

company in order to make an application which in fact was substantially based on the existing operator having a controlling or substantial interest in the FM station. The intention of the legislation is clear.

However, IBC have taken the proper attitude and we believe that the monopoly aspect will be much less important than Mr Gough or the PSA submit in their submissions.

(j) The hours during which the applicant proposes to broadcast

The service will be a 24-hour one with a relay from Metropolitan FM in the early morning off-peak hours. We can see no objection to this arrangement.

(k) The extent of advertising matter which the applicant proposes to broadcast

(l) The proposed rates and charges to be made in respect of advertising programmes

The applicant proposes a self-imposed limit of 8 minutes and is opposed to a restriction of less than 12 minutes per hour. It says that the self-imposed restriction has worked effectively with the AM operations confining themselves to 12 minutes.

The Tribunal considers however that where a solus FM operation is to be established, it is desirable to limit the commercial content by condition in the warrant to 8 minutes per hour. This is particularly so in view of the submissions made by the Corporation.

During the initial stages the Tribunal considers it is appropriate to limit it to a maximum of 6 minutes an hour. This is a figure which we anticipate will not inhibit reasonable revenue and profitability. That limit would rise to 8 minutes when Radio Waikato ceases operations and thus withdraws from the advertising market.

We believe the rates being offered are low. That has caused considerable concern to competitors. The station may well decide to raise its advertising rates to a higher level having regard to the limited commercial content.

We should say that in the long term the advertising rates will be based on market shares and of course the marketing abilities of the various operators.

(m) Such matters as may be necessary for the purpose of imposing conditions under section 71A of this Act

These have been covered under other headings.

(n) All relevant evidence or representations received by it at the hearing

Radio Bay of Plenty Ltd., holder of the AM warrant 1XX for Whakatane, did not object to the application but raised a number of matters of concern.

The company considered the effective radiated power too high because it said it would extend the signal into its primary service area and would have an effect on the audience of 1XX AM or FM. That could affect the viability of the station.

It was submitted that there was no community of interest between the Waikato and the Bay of Plenty and that it would be serving too many communities and regions.

The company expected to lose some national sales which it said were the difference between profitability and non-profitability for the station.

Radio Bay of Plenty Ltd. said the proposed format was too similar to that of existing stations and that the company would be operating a juke box without any real community service.

It was submitted that the advertising rates appeared to be too low and the establishment of a Tauranga sales office meant the possibility of selling in the Eastern Bay of Plenty.

1XX uses the Pacific network news and there would therefore be a duplication.

The Tribunal was asked to change the direction of the signal, to impose a restriction on the selling of advertising in Central and Eastern Bay of Plenty, to require the applicant to provide an alternative news-service, to improve the community service commitment and to provide a truly alternative format.

As to the economic effect on the station no evidence was produced by the company to support its statements.

We do not believe that the type of community station successfully conducted by Radio Bay of Plenty Ltd. would be seriously effected by this regional programme but we do agree that where it can be well heard it will be listened to.

In the absence of evidence of the effect on the station we are unable to find that there is adequate reason for changing the nature or extent of the coverage proposed.

As far as any FM operation by Radio Bay of Plenty Ltd. is concerned the Tribunal notes that the only application for FM services in the area is from that company and they are for the total duplication of the AM programme from FM transmitters. The effect of the granting of this application will be to provide a new programme service in the area which neither 1XX nor any other applicant has sought to provide.

It may well be that 1XX will consider joining with the present warrant holder in a transmission directed to the audience in the Eastern and Central Bay of Plenty which might carry some local programming and the regional programming from the Te Aroha site. But that is a matter for Radio Bay of Plenty Ltd. We do not see the proposal by Radio Bay of Plenty Ltd. to provide a duplicated programme to its listeners in its service area on FM as providing a ground for criticism that this applicant's programming is too similar.

We consider that there will be a sufficient difference in format from the existing stations to provide a contrast to the AM programming. We do not expect that an FM station will or should make any attempt to provide the same community service content as an AM station. The submission in that respect fails to understand the essential difference that has already occurred in FM broadcasting here and abroad. In this case one of the aspects which will make the station less competitive with local AM stations is that it will be operating over a wide region and cannot provide a close local community service. Nor is it compatible with the music objectives of the station to load it with that sort of information role.

We see no point in preventing the available signal reaching those fortunate listeners in some parts of the Bay of Plenty beyond Tauranga who might welcome the opportunity of receiving this FM programme.

The question of advertising rates is dealt with elsewhere.

The prime purpose of the FM station is not to provide a news and information service and we see no significant disadvantage in the application because it is proposed to carry a network news service from Radio Pacific which is the same service as is carried by 1XX.

There is no justification, in the absence of any evidence from Radio Bay of Plenty Ltd., for the imposition of a restriction on the selling of advertising in the Central and Eastern Bay of Plenty area. We expect it would be more likely to be an incidental service from the station having regard to the small numbers of listeners in the area who would be reached from this regional station. We would be surprised if the rates proved to be competitive with 1XX but again lack any evidence from that station to support its submissions.

(o) Such other matters as may be prescribed in regulations in that behalf

The Tribunal is required to have regard to Regulation 15A, Broadcasting Regulations 1977 which reads:

"15A. (1) In considering any application for a sound radio warrant in respect of an AM broadcasting station or a FM broadcasting station, the Tribunal, before determining whether or not to grant the application, shall have regard to the policy of the Government under which a frequency modulation (FM) broadcasting service is to be developed as an integral part of sound-radio broadcasting in New Zealand."

(2) Nothing in this regulation limits the provisions of paragraphs (a) to (n) of section 80 of the Act."

By direction dated 27 October 1981 the Minister of Broadcasting notified the Broadcasting Tribunal that after considering its report on the development of frequency modulation broadcasting in New Zealand, it was a part of the general policy of the Government in relation to broadcasting that a FM broadcasting service be developed as an integral part of sound-radio broadcasting in New Zealand and that it be introduced in New Zealand without delay.

In pursuance of that policy the Tribunal was directed to call progressively for applications for sound-radio warrants in respect of commercial FM broadcasting stations to be established in areas outside Auckland.

As well as considering each of the criteria under section 80, including section 80 (o), we are required by section 68 to have regard to the general policy of the Government in relation to broadcasting and to comply with any directions given by the Minister of Broadcasting in writing. The calling for this application was in compliance with the direction to do so. The general policy which is relevant is summarised above. It is set out in full in the ministerial directions.