

consideration. Such a consideration may involve an application for amendment to the warrant to ensure that any breach of the arrangements entered into constitutes a breach of a condition of the warrant.

Leave is given to the applicant to apply for further directions.

It is appropriate here to refer to the procedure adopted by the warrant holder, namely—to apply to amend the warrant to provide a more comprehensive clause as to news media ownership and then to apply for specific consent for a particular transaction. While this may limit immediate rights of appeal, it enables specific consents to be given without the need for an application to amend the warrant. It also enables the application to be made by the party seeking to acquire the shareholding. The warrant holders would be heard by the Tribunal but the application may in some cases more conveniently be made by another party.

It is a proper procedure to follow. It is to be contrasted with the alternative of news media organisations acquiring shares in breach of the spirit of the clause through holding companies or subsidiaries who do not actually publish or broadcast. Other private warrant holders may wish to consider bringing their warrants into line with Radio Avon and Radio Waikato either by direct application or by consenting to an amendment made on the motion of the Tribunal.

Dated the 8th day of March 1983.

Signed for the Tribunal.

B. H. SLANE, Chairman.

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Decision No. 7/83

Bro. 26/82

*Before the Broadcasting Tribunal*

IN the matter of the Broadcasting Act 1976, and in the matter of an application by the Broadcasting Corporation of New Zealand for amendment of sound radio warrant 1ZM:

*Chairman:* B. H. Slane.

*Members:* Lionel R. Sceats, and Ann E. Wilson.

*Co-opted Member:* Murray J. Henshall.

*Counsel:* C. M. Nicholson Q.C., B. Hudson and J. Thompson for the Applicant.

D. A. R. Williams for the Independent Broadcasters Association Inc.

B. G. Impey for Radio Pacific Ltd.

R. L. Maclaren for Metropolitan FM Broadcasting Ltd.

T. C. Gould for Radio I Ltd.

S. P. Bryers for Hauraki Enterprises Ltd.

A. C. Sorrell for Stereo FM Ltd.

INTERIM DECISION

THE Broadcasting Corporation of New Zealand has applied to amend the warrant for an Auckland commercial station, 1ZM to delete the condition:

"Whether advertising programmes may be broadcast:

Yes.

And the substitution of the following condition:

Whether advertising programmes may be broadcast:

Yes, but limited to sponsorship."

The application was made to comply with a direction given to the Corporation by the Minister of Broadcasting pursuant to section 20, Broadcasting Act 1976 in writing on 14 April 1982. A copy of that direction is appended to this decision.

After its attention was drawn to the fact that the form of the application did not follow the form of the direction, Mr Nicholson was given leave to amend the application to read:

Yes, but restricted to limited sponsorship."

In so far as it relates to the present application, the direction of the Minister stated that the Government had considered the recommendation of the Broadcasting Tribunal in its report on FM Broadcasting to the effect that the Broadcasting Corporation of New Zealand should apply to amend the warrants 1ZM, 2ZM, and 3ZM to be non-commercial (with rights to limited sponsorship) upon the introduction of commercial FM broadcasting in their respective cities.

It gave notice that the Government accepted, as part of its general policy in relation to broadcasting, the opinion expressed by the Tribunal to the extent that that opinion related to Auckland—namely, that, without the withdrawal of 1ZM from the metropolitan market, it would not be possible adequately to develop popular FM broadcasting on an economic basis.

The Minister then went on to notify the Corporation that it was part of the general policy of the Government in relation to broadcasting that popular FM broadcasting should be developed in Auckland on an economic basis.

In pursuance of that general policy the Minister directed the Corporation to apply without delay for the amendment of the terms and conditions of the warrant for 1ZM "so that the station shall cease to be a commercial station (except for rights to limited sponsorship) on the date which the first commercial frequency modulation (FM) broadcasting station to be established in Auckland begins broadcasting."

As the direction specifically refers back to the Tribunal's Report on FM Broadcasting presented to the Minister of Broadcasting on 31 August 1981 it is appropriate to set out here for reference those parts of section 6 of the report referred to in submissions or identified by the ministerial direction or associated with those paragraphs.

6.18 Essential to our proposal is the change in the role of the ZM stations. We propose that they should withdraw from the commercial markets in Auckland, Wellington, and Christchurch.

6.22 Rather than these stations continue to operate unprofitably causing a drain on the Corporation's resources and extracting revenue from the market, we consider it better for the stations to cease to compete commercially.

6.26 Despite changes and improvements the Tribunal considers that the loss of the 3 ZM stations will be more than made up by the advent of a FM station in the same areas.

6.39 The Tribunal recommends that stations 1ZM, 2ZM, and 3ZM cease commercial operations upon commencement of broadcasting of the first commercial FM station in the same area. The BCNZ should apply to amend the warrants to be non-commercial but with rights to limited sponsorship. Without the withdrawal of the ZM stations from the metropolitan markets, it would not be possible adequately to develop popular FM broadcasting on an economic basis.

6.40 Some provision should be made to permit limited sponsorship of programmes or time zones on some non-commercial stations. This could apply not only to the ZM stations in a new role but also to some non-profit making community based FM stations.

6.62(9) The BCNZ should apply to amend the warrants 1ZM, 2ZM, and 3ZM to be non-commercial (with rights to limited sponsorship) upon the introduction of commercial FM broadcasting in their respective cities.

Evidence was given for the applicant by Mr R. K. Wilkinson, by Mr D. S. R. Lowe for Radio Pacific Ltd., Mr C. J. Butcher for Radio I Ltd., Mr J. A. McCready for Hauraki Enterprises Ltd., and Mr A. J. Rutledge for Stereo FM Ltd.

For the Corporation, Mr Nicholson submitted that the correct definition for sponsorship would be "broadcast of programmes for which payment has been made by a business firm or person and which introduce advertisements or a commercial product." He submitted that the references to limited sponsorship were words used to show the intention that the limitation should not be so restrictive as to remove all aspects of the role of the commercial station from 1ZM. He said the operative words were—

"... so that the station shall cease to be a commercial station (except for rights to limited sponsorship)..."

He said that the words "except for" clearly indicated the intention that some of the advertising role of the commercial station be retained. A commercial station is defined by section 2 of the Act as "a broadcasting station from which advertising programmes are broadcast."

Advertising programmes are defined in Section 2:

"Advertising programme means a programme or part of a programme intended to promote the interests of any person, or to promote any product or service for the commercial advantage of any person, and for which, in either case, payment is made whether in money or otherwise."

Mr Nicholson submitted that the limits of sponsorship should not be restrictively confined to prohibit advertising programmes as defined in the Act. He suggested that the limitation should be a time limit. Radio New Zealand's director of sales and marketing, Mr Wilkinson, suggested in evidence a maximum of 6 minutes per hour.

Although the applicant has based the application on the direction of the Minister, it did not adopt the nomenclature of the Minister in the application. It partly corrected that with an amendment to the application. The approach was that advertising programmes are to be broadcast since sponsorship, involving payment directly or indirectly, constitutes an "advertising programme" in terms of section 2.

We do not think a great deal hinges on that. It is open for the conditions of a warrant to be expressed in the most convenient form of words. That could be that all advertising is banned except a certain type or class of advertising. Or it could be that advertising is permitted but it is restricted to a certain type.

The Corporation said that it made the application in terms of the direction of the Minister.