seek a fairly wide demographic and consequently the new station may well be more top forty than it now says it would, and would sound much more like the existing stations. We have accepted the BCNZ evidence as to existing formats and demographic targeting.

We do not find that the application is desirable in the sense that it provides significantly different music choices for listeners, or any great amount of complementary programming. (We note that from the detailed programme proposals at times there will be complementary programming.) It will provide an independent news service and some local current affairs but it is not likely to satisfy a demographic group not provided for at present. It will, commercially, have little choice but to compete head on with the existing stations. The tape supports this view.

From an audience point of view there is a young audience which could well have been served by a new operation, but the applicant has specifically (and possibly for good commercial reasons) eschewed that choice in favour of broadly the same group as the Radio New Zealand stations seek to satisfy.

We must therefore assess the desirability of the proposed service in the public interest as slight. This in no way suggests that the programme services proposed would be of poor quality or badly presented. It is simply an assessment based on the nature and intent of the application in the context of existing services.

(b) *The economic effect which the establishment of the station to which the application relates is likely to have in respect of broadcasting stations already in operation.*

(c) *The effect which the establishment of the station to which the application relates may have on broadcasting services provided by the Corporation in the public interest.*

There was a conflict of evidence on the projected levels of income and the effect of obtaining that income on the BCNZ. Mr Ballantine sought to prove that by an objective