

conditions of the warrant, even in general terms, must comply or seek an amendment of that condition if they did not intend to comply with it.

In the situation of *Radio Windy* today, we find a station of a different character from that originally proposed and for which a warrant was granted. Furthermore there have been format changes that moved the targetted audience away from that which it originally intended to serve.

It may have been appropriate to make the changes that were made, but they should have been preceded or accompanied by an application to the Tribunal. We take into account that the warrant was renewed without comment in 1979 and that there are still substantial informational elements in the application. Nevertheless it is clear that what is offered is, in terms of commitment, somewhat less today than at the original warrant hearing.

We make it clear once again that the dropping of a particular item or of changing the way in which some particular need is catered for, will not of itself constitute a breach of warrant and a shortening of the renewal period. But in this case the Tribunal in the light of previous decisions cannot regard the matters as merely technical. While the change in news bulletins in itself is more akin to the situation in the *Radio Otago* case, the extensive dropping of talk and talk-back programmes is more fundamental.

The Tribunal has therefore decided to renew the warrant for a period of 3 years. It is essential however that it be understood quite clearly by all who read this decision, that if the warrant holder complies with the new condition relating to format and content, it will be entitled at the end of the 3 year period to a 5 year renewal in the absence of any other breaches of warrant.

It is important however that directors of companies which make applications understand at the time they make such applications that the Tribunal takes their undertakings and promises seriously and that there is some accountability for them.

In evidence Mr Isles, who only recently became a director, observed that *Radio Windy* had not met the expectations held for it by its founders which he attributed to 2 fundamental and inter-related causes. One was features peculiar to the market and the second was a lack of programming consistency, continuity of objective and continuity of staff.

It is not necessary for use to traverse these arguments, but we do affirm that those who take up warrants are volunteers. They are not compelled to apply for a warrant and they are not compelled to make the promises that they do beforehand. The Tribunal is not particularly sympathetic to claims of difficulty in making sufficient profits to carry out promises. Warrants can be transferred to others who may wish to try or they can be surrendered. While a company by holding a warrant may well be preventing others from having an attempt at running a radio station it should comply with the terms of its warrant or apply for amendments, if it feels it can make a case.

News

Mr Isles pointed out that the position of Wellington as a source of national interest news imposed a unique burden on *Radio Windy*, even allowing for the coverage provided by a Parliamentary News Bureau servicing private stations. He also indicated changes of technology and policy regarding news among private stations needed to be agreed.

We do not need to traverse in detail the burden of the case of the Journalists Union which was ably presented by Mr Wilton. While not opposing the renewal the Union was concerned at the standard attainable on the staff and other resources of the station and was concerned to ensure the independence of the news editor who shall always be an experienced journalist. While considerable attention was paid to the staffing situation, as we have pointed out in other decisions, unless this is a specific condition in the warrant the Tribunal is not concerned. It is concerned with the output of the station.

The Tribunal is concerned at reduction of news coverage but is prepared to accept some reduction in evening bulletins.

We are concerned that the private industry should sort out arrangements that will provide better news, without eliminating local coverage at weekends. Reliance on networks does not replace the need for on-the-spot local coverage, either by the use of *Radio Windy* or a supplemented Parliamentary News Bureau staff adequate coverage should be provided to all stations through journalists in Wellington.

The independence of the news editor should be firmly established by tradition but, in the absence of any indication of interference we do not, at this stage, intend taking up the suggestion of imposing a condition in relation to an agreement for the securing of that independence. If however the station wishes to embark on that course at a later date it would be appropriate to do so since 60 percent of the shareholding is held by other news media companies.

Renewal

The warrant is renewed for a period of 3 years to 11 October 1986.

Amendment

The amendment sought is in substantially the same form as that imposed on other warrants at the time of renewal. It varies from them in form only. In view of the change of the character of the station we agree to the amendment sought.

Condition 4 (b) will be deleted and the following substituted:

The warrant holder shall not substantially depart for 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.

This should not be regarded as an indication of approval of news staff or news source arrangements.

News media ownership

Clause 4 (g) of the warrant reads:

"That the total aggregate shareholding in the holder of the warrant by one or more news companies as defined by the News Media Act 1965 whether as beneficial owner or otherwise shall not exceed 30 percent of the issued capital of the holder of the warrant."

This provision has not proved effective. Although Hauraki Enterprises Ltd., applied for and obtained consent to increase its shareholding to up to 30 percent of the capital of the company, 2 holding companies for newspaper groups have obtained shareholding of about 15 percent without the consent of the Tribunal. The reason for this is that the companies which took the shares were holding companies of newspaper companies but did not themselves conduct the business of a newspaper. This was clearly not in the spirit of the clause but the Tribunal, although aware of the situation when the warrant holder drew the Tribunal's attention to it, could not find that there was a breach of the warrant.

The Tribunal has invited private stations to amend their warrants to a form first approved for Radio Avon Ltd., which is more comprehensive and meets the situation. Although there was no formal application made to the Tribunal at the time of the present application for this particular amendment, the applicant, through its counsel, suggested that the Tribunal should amend a warrant to bring it in line with the Radio Avon clause of its own motion.

The company consented to such an amendment the effect of which would be to require a consent to any further acquisition of shares in the applicant company by a news media company as now defined by that clause.

As both those companies are represented on the Board of Capital City Radio, the Tribunal sees no reason why it should not bring the warrant into line as suggested and makes an order accordingly.

Leave is given to the applicant to submit the necessary wording to accommodate the present news media shareholding.

The Tribunal notes that another condition of the warrant provided that no director of any news company as defined by the News Media Act which publishes a newspaper, either directly or by means of subsidiary companies, should be appointed a director of the warrant holder without the prior written consent of the Broadcasting Authority.

That will be amended to read "Broadcasting Tribunal" instead of "Broadcasting Authority". The Tribunal considers that condition needs to be brought in line with the new news media clause. The applicant may submit proposed wording to the Tribunal.

Dated the 30th day of March 1984.

Signed for the Tribunal:

B. H. SLANE, Chairman.

Decision No. 9/84

BRO 39/83

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976 and in the matter of applications by HAURAKI ENTERPRISES LIMITED for a renewal of sound-radio warrant AM/43:

Chairman: B. H. Slane.

Members: L. R. Sceats, A. E. Wilson.

Hearing: Auckland, 24 August 1983.

Counsel: S. P. Bryers for applicant.

B. G. Impey for Radio Pacific Limited.

R. L. Maclaren for Metropolitan FM Limited.

H. F. Callagher for the Northern Journalists Union.