

Decision No. 5/84
BRO 59/83, BRO 60/83

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976 and in the matter of applications by CAPITAL CITY RADIO LIMITED for:

- (1) Amendments to Warrant AM49 2XW;
- (2) Renewal of warrant AM49 2XW.

Chairman: B. H. Slane.

Member: L. R. Sceats.

Hearing: At Wellington—15 February 1984.

Counsel: D. A. R. Williams and P. J. Keane for the Applicant.

Appearance: J. A. Wilton for New Zealand Journalists Union.

DECISION

THE applicant applied to renew the warrant, the second term of which expired on 11 October 1983.

The application for amendment was to delete the condition:

- (4) (b) That the holder of the warrant shall comply with the rules of the authority, and with the conditions of this decision and otherwise with the proposals contained in the application as amended at the hearing unless otherwise approved or directed by the authority.

and to substitute the following condition:

The warrant holder shall not substantially depart from the basic format and content of its proposed programmes or the type or extent of the services intended to be provided at the time of the amendment 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.

Some of the reasons relating to the amendment were concerned with the inappropriateness of the wording and the references to the authority and its rules. However the main reason was that prior to the renewal of the warrant in March 1979 the programming had departed in significant respects from what was proposed originally. Since the renewal of the warrant and more especially over the last 12 months, the applicant had returned more closely to the essential elements of what was first proposed but there remained differences. The applicant said, "It was found that the original intention to be all things to all men could not be sustained commercially."

The applicant says a strong emphasis on audience participation through talk-back, which appealed to an audience between 25 and 54 and on music which ranged from the light classical to pop which appealed to an audience aged between 10 to 65 resulted in an incompatibility in programming objectives. The applicant also said it had to contend with strong and more precise competition from Radio New Zealand's 2 Wellington stations 2ZB and 2ZM. The tendency was now to give first importance to being an adult music station but audience participation had been reintroduced and will be extended. The balance in programming appeared capable of being sustained profitably and provided the basic on which the applicant wished to commence the next 5 years programming.

The proposed clause is similar to the one which has, on renewal, been applied in the case of a number of other warrants of private radio broadcasting stations.

The application for renewal was advertised on the station as well as the usual newspaper notification. There were no objections. Nobody elected to make any comments on the application other than the New Zealand Journalists Union which will be referred to later.

The only complaint upheld in respect of the station would not justify interfering with the renewal.

Evidence was given by a director, J. K. Isles and the manager, D. A. Gold.

Mr Gold has been station manager with *Radio Windy* since 1 August 1983. His past experience included 3 years as station manager 2ZM with Radio New Zealand.

Mr Gold had extensively researched the background to *Radio Windy's* format and frankly outlined the changes which had occurred to the point where he describes them as cumulatively effecting a significant change to the station's format. At that stage in June 1983, the station informed the Registrar of the Broadcasting Tribunal. It then filed the application for an amendment to the warrant so that the warrant could accurately reflect the station's present programming format.

The original station proposals were to provide listeners with a relaxed easy listening format, mixed with news, opinion and background information. The station was to be directed towards an adult listener and that is the position today, according to Mr Gold.

However, during the period there have been changes of format and changes in the target audience.

The station was to be heavily involved in talk-back, news background and with lavish provision of talk and talk-back programmes, commentary and backgrounding as well as a considerable news input directly in the terms of bulletins and indirectly in contributions to the other talk programmes.

The original application envisaged a music format from light classical to pop and the station no longer plays light classical but concentrates on the centre of the spectrum playing middle-of-the-road pop and rock. A market survey confirmed the widespread acceptance the station has gained for that format.

Although the amount of talk-back and talk has been reduced, compared with the original proposals, a music programme interspersed with informational segments is featured in the morning magazine. There is a Sunday night talk-back programme from 10 p.m. to midnight and a "hotline" enabling persons to call in and record opinions which are later edited and rebroadcast.

The station has a prominently exploited provision for advertising community affairs, free of charge, mainly in the style of radio commercials. This is additional to the variety of service announcements usually provided by metropolitan commercial AM stations.

We intend to discuss the question of news in more detail later but it is sufficient to say at this stage that the news bulletins are not as extensive as originally promised and are presented only over a 1½ hour period weekdays.

In answer to a question, Mr Gold agreed that the character of the station had changed from that original envisaged to that which exists today. Mr Williams conceded that there were breaches of the warrant condition but he contended that these breaches were more in the category of technical breaches.

As the chairman made clear at the conclusion of the hearing, the station is entitled to renewal of the warrant. However, where there have been breaches the Tribunal may decide to renew the warrant for a shorter period than 5 years. This the Tribunal had done on a number of occasions.

It is appropriate that we should refer to previous decisions.

In Decision 19/81 on the renewal of *Radio Waikato's* warrant, we found that the station had not departed from its obligations to a degree which should cause the Tribunal concern. While formatting in particular specific aspects was now different, we did not find within the content of the programming an intention to withdraw from the provision of services promised because of their cost, but merely to vary them from the original proposals. In particular we found there had been no failure of news and music obligations nor of community service. We did not find the departures in programming in relation to religious programmes, children's and educational programmes, sufficiently significant, to constitute a breach of the terms of the warrant.

The Tribunal was satisfied that there had been a broad adherence to the proposals made in the application and the warrant was renewed for 5 years.

On the renewal of *Radio Hauraki's* warrant—Decision 11/80—the Tribunal made some observations. *Radio Hauraki* had previously provided news 24 hours a day broadcasting 175 bulletins but had reduced that to 101 bulletins providing no scheduled bulletins between 6 p.m. and 5.30 a.m. on weekdays. We expressed concern that a warrant holder must take its responsibilities seriously in relation to its proposals when a warrant was granted to the extent that it must feel a major obligation to provide services, even if it is inconvenient or a financial burden to do so. The warrant was one to exploit a public resource in the public interest and its objectives must be wider than to provide a profit. Besides the reduced schedule of news bulletins, the station had not complied with its warrant requirements as to sport, nor had it carried out its proposals to put as much time and expense and effort into information as it would to music. The *Radio Hauraki* warrant was renewed for 3 years, the period being chosen to mark the seriousness with which the Tribunal viewed failure to comply with warrant conditions. It would also enable the Tribunal to review the performance of the station in relation to its promises and in particular to the services it provided to its listeners. It reminded the warrant holder that interest would be taken in the situation not just at the time of renewal but over the whole of the 3 year span.

The *Radio I* warrant was renewed for a similar period of 3 years in Decision 13/80. The hours for news bulletins had been radically reduced without consent of the Tribunal and they had been abandoned for weekends altogether for a period.

In the case of *Radio Otago* in Decision 18/81, the warrant was renewed for 4 years. The station had been broadcasting news bulletins between 6 a.m. and midnight but the proposal for a 24 hour news service given at the original hearing had never been implemented. The Tribunal did not condemn the company for its decision on the extent of its news services, but for failing to apply for the necessary amendment.

The Tribunal emphasised that stations which made a commitment at the time of obtaining a warrant which was incorporated in the