

## Decision

The application is granted subject to conditions.

## Conditions

The usual conditions will be inserted in the warrant. The warrant will lapse unless it is taken up within 12 months of the date of this decision or of the date of the final determination of any appeal unless extended by the Tribunal.

There will be a prohibition on networking in terms of section 71A (3) but with an exception as provided in most private warrants. This permits networking news. Consent is given to network with Metropolitan FM for programme from midnight to 6 a.m. daily.

Advertising will be permitted in the same terms as for other private stations but there will also be a special condition. There will be a limit of 6 minutes maximum advertising in any one hour until 1XW has surrendered its warrant and ceased broadcasting. Thereafter the limit will be 8 minutes in any 1 hour.

The warrant holders will be required to co-site with the BCNZ television facility at Mount Te Aroha. The coverage objectives will be modified until the full facility can be provided. Leave is given to make submissions on the wording and description of the interim and final coverage areas. The usual clause will be imposed requiring adherence to technical rules.

The Tribunal does not consider it should impose detailed conditions as to the nature of the station's programmes. However, in order to ensure that the station adheres to the promises made when the application was submitted and to ensure there is no radical departure from what was intended, the Tribunal will impose the following condition.

The warrant holder shall not substantially depart from the basic format and content of its proposed programmes or the type or the extent of the services intended to be provided at the time of the grant of the warrant without the prior consent of the Broadcasting Tribunal and subject to any conditions that the Tribunal might impose in the public interest.

The mixed polarisation to be used will be slant.

Allocation of frequency will be made after the parties have had the opportunity to make representations to the Tribunal.

The same news media ownership restrictions will be applied as apply to 1XW and the form of these can be the subject of submissions. The same arrangements for editorial independence will also be applied.

The warrant grant is subject to the condition that the warrant holder for 1XW, IBC, consents to an amendment to its warrant requiring the surrender of its warrant within a period of 2 years from the commencement of broadcasting by the FM station. This warrant will not issue until that condition has been satisfied.

Pursuant to regulation 14A Broadcasting Regulations 1977 the initial warrant period will be 3 years. This will enable a review at an early date by the Tribunal after the cessation of operations by Radio Waikato. We would expect that upon renewal the warrant would, in the absence of special reasons, be renewed thereafter for terms of 5 years. It should be emphasised that the condition is in no way a reflection on the permanency of the warrant grant.

Messrs Magan and Robson are already directors of 2 companies having prescribed interests in warrants. They require consent under regulation 21 Broadcasting Regulations 1977. That consent is given for the period of 2 years.

## Co-opted Member

Mr Murray J. Henshall was co-opted as a person whose qualifications and experience were likely to be of assistance to the Tribunal in determining the application. He took part in the hearing and the deliberations of the Tribunal but the decision is that of the permanent members.

Dated the 31st day of August 1983.

Signed for the Tribunal:

B. H. SLANE, Chairman.

Decision No. 16/83

BRO 11/83

*Before The Broadcasting Tribunal*

IN the matter of the Broadcasting Act 1976, and in the matter of an application by RADIO HAWKES BAY LIMITED for a FM sound radio warrant for Hawkes Bay:

B. H. Slane, Chairman; Lionel R. Sceats and Anne E. Wilson, Members, Murray J. Henshall, Co-opted Member.

Hearing: Napier, 7 June 1983.

Counsel: R. L. Maclaren for applicant; G. R. Rowe for Broadcasting Corporation of New Zealand.

## DECISION

THE applicant applied for a warrant to establish a commercial FM radio station. The Tribunal had advertised for applications for a commercial FM warrant to serve the Hawkes Bay area.

The applicant is a public company which had previously applied for an AM warrant which was declined (Decision No. 18/82).

A station for the transmission of a FM programme was to be established on Mount Erin, co-siting with the television transmission facility of the Broadcasting Corporation of New Zealand. A calculated coverage area prepared by BCNZ transmission engineers formed the basis for calculations of expected audience. Stereo coverage would extend to a large proportion of the Hawkes Bay area but would not extend to the northern part of the Hawkes Bay. Coverage from Mount Erin would include Napier, Hastings, Havelock North, Waipawa and Waipukurau.

Evidence in support of the application was given by 4 of the proposed directors, Messrs G. W. Parsonage, G. G. McKay, P. D. Wilson and M. L. Ballantine. Evidence was also given by Mr J. B. Geddis, deputy managing director of Hawkes Bay News Ltd. Technical evidence was given by Mr P. L. Johnston.

The application was opposed by the Broadcasting Corporation of New Zealand. For the Corporation Mr Rowe submitted that there should be some restraint on the commercial aspects of the application in order to protect the Corporation's existing commercial stations in the area, 2ZC and 2ZK. In response to a question from the Tribunal Mr Rowe submitted that there should be a limit on the advertising minutes permitted per hour and although he did not specify a figure, he suggested it should be less than the 8 minutes per hour which the applicant had proposed as a self-imposed limit.

Mr Rowe said that regard should be had to section 80 (c) Broadcasting Act 1976 because of the economic effect which the station would have on the stations of the Corporation in the area and thus on the Corporation itself.

The Corporation also produced evidence for the purpose of rebutting statements made in evidence by the applicant's witnesses regarding the programming of the existing stations and whether or not the proposed station's programming would be different.

The applicant proposed a 24-hour locally originated popular music programme directed to an audience 15 to 24 "with a desired spill-over to the peripheral audience at either end".

The 2 local stations were seen by the applicant as providing a service predominantly to people aged 25 to 54, with both stations using "day-parting" of music to the lower age group of the audience in the afternoons. The applicant also expected the stations audience to include some older people up to 40 who would listen to the programme for some of the time. The station would attract the interest of people outside the target audience. The audience would be older between 9 a.m. to 3 p.m. and would attract a younger age group at night.

The Tribunal is required by section 80 in considering any application for a warrant, to have regard to the following matters so far as they are applicable before determining whether or not to grant the application. (Some of the comments made under one heading will be applicable to other headings.)

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

The principal benefit that the new station would bring to the Hawkes Bay would be a stereo FM programme which is not at present available to listeners in the area. There was no claim made to us by BCNZ witnesses or in submissions which suggested that it was not desirable to introduce a commercial FM programme service to the area. The objections were based on the suggestion that the proposed format was not sufficiently different from the programmes already available in the area and the effect which the commencement of the station would have on other services.

The Tribunal is satisfied that the stereophonic high fidelity sound which enhances the listening pleasure and brings the music quality available on recordings to the listener, is a real and substantial benefit to which great weight must be given.

We have considered the objections raised by the Corporation. We are satisfied that the programme is suitably organised and formatted to exploit the qualities of this broadcasting mode for a young audience. They would most readily of all population ages adapt to the programmes offered and switch to the FM band.

It is clear, of course, that there will be some overlap—indeed at times a considerable duplication—of particular music played on the 2 Radio New Zealand stations.

However the presentation, tone and style of the station will be entirely different from that which was, for instance, proposed previously by the company for an AM warrant.