

9. The need to foster cultural identity for minority ethnic groups inside the overall aim of a caring, understanding multi-cultural society.

One question is really the extent to which the station should, in order to serve those needs, have to engage in the multi-cultural Maori and Pacific Island language broadcasts directed to an audience segment which were being undertaken at one stage. The Tribunal made it clear in the original decision (page 25) that it was not its intention to become closely involved in programme matters. Nevertheless, we said, the Tribunal had some responsibility to see stations adhere broadly to the type of service that they undertook to provide when making applications.

The Tribunal does not consider its role at this stage to identify exactly how those needs ought to be served by the radio station. It is clear however that the station has said it has moved away from an attempt to fulfil those needs and we do not think there is sufficient weight to be given financial considerations to justify our removing obligations of that nature from the station.

As we have pointed out the condition is not put in terms which the Tribunal might have itself drafted.

We consider it no longer necessary for the station to serve the needs 3, 7 and 8. Paragraph 10 appears to be virtually unenforceable and the final statement is over ambitious in suggesting that it is the obligation of the station to develop radio programmes to help solve the problems of the future rather than to provide the forum to discuss possible solutions.

The Tribunal acknowledges the difficulties that have been faced by the station when, in effect, the original application contemplated something in the nature of access programming at night and a more commercial discussion format with an emphasis on open line programming during the day.

We consider that the station's present format substantially fulfils those objectives and that, within its own format, it is necessary for the station to find the ways of fulfilling the objectives of multi-culturalism. It cannot abandon the obligation undertaken by Mr Dryden because he is no longer with the station or because it is not profitable. That was made clear to investors.

But it should be clearly understood that whatever was said elsewhere, the application made to the Tribunal was not for a Polynesian radio station or a Maori or Pacific Island language station. There was never any misunderstanding about that as far as the Tribunal is concerned, but we do not know whether there was any misunderstanding about that among those who lent their support to the application.

The difficulty lies in the fact that the majority of its time must be addressed to these (and other) particular needs. We believe that that expression is an inexact way of setting any programme objectives. After all, it could be said that every talk back programme is addressed to the need to operate as a democracy since it gives time to a fundamental aspect of democracy the freedom of speech. It is also directed to the need to involve more people in shaping their own society by discussing it on the radio. The present clause is patently vague and unsatisfactory—possibly difficult to enforce specifically. Concentration on only one or two of the needs to be served for the majority of the time could be compliance. The time of the day (or night) of broadcasts is more important than the length in some instances.

The condition is inexact and unsatisfactory and one that would be better replaced. We would therefore delete the condition and substitute the one applied for but modified to require that significant elements of programming must be directed to the listening needs of a multi-cultural audience. The wording of the condition will be determined after submissions are made by the parties and considered by the Tribunal.

We make no direction that the programming shall be multi-lingual but we consider that the station might assess the extent to which it can engage in such broadcasting. We do not find we could support a condition specifically to require the station to revert to the segmented special interest broadcasting which was proposed or to the programming undertaken by the station earlier.

It is important to note that the main emphasis of the application was on information and audience involvement using talkback techniques and that the significant references to programming for an ethnic audience involved a period of 9.30 p.m. to midnight on 4 nights a week and a 2-hour period on Saturdays and Sundays, with a specific Maori programme 9 p.m. to midnight on Sundays. This hardly reflects an intention for ethnic programming to be in the mainstream of programming.

Discussions and reports with leaders of cultural and community organisations, education, health and Social Welfare, were part of the spread of activity which one would expect Radio Pacific would have no difficulty in fulfilling now. It should do so.

The difficulty lies in fulfilling substantial periods of time with programmes directed to a small minority who do not in fact want that sort of programming as it was done. We cannot compel the station to do it in a more elaborate and better way and it may be

that only access or non-commercial public radio will succeed in specifically directed programmes for substantial periods.

But the station, in a possible attempt to shrug off the Polynesian image given by those who had a chance encounter with it on a car radio at night, appears to have swung too far towards being a non-multi-cultural or mono-cultural station.

We take no exception to the expansion of the proposed sporting service or of racing which ties in with the older audience group. We do not see that the station can be expected adequately to deal with the needs of younger Polynesian people. It is a fact of life that that sort of programming simply cannot be done on commercial stations in a highly sophisticated market in a non-music format. Audiences tend to be streamed by age group. It is the older age group which enjoys talk rather than music.

We believe that if the warrant holder were, as Mr Stevens mentioned, to employ 2 persons full time to produce programmes it would go a long way to satisfy the obligations which every shareholder acknowledged in acquiring shares in the warrant holder. That might diminish profits but we do not accept that to adhere broadly to its obligations to multi-cultural broadcasting threatens its viability.

We believe that the talk back, discussion and documentary format can be adapted in a number of ways to provide much more than is at present being done for diverse cultural interests. That is not to make it a "Polynesian station" but rather that it reflect in its information, news and opinion programmes a wider range and depth of ethnic and cultural diversity than at present. We acknowledge the impracticalities of some of Mr Dryden's specific programme proposals. Even without changing the present format more emphasis could be given in the direction originally intended.

The application for deletion and substitution will be granted in part but with the modification of a clause to maintain an obligation arising from the needs 1 and 9, to provide elements of multi-cultural programming. Parties are invited to make submissions on the form of the conditions to be substituted for condition 4 (b).

Shareholding

Mr R. B. W. Gill, Executive Director of the Stock Exchange, gave evidence of the reasons why the Stock Exchange had refused listing to the company and the Stock Exchange's requirements for listing. The article requirements in the Stock Exchange listing requirements were based on the notion of free transferability of shares, the very limited right of the directors to refuse to register transfers of shares and restrictions on issuing capital other than pro rata to or with the approval of existing shareholders.

The Exchange would not consider listing a company which gave some ordinary shareholders a preference over others in the number of shares they could hold unless such an advantage was prescribed by law. Radio Pacific Ltd. prevented a person other than a station employee or of the Manukau Community Foundation, from holding more than a 10 percent shareholding without the consent of the directors and the Tribunal and was therefore not in accordance with the Stock Exchange requirements. The fact that the restriction was not imposed by the terms of the legislation but was included as a condition of the warrant at the request of the company, was of real importance to the Stock Exchange. In other words, it was the company that was proposing the restrictions.

The Tribunal must express concern that when a condition is validly imposed by law in circumstances in which the Tribunal considers it to be in the public interest, that the New Zealand Stock Exchange should be able to penalise the company and its shareholders by refusing a listing but nevertheless carrying on with the dealing in the shares at a higher commission.

The Tribunal does not accept that, if the Stock Exchange can still deal with shares which contain such restrictions in circumstances where they are imposed by law, there should be any difficulty in dealing with them when they are so imposed by the Tribunal.

However, we take into account the fact that the practical result of the collective decision of sharebrokers in New Zealand to ban the company from listing has exacted a penalty from the shareholders. It is with some reluctance that we agree to the removal of the condition.

This reluctance is ameliorated to some extent by the fact that the clause as presently drafted was likely to prove ineffective in its objective. In the absence of a more effective clause it would not be difficult for a number of companies or individuals or members of one family to act in concert and to obtain a shareholding in excess of 10 percent. We accept that the removal of this condition may well result in such actions. It is therefore necessary in the public interest to impose the restriction on news media ownership which the company would have no objection to.

As this condition is imposed on a number of warrants of companies which are listed, it should not stand in the way of the listing of the company's shares.

If there has been annoyance or frustration on the part of the company or shareholders over this restriction, we consider that