

Co-opted Member

M. J. Henshall was co-opted as a person whose qualifications and experience would be of assistance to the Tribunal. Mr Henshall took part in the hearing and the deliberations of the Tribunal, but the decision is that of the permanent members.

Dated the 20th day of December 1984.

Signed for the Tribunal:

B. H. SLANE, Chairman.

Decision No. 26/84
BRO 90/84

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976, and in the matter of an application by RADIO HAWKES BAY LIMITED for an amendment to warrant FM-3/2RHB:

Chairman: B. H. Slane.

Members: Lionel R. Sceats, Ann E. Wilson.

Co-opted Members: Murray J. Henshall.

Hearing: At Hastings, 25 and 26 October 1984.

Counsel: G. G. McKay for applicant. B. Hudson for Broadcasting Corporation of New Zealand.

DECISION

Radio Hawkes Bay Ltd. sought an amendment to the warrant to increase from 6 minutes to 8 minutes the maximum advertising content per hour.

The applicant submitted—

1. The present limitation was unsatisfactory for an adequate advertising service to clients.
2. The limitation caused difficulty at peak advertising times.
3. No limitation of advertising time of a similar nature applied to holders of FM warrants in metropolitan centres.
4. The FM warrant issued to Radio Waikato Ltd. contained a limit of 8 minutes per hour.
5. No detriment would be suffered by either of the other two commercial radio stations operating in the district.

The FM warrant for Hawkes Bay was granted in a decision of the Tribunal dated 31 August 1983.

The application had been opposed by the Corporation which sought a limit on the advertising minutes permitted per hour to protect the Corporation's existing commercial revenue for the stations 2ZC Napier and 2ZK Hastings. The applicant had been willing to adopt a self-imposed limit of 8 minutes per hour.

The Tribunal had to consider the effect on the Corporation and on the revenue of the stations already operating in the area. The Tribunal considered that the effect on the Corporation would be to the order of \$150,000 in the first year and the Tribunal considered that this was not so significant as to outweigh the benefit of the provision of a popular commercial stereo FM broadcasting programme service in Hawkes Bay.

The Tribunal said (at page 4):

"The Tribunal acknowledges however that at least in the initial stages some consideration should be given to limiting the effect.

"The Tribunal has had regard to the case made by the Corporation and in particular in the evidence made by G. M. L. Storry.

"The Tribunal has considered the evidence given and the confidential figures supplied by the Corporation. We accept there will be additional costs as well as an effect on the revenue of the Corporation. But we do not believe there will now be a potential to obtain substantial additional revenue well beyond target which Mr Storry feared, because it would exacerbate the economic effect on the Corporation's stations. The condition as to advertising content will limit that.

"Overall we considered the desirability of the service outweighs the economic factors raised by the Corporation."

At page 7 the Tribunal considered the extent of advertising matter which the applicant proposed to broadcast.

"A self-imposed limit of 8 minutes advertising per hour is proposed by the company which it says would enable it to reach its income projections. There is no reason to suspect that the station would depart from this, but programme rules at present permit advertising of up to 18 minutes per hour. Commonly AM stations broadcast up to 12 minutes per hour.

"The Tribunal considers that an adequate revenue can be obtained by limiting advertisements to 6 minutes in any 1 hour and a condition to this effect would limit the impact on the other stations. This will only affect peak time revenue but will assist Radio New Zealand stations. The applicant could reconsider its proposed rates for advertisements."

The station commenced broadcasting during December 1983. The application to amend the warrant was filed about 6 months later on 15 June 1984.

Evidence was given by G. W. Parsonage and M. L. Ballantine.

This application was heard in conjunction with an application by the Corporation in relation to 2ZK and by consent the evidence adduced in respect of each application for amendment was available for consideration in the other case. This course was adopted to save unnecessary repetition of evidence in chief and of cross-examination.

The applicant did not put forward a dearth of revenue or hardship in support of its application. What the applicant said was that the restriction had gone on for long enough and it should only apply for a few months while the station is starting broadcasting. It also said that it had now developed to the level where most weeks in the month the station was fully sold in peak zones—6 to 10 a.m. Wednesday, Thursday and Friday and 10 to 7 p.m. on Wednesday and Thursday and from 7 to midnight on Thursday. Other zones on Tuesdays and Saturdays were said to be usually fully or heavily sold.

We heard a considerable amount of evidence about the high advertising content of the Corporation stations and allegations that 2ZK was endeavouring to direct its format towards the same audience as the applicant's station 93 FM. The applicant also claimed that it needed to spend more money for advertising and promotion. The applicant's case was that it pitched its prices at the highest level possible.

We can sum up this evidence as saying that the company could increase its revenue considerably by having more time to sell during peak hours. Mr Parsonage agrees that, in hindsight, the imposition of the condition has been good for the establishment period as the low commercial content has created an opportunity for a greater amount of programme content to be broadcast so that music and announcer comment reaches 46 minutes 45 seconds.

The figures on a monthly basis showed that while the breakfast session was fully sold, there was still room for further sales in the 10 a.m. to 7 p.m. and from 7 p.m. to midnight.

Those figures were supplied on a confidential basis.

Mr Parsonage confirmed that the station would operate profitably in the first year but would earn nothing like a 10 percent return on capital. In opposition, Mr Hudson for the Corporation, said that the applicants had failed to make a case and that there were inconsistencies in their evidence. For example they claimed that the advertising rate from 2ZK was too low but on the evidence of the manager of 2ZK, Mr Pike, that was not the case. FM stations hold their audiences longer during the day and are better able to spread their advertising than AM stations. There was a lack of financial evidence of any substance and the revenue figures were begrudgingly introduced.

Although the justification for the application was to obtain funds for promotion, the exact nature of such promotion was not put forward and its purpose was to promote the station not FM as such:

The Tribunal has considered the case and had decided that the application is, to say the least, premature. The Tribunal did not impose the condition with a view to it being lifted in a few months. The station is making a profit which is a happy result in the first year. If, after several years, ("the early stages") it was clear that the station was unable to obtain an adequate return for its shareholders or there were other appropriate reasons, the Tribunal would be prepared to reconsider the limitation imposed.

However, the reasons must be recalled. The purpose of the limitation was to limit the effect on the BCNZ's revenue. The effect therefore must be to limit the revenue of Radio Hawkes Bay Ltd.

The Tribunal has had to have regard to the effects on the Corporation of a number of new stations opening.

The situation in the Waikato was not comparable and the limitation imposed there is not applicable in Hawkes Bay.

In the more varied market in the metropolitan areas, the FM stations have not had any limitation imposed where there is more than one FM station operating in each area.

If the Tribunal found that the Corporation was taking an unfair advantage of the situation and pitching some of its rates very low in order to unfairly compete with the FM station, the Tribunal might reconsider the position. The Tribunal did not consider that the evidence produced convinced it of the need to alter the present limitation now.

The application is declined.