

- (ii) The need to operate as a democracy.
- (iii) The need for pre-school, parent and adult education.
- (iv) The need to develop community involvement.
- (v) The need to understand the major events shaping the lives of New Zealanders.
- (vi) The need to develop effective community health care.
- (vii) The need to stimulate children's creative ability.
- (viii) The need to develop teenagers as rounded adults.
- (ix) The need to foster cultural identity for minority ethnic groups inside the overall aim of a caring, understanding multi-cultural society.
- (x) The need to involve more people in shaping their own society.

"Finally, in this section, it is the view of the sponsoring directors that the needs of society are changing, and it will be their policy to keep abreast of those changes and encourage their executive staff to develop programmes to help solve the problems of the future."

Condition 4 (d) states:

"That apart from the combined holdings of full-time staff members and the Manukau Community Trust, no shareholders shall directly or indirectly hold more than 10 percent of the ordinary shares of Radio Pacific Ltd. without the prior approval of the Tribunal."

The applicant sought the deletion of each of the 2 conditions and the substitution of the following conditions:

- 4 (b) The warrant holder shall not substantially depart from the basic format and content of its proposed programmes or the type or the 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
- 4 (d) Except with the prior written consent of the Tribunal, the total aggregate shareholding by one or more news companies as hereinafter defined, whether as beneficial owner or otherwise in Radio Pacific Limited shall not exceed 30 percent of the issued capital of the company, the term "news companies" meaning any of the following:
 - (i) Any company that operates a private broadcasting station.
 - (ii) Any company that publishes a newspaper.
 - (iii) Any company that or person who holds 20 percent or more of the issued capital carrying a right to vote of any company referred to under (i) and (ii) above.
 - (iv) Any wholly owned subsidiary of any company referred to under (i), (ii) or (iii) above or any company or person under the control of any person referred to in (iii) above or any company referred to under clause (i), (ii) or (iii) above.
 - (v) Any company or person with control over any company referred to in clause (i) or (ii) above or with the control over any company or person referred to in clause (iii) above.

AND "control" in relation to a company means the power of a person or company to secure, whether by means of the holding of shares, the possession or control of voting power, the membership of the Board of Directors, a number of subsidiaries and sub-subsidiary companies in or in relation to that or any other company or by virtue of any power conferred by the Articles of Association or other instrument regulating that or any other company or otherwise that the affairs of the first mentioned company are conducted in accordance with the wishes of that person or company and without limiting the generality of the foregoing control as a result of or by means of trusts, agreements, undertakings and practices whether or not having legal or exercisable force and whether or not based on legal or exercisable rights and the relation to the person shall have a like meaning.

The other provisions of condition 4 of the warrant are:

- (a) That the main emphasis of the station programmes should be informational
- (c) That the station will not broadcast more than 10 percent recorded music content in the course of a calendar month excluding music that is part of or incidental to advertising commercials and excluding informational programmes as centre around a musical topic
- (e) That total shareholding whether as beneficial owner or otherwise by a news company or by one or more such news companies in the holder of the warrant shall not

exceed 30 percent of the issued capital of the company. The term news company means—

- (i) Any company that operates a private broadcasting station and
- (ii) Any company that publishes a newspaper. The word newspaper shall have the meaning given it by the former News Media Ownership Act 1965.

(The proposed deletion of condition (d) and the proposed substitution of a new clause would make condition (e) redundant).

Applicant's case

In support of the application the applicant stated:

1. The philosophies expressed in the original application relating to the needs to be served are impossible to implement on a radio station which survives solely on commercial advertising.
2. The station did originally attempt to base its programmes on this philosophy but they were not popular and the high cost of production of quality minority programmes meant that the programming was not viable.
3. That there is a place in the Auckland market for a news/talk radio station which can be popular and viable but not if it was to be conducted within the context of the existing programming condition. The result would be minority programming and/or narrowcasting, resulting in an alienation of the mass audience.
4. That a news/talk format attracts predominantly listeners 35 years and older. It was therefore incompatible with programmes aimed at children and teenagers and the pre-school parent.
5. The radio market has changed; with the resulting re-positioning meaning commercial radio stations must aim their programmes for particular interest groups.
6. The applicant has the most restrictive programming conditions on its warrant but it accepts the condition that the main emphasis of the programmes would be informational.
7. The warrant was granted on the basis of a greater expected audience than has proven to be the case.
8. The applicant proposes a condition which would not allow it to depart from its basic format at the time of the amendment.

With regard to the shareholding restriction the applicant stated that the restriction had prevented listing on the stock exchange which made it difficult for existing shareholders to obtain information as to the turnover of shares and price. It acted as a restriction on potential purchasers and had left only major investors, or those with direct interest in the company, as potential purchasers. The Broadcasting Regulations 1977, Amendment No. 2 gave warrant holders increased protection regarding prescribed interests and therefore there was no longer any purpose in maintaining the condition.

The proposed amendment to the shareholding by news media companies is on the same lines as that of Radio Avon Ltd. and is more comprehensive than the existing condition which has proved ineffective to prevent holding companies of newspaper companies from purchasing shares.

For the applicant, Mr Impey referred to a programme schedule that set out the station's programme policy which he said emphasised the informational basis of the company including 131 hours of talk, a target age group of 35 years and over, its place in the market and its commitment to news/current affairs/racing/sport/community service, the extent of its commercial content and a breakdown of the programme schedule.

Some of the proposals were now incompatible with the news/talk format. He accepted that the Tribunal in its original decision at page 25 said "... should its (the station's) proposed format fail it will not be permitted to change the warrant to permit a music station format".

And at page 26 "If, contrary to the expectations of the Tribunal, the station proves financially unprofitable that will not in itself be considered an adequate ground for widening or eliminating conditions", and at page 23, "... this application would not be granted where such conditions not available to the Tribunal".

He submitted that the granting of the application would not offend those statements. The Tribunal was concerned about the applicant making an application later to change to a music format. At page 25 the Tribunal said, "The Tribunal is concerned that applicants might in the past have lightly made stipulations which they were later prepared to drop and treat the warrant as an 'open' one to be used for any sort of radio transmission which might attract a suitably large commercial audience."

The station accepted the continued application of the condition 4 (c) on recorded music content, but the restriction would be unnecessary because the station would be bound not to substantially