

It was also accepted by Mr Nicholson that some definition should be included in the decision of the Tribunal and endorsed on the warrant so that there would be no doubt about the meaning of the condition.

With the exception of Stereo FM Ltd. the other parties supported the application but they did not support the proposed definition of limited sponsorship put forward by the Corporation. They also proposed the imposition of conditions limiting or prescribing the format and programme content of the station.

We deal with the submissions of Stereo FM Ltd. later.

Mr Wilkinson in evidence, proposed a definition of limited sponsorship as "a maximum of 6 minutes of advertising per hour during hours normally allowed for radio advertising and subject to the rules covering advertising laid down in the Broadcasting Standards and Rules."

He said this would restrict the growth of advertising funding for 1ZM but admitted that only in the peak pre-Christmas period had the station reached its existing maximum of 12 minutes per hour for 50 percent of the available time. He admitted that for much of the time the station did not achieve 6 minutes per hour of commercial content.

Mr Wilkinson said it was anticipated that 1ZM would provide a mixture of brief client mentions plus spot advertising. (The station normally concentrated on spot sales.)

It was intended the station would continue to serve the same audience. Its targets would remain a 15-30-year-old age group where it attracted a substantial audience.

Mr Wilkinson said the Government required the Corporation to cover the costs of its operations for advertising revenue as far as possible and the proposal would enable the Corporation to meet that objective.

It appeared therefore that the Corporation proposed to limit its advertising but would cover as much of the cost of running the station as it could. The aim would, apparently, not be to create a surplus. In answer to a question he admitted that the proposal was to continue as a commercial station but with a restriction on advertising. Mr Wilkinson admitted it was not a proposal to change the character of the station to non-commercial (with the exception of some advertising). He said it would be a commercial station with limited advertising.

Mr Wilkinson said the maximum of 6 minutes was one-third of the normal maximum for a commercial warrant and only 50 percent of the current self-imposed limit for 1ZM.

The Tribunal has had regard to the provisions of section 80 of the Act where applicable and sets out in detail later its consideration under those headings. Under section 80 (o) the Tribunal must also have regard to the policy of the Government under which a frequency modulation broadcasting service is to be developed as an integral part of sound-radio broadcasting in New Zealand (Regulation 15A Broadcasting Regulations 1971 as inserted by Amendment No. 5, S.R. 1981/295).

It has also had regard to the general policy of the Government in relation to broadcasting to which it is required to have regard under section 68. This is partly contained in the ministerial direction appended hereto. The basis of the Government policy is contained in the FM Report.

The Tribunal has also resorted to the ministerial direction to interpret the application made by the Corporation since the application was made pursuant to the direction.

As stated, the Tribunal considers either wording could be used and would have the same effect on what is broadcast:

"Yes, but restricted to limited sponsorship"; or

"No, except for limited sponsorship."

But the difference is important in relation to the interpretation of the direction, the real nature of the application and the future character of the station.

It is clear that the reason the application is being made is to facilitate the introduction of commercial FM broadcasting in Auckland. We do not need to refer again in detail to the statements made by the Tribunal in the grant of those warrants.

References in the direction to withdrawals from the commercial market, ceasing commercial operations and the change of the station to non-commercial indicate Government policy in a far stronger light than the interpretation Mr Wilkinson has chosen on behalf of the Corporation.

The definition he proposed was clearly in conflict with the application.

The direction was that the station should cease to be a commercial station. It is clear that the direction does not refer to a limitation of the amount of advertising but to eliminating it except for a right to sponsorship (rather than all types of advertising) and to limited sponsorship at that.

As Mr Impey put it:

"Mr Wilkinson includes in this definition spot advertising. With respect, the fact that "sponsorship" is a form of advertising, does not in itself extend the definition to include spot advertising. To apply Mr Wilkinson's definition would

in effect mean that there is no distinction between sponsorship and advertising".

As a result of the FM inquiry the Tribunal was aware of the conditions which pertained to some non-commercial stations which are permitted to carry some sponsorship announcements. Details were given to the parties and were included in the submissions and evidence of parties to this hearing. Mr Nicholson did not deal with the merits of these proposals but suggested that the Australian situation was different, the legislation different and therefore their approach to permitting some revenue for a non-commercial station from sponsorship was not relevant.

The Tribunal however considers that the type of approach adopted in Australia is useful in the context of the ministerial direction which is to change the character of the station to non-commercial.

The Tribunal has taken into account as far as each is applicable, the provisions of section 80 Broadcasting Act 1976.

The desirability of the amendment lies essentially in the need to develop FM broadcasting. That has been done by the introduction of 2 FM stations. Without the withdrawal of 1ZM from the commercial market the successful development of commercial FM broadcasting in this way would be prejudiced. But it goes beyond the removal of a commercial station from competing for revenue in the market which has to absorb 2 more commercial stations.

With 2 more popular music stations established in the FM band, it provides an unprecedented opportunity for Radio New Zealand to use the station as part of public broadcasting in New Zealand free from commercial constraints which in the past have limited it to the tight format of a popular music station directed to the interests of a specific age group. It is clear from the pattern elsewhere in New Zealand, that where strong competition occurs, the Corporation is, as with any other commercial broadcaster, less innovative and more reliant on tried and true formulae for securing the highest possible ratings. This leads to a mass programming approach which tends to eliminate that which may produce a turn-off factor.

In the young music market, for instance, it would be an opportunity to give exposure to New Zealand music which is not perhaps immediately appealing but which may gather support if it is given sufficient exposure. Innovative programming techniques, alternative rock music and the introduction of a service to the young Polynesian population, as well as the possibility of access programmes are only some of the options aired in the hearing before the Tribunal.

As soon as the Corporation realises it can be less ratings conscious with this station, so we believe opportunities for public broadcasting will be manifest. We cannot believe that the Corporation will adhere to its present intention to run this station exactly as before but with limited commercial content.

The Tribunal has also to have regard to the economic effects the proposed amendment will have in respect of broadcasting stations already in operation. The effect would be marked if the Corporation's definition were to apply. While Mr Wilkinson indicated that the station might have been expected to earn more than a million dollars and would only, with the restriction he proposed, earn less than 700,000 dollars, that is a substantial amount of revenue from the market. It is in the range of the recent revenue of 1ZM and about the same as the revenue proposed for one of the new FM stations.

What we have decided is that the character of the station should change from commercial to non-commercial but, through limited sponsorship, it will have the opportunity of gaining some financial support for its programming. We expect the limited sponsorship proposals could produce a modest revenue which will not have a significant effect on existing stations (or, incidentally, the new FM stations). The revenue available will be less dependent on ratings.

It is clear from the direction, the Minister does not expect the station to pay for itself, let alone produce a profit, as he directed that the application be made to change the station from a commercial station to a non-commercial station. With the change of character the Corporation will, no doubt, reconsider its staffing and structure for the station. Substantial savings of costs can be made beyond those proposed by Mr Wilkinson in evidence.

Mr Wilkinson identified some of the needs of the area which were not being filled by the Corporation. The Corporation did not consider it needed to take into account what needs were already served by private stations.

The Corporation should, in considering its priorities, have regard for those areas which are not being satisfied by non-Corporation stations. It would hardly seem an appropriate use of public resources to give priority to providing a service which is already available from other stations, when there are other needs in the Auckland community that are not being met. Many of the substantial audience at present serviced by Radio 1ZM will have access to FM stations and one of those stations in particular will concentrate on providing a service to many 1ZM listeners.

The change of the character of the station will, as we have stated, give 1ZM an excellent opportunity for the needs of Aucklanders to be explored and developed.