

Netherlands	1.63	Florin (Guilder)
Norway	4.22	Krone
Pakistan	7.03	Rupee
Papua New Guinea .. .. .	.45	Kina
Philippines	9.44	Peso
Portugal	77.86	Escudo
Singapore	1.05	S Dollar
South Africa .. .. .	.86	Rand
Spain	80.69	Peseta
Sri Lanka	12.48	Rupee
Sweden	4.20	Krona
Switzerland	1.19	Franc
Tonga .. .. .	.57	Pa'anga
United Kingdom .. .. .	.39	Pound
U.S.A. .. .. .	.49	Dollar
West Germany	1.45	Mark
Western Samoa	1.03	Tala

Dated at Wellington this 16th day of November 1984.

P. J. McKONE, Comptroller of Customs.

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Decision No. 22/84
BRO. 104-105/84

Before the Broadcasting Tribunal

IN THE MATTER of the Broadcasting Act 1976, and IN THE MATTER of applications for short term broadcasting authorisations at New Plymouth.

- (1) Peak FM Ltd.
- (2) Energy Enterprises Ltd.:

Chairman: B. H. Slane.

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

REASONS FOR DECISION

BOTH applicants applied for short term broadcasting authorisations to broadcast of FM stereo during the latter part of 1984 and the beginning of 1985.

Both applications were granted but for shorter periods than applied for.

Energy Enterprises Ltd. has asked for the reasons for the decision to be given.

The Tribunal considers it necessary to give the reasons for the decisions on both applications.

The Applications

1. *Peak FM Ltd.*—The applicant sought to transmit, from New Plymouth, an FM stereo programme from 5 October to 1 November and from 23 November to 20 December 1984. The hours were to be 6 a.m. to 10 p.m. Sunday to Wednesday and 6 a.m. to 1 a.m. Thursday to Saturday. The maximum hours for which permission was sought to broadcast were 968.

The programme was to be targeted to an audience in the 20-50-year-old age bracket with possibly more emphasis towards the younger listeners. In the later evening party type music would be broadcast and it proposed to have news, current affairs and weather for 6 minutes an hour and commercials for a similar period. The applicant said it would provide concerts, local artists and groups, new releases and request programmes and a top 20 of requests. News would be broadcast from *Radio Pacific*. It budgeted for a revenue of \$34,000 to produce after expenses a net profit of \$2,000. Its advertising was proposed to be for 6 minutes per hour.

2. *Energy Enterprise Ltd.*—The second applicant applied to broadcast continuously from 17 November 1984 to 2 February 1985. The maximum number of hours sought were 1,880.

It was proposed to carry advertising to a maximum of 6 minutes per hour. The programme would be directed towards a 15-34-year-old audience with a youth oriented contemporary rock format which the applicant said would provide a listening alternative to the existing commercial radio station introducing different artists and styles of music.

The applicants had some elements in common. Both were testing themselves with a view to making applications for full time private commercial FM warrant.

Both applications had some deficiencies. There was rivalry between the applicants. Both applications were opposed by the Broadcasting Corporation of New Zealand, the operator of 2ZP, the permanent commercial AM station in New Plymouth.

The Peak FM application at first was more seriously deficient. It appeared that A. P. MacDonald had been advising them and that he proved to be unreliable and not to have the background of experience which he had held out to the company. He was dropped from the application.

The Energy Enterprises application was dated 17 August 1984. The company was not in fact incorporated until 21 August 1984.

Objection

Peak FM Ltd.—*Radio New Zealand* considered the expectation of grossing \$80,000 for a 28-day period to be optimistic and budgeting expectations for the commercial content were high and unrealistic. It also claimed that the programming philosophy was absent from the application and that the directors in a meeting had admitted they would not be able to maintain the news, current affairs, weather commitment of 6 minutes.

The Corporation pointed out that a short term broadcasting authorisation from 5 October to 1 November and 23 November to 20 December would cover period of major commercial earning for *Radio Taranaki*.

The Corporation pointed out that it had been demonstrated to the Tribunal in other markets the effect which another operator could have in fragmenting audience and effecting the revenue potential for existing stations. A large proportion of the revenue would be at the expense of *Radio New Zealand*. The Corporation said the application was an attempt to capitalise on the buoyancy of the pre-Christmas market.

Energy Enterprises Ltd.—Peak FM Ltd. objected claiming it was formed 3 years earlier but had not felt able to make an application for a short term broadcasting authorisation then. We did not place great reliance on some of the matters raised but noted the point that it would be difficult for two short term stations to survive over this period if both applications were granted as applied for.

The application was also objected to by the Corporation which described it as a reasonably well prepared application but pointed out the unfair economic effect such applications had on the full time operator in the area which provided a year-round public service and looked to the Christmas season to boost its revenue and to achieve financial targets. It suggested that the Tribunal might limit the period of the broadcast or require part of the period to be non-commercial with a maximum 6-week commercial period. It drew attention to the purpose of the station "to test the need and viability of a full time FM station".

It also raised some technical matters and some deficiencies in this application also.

We do not need to refer to the technical matters because we believe they have now been satisfactorily dealt with.

In reply Energy Enterprises claimed that short term stations in Horowhenua and Nelson had been permitted by the Tribunal and that the programme was targeted at a different audience. They said that they had asked for a maximum of 6 minutes per hour advertising and that this would have minimal adverse effect on the Taranaki station 2ZP. It claimed that 11 weeks was the minimum economic period for a FM summer station supplying full audience services and that any reduction would result in a reduction in services.

The company accepted that in testing the viability of a permanent FM station it was not presupposing an authorisation would give the company any rights or advantages.

Decision

It is not necessary to traverse a lot of the minor matters that were raised in relation to each application. It is clear however that neither applicant seemed to understand the purport of previous decisions of the Tribunal and the rulings made in particular short term applications which had a bearing on this decision.

Applicants should not consider that they are entitled to come into a market and run a station for a short time over a buoyant period and withdraw from the market sufficient advertising to make their venture viable. Nor should potential warrant applicants consider that they have a right to move into an area and try themselves out on a basis that it will be at no cost to them.

There is no doubt that there is an element of "warming up" the area for the warrant application and to claim as a merit in their application the conduct of a short term authorisation. In a decision as long ago as March 1979 in respect of the BCNZ's application for an authorisation at Levin (Decision 1/79) and in respect of applications by *Radio Rhema* we have traversed a number of issues arising from this type of application.

The Tribunal considers such of the factors under section 80 of the Act as may be applicable.

The Tribunal referred to some of the issues in granting authorisations which were referred to in submissions but without reference to the reasons given. The reasons were relevant but we quote only one passage from Decision No. 20/83 (*Radio Kapiti Ltd. and Fifeshire Music Co. Ltd.*):

"The Tribunal is concerned that stations can appear for short periods in these circumstances and then start to spread their broadcast time from the immediate holiday period which might be regarded as the week before Christmas and continuing through until the end of January and move into the more lucrative November/December pre-Christmas advertising.