

difficulties and profits were required to generate the funds needed to produce better programmes.

It was seeking to substitute talk back programmes apparently having a reasonably widespread common appeal for programmes of special interest to various minority groups.

The Tribunal had described Radio Pacific's programmes as:

"To provide news and current affairs, information programmes covering a wide range of social political educational industrial and economic matters and presenting, on major issues, clearly and impartially, all sides of the question."

Mr Bryers submitted that the Tribunal gave considerable weight to community involvement with its references to the community station, "We are satisfied that the station would meet some significant needs of the community and we give considerable weight to the importance of this function of the station. While we have some reservations about the real educational development that might occur as far as children are concerned, particularly at the times when the station is in competition with television, we do feel that an attempt at this role at a practical community level would fulfil some of the needs to the area."

He also referred to the Tribunal's statement at page 16:

"A determination to disseminate information and make people more aware of alternatives, to make them more socially conscious and informed, to improve their relations with each other and their understand of other groups in the community and of matters multi-cultural, and to provide a small voice for minority national groups seems to be a sincere and practical attempt to provide for the needs of the area. We have given considerable weight to these aims."

And at page 25:

"In the circumstances of this application we do not think the conditions will be unduly hampering if the subscribers to the company understand that the application has been made on the basis that a certain type of programme will be produced and that a warrant is not to be regarded as open for permanent use in any way in which the warrant holder considered commercially suitable."

After referring to some comments made about Hauraki Enterprises in its decision of 29 July 1980 considering the renewal of that warrant, Mr Bryers submitted the deletion of condition 4 (b) should not be allowed since it would destroy the integrity of the Tribunal process, the credibility and the role of the Tribunal. The station had ignored the conditions of its warrant and belatedly came to the Tribunal to seek its sanction. It was seeking to delete conditions which were instrumental in allowing it to obtain its warrant in the first place because they were unprofitable, which was the argument of objectors to the granting of the warrant. The Tribunal would be endorsing the approach of an applicant advancing any undertaking that it thought necessary or desirable to obtain a warrant and later withdrawing that undertaking at the earliest convenient opportunity.

The Tribunal had made it clear that the involvement of the community in the applicant's operation was of great weight and importance. This would be a move from emphasising a station's service to the public to emphasising the importance of a commercial operation.

He added that the applicant must show that the conditions were too restrictive. Although one or two of the 11 paragraphs in 4 (b) may not now be relevant and could be deleted or could be enlarged, the Tribunal should look at dropping conditions as a remedy of last resort.

The Auckland Committee on Racism and Discrimination ("ACORD") objected to the change, reminding the Tribunal that it had been impressed by the evidence given by Dr Hohepa, Mr Garfield-Johnson and Mr Ralph Witten and others as to the needs of the local community at the warrant hearing. ACORD said that although in the early days of Radio Pacific an attempt was made to implement the aims in the application, commitment steadily diminished until any pretence of meeting the conditions of the warrant appeared to have been abandoned. It said that Polynesian groups felt duped and betrayed and a mockery had been made of the Tribunal.

ACORD was represented by Margaret Arthur, Chris Lane and Titewhai Harawira. ACORD submitted that the station didn't seem to think it should include specific community interest or the languages of those groups, but ACORD considered that it could not have multi-cultural broadcasts without being multi-lingual. The station was now another station aimed basically at a Pakeha audience. It duplicated opinions on other stations. It submitted that ratings had dropped after the programmes in specific languages had been dropped. There were now no access programmes. It accused Mr Stevens of paternalism and pointed to the absence of music programmes of interest to Maori and Pacific Islands groups and the lack of proportional representation in the guest celebrities on the station. The mini-programmes were not of special interest to Maori or Pacific Island listeners.

The effect had been to get rid of all community involvement in the running of the station, and to dismantle Maori and Pacific Island programming. The Tribunal should take a more active role—an investigative role. The station had started out to be positive and hopeful but those who could have been helpful had left the station, and Maori stations will only succeed if granted on Maori terms. (Radio Pacific had maintained that Pacific People's programme were only the sixth most popular programme among Polynesians themselves.)

Mrs Harawira said that Radio Pacific had not kept up with a changing Maori world. In South Auckland health programmes had been disastrous and efforts by Radio Pacific in community programming would have been beneficial. There were capable people available who speak both Maori and English and people for whom the station was designed and for whom nothing was being done. She said that the station was not catering for the needs of Maori people who had suitable people trained who could run it in a more positive way.

Decision

The Tribunal has made it clear on a number of occasions that it expects the substance of undertakings and conditions and programme proposals made at the time of the granting of a warrant to be broadly adhered to by applicants. Otherwise an application immediately had to be made to the Tribunal for an amendment. This was not done promptly in the case of Radio Pacific which made more than one change to its format without the approval of the Tribunal. That will be a matter for consideration at the renewal of the warrant in determining the period of renewal.

What the Tribunal is concerned about at this stage is whether or not any condition should be revoked and whether it is necessary in the public interest to impose new conditions.

We do so within the context of a background in which a number of stations have had warrant renewals and have had their programme obligations updated since the period of 10 years earlier when those applications were granted.

Some stations have needed no such amendments.

However, it is clear that some aspects of original proposals have not proved to be practicable in the long term and it is necessary to revise them. We first intend to discuss the major amendment required and then separately to deal with the limitation on shareholding.

We start from the difficulty that the condition and the way it is worded so far as programme content is concerned, has not been the choice of the Tribunal. Both the Tribunal and the Supreme Court versions were based on what the applicant was prepared to undertake. In one case it was to *base* programmes on certain needs and in the latter to concentrate a *majority* of its time to providing such programmes. And the needs were defined in terms that limit the effectiveness of the clause as it fails to define obligations in a readily enforceable form. It was not a condition to adhere to the programme proposals as is more usual.

We also note that the condition that the station will remain primarily informational is not to be interfered with. That is a basic format requirement.

The difficulty lies in the needs which Mr Dryden obliged the station to serve and the time which would be devoted to serving them. The other needs and the time which might be devoted to them are not defined.

Some of the needs are either irrelevant or redundant. We have little difficulty in deciding that, in the light of the range of audience support for the type of programming the station has had from the beginning, it is not appropriate to try, in the segmented Auckland market, to have a programme which would appeal to older children and young adults, as well as an older audience. The station simply cannot succeed in audience terms by trying to serve the full range of ages.

About the other obligations we have some doubt. We would like to see the obligations spelled out to continue a responsibility for community involvement and health education. We were impressed with and largely accept the evidence of Mr Stevens on the events and the problems faced in ethnic programming.

But it is to be noted that because of the limitations in the Act at the time the Tribunal was not able to impose a requirement that the station produce programmes which it proposed in the application. The description of the programme proposals is a description of the basis on which the application was made but the only relevant conditions are those which we have set out. In respect of the major issue of multi-cultural or ethnic broadcasting, we are faced with what appears to be a reasonable objection from ACORD that the station is simply not carrying out what it promised the community it would do.

There are 2 relevant needs described in the application document:

1. The need of Auckland and South Auckland's 800,000 people to develop as an understanding, multi-cultural society.