

We believe that an argument for simulcasting cannot be sustained at all on the grounds that there are people who will not at present have the appropriate equipment. The availability of FM receivers in households is known to be increasing. We have no doubt that one effect of simulcasting is to postpone the day on which a decision is made to switch to FM. Simulcasting, we are satisfied, does not provide the incentive for change which the imminent loss of service on AM does.

While simulcasting for a short period at the time of changeover may be justifiable, or on a longer term basis in some areas where, as the ministerial direction contemplates, there is a necessity to provide continuity of service, because of different services areas, the reasons for the simulcasting should be made clear from the beginning. When, for instance, reasonable coverage is obtained on the FM network then the AM programme broadcasting should cease.

The difficulty is compounded by the Corporation's inability to plan for the full development of available frequencies, partly for financial reasons and partly because of the inherent corporate desire of the BCNZ to retain all existing frequencies for developing its own services, rather than to make them available for others.

Nevertheless there is a case for the continuation of YC programmes for sports, education and Parliamentary broadcasts—indeed in Auckland there is justification for YC programme broadcasting Parliament at night to provide a reasonable service, which is not available from 2YA.

This will require either short term authorisations or a warrant for the FM transmitters to carry separate programmes.

The Tribunal will therefore only consider simulcasting on a case by case basis where it is satisfied there are cogent reasons for continuing the service on both frequencies. It does not consider it appropriate to use 2 frequencies to serve one audience until the personal receiving equipment of all listeners has expired of old age and has been replaced by more modern equipment with VHF-FM capability.

The Ministers' direction that simulcasting may be permitted until the final establishment of the FM network is completed is interpreted as permissive and as an exception to the general policy. It is also seen as limited to allowing continuity of service to areas outside the immediate FM coverage area in the same city, not to provide a dual service for many years to those who could receive FM.

(j) *The hours during which the applicant proposes to broadcast programmes*

The Tribunal found the proposal to increase the hours vague and unsatisfactory. The Tribunal prima facie favours the extension of hours for a service but it would be presented with specific proposals and the hours proposed from time to time.

The Tribunal therefore in respect of this part of the application signifies a general approval but defers any amendment of the warrant until it has been satisfied by the submission of specific proposals for programme material and the hours proposed. It believes this is particularly important in view of the suspicions of many objectors that some watering down of the quality of the total service is behind the development.

(k) *The extent of advertising matter which the applicant proposes to broadcast*

The Tribunal agrees with the proposed 6 minute limit. As Mr O'Brien in his opening indicated this will produce in fact about 3 minutes (or slightly more) average advertising time per hour. Advertisers also will not consistently fill all the schedules.

Mr Wilkinson said the advertising would not alter the character of the programming. Advertising placement would not interrupt accepted conventions of continuity for musical works and live broadcasts. For example, if a relay of a concert were broadcast advertising would be confined to prior to the start and at the end.

The Tribunal agrees with the line taken by the Corporation as to the style and content of advertising and its relationship to the programme material. Material to be broadcast on Sports Roundup can be of a different nature than that broadcast during the Concert Programme.

The Tribunal has considered the in-house "rules" but when analysed they are seen to be guidelines of a fairly broad kind rather than a detailed set of rules.

The Tribunal has considered whether it should impose conditions as to advertising but has decided that it would be wrong to fix an exact definition. It simply imposes a condition limiting the total advertising to 6 minutes each clock hour and says that the format and style of advertising should be appropriate for the programme material at the time being broadcast.

(l) *The proposed rates and charges to be made in respect of advertising programmes*

At July 1983 Mr Wilkinson estimated the base rate to range from \$50 to \$20 with \$120 to \$80 for a sponsored hour of programming. The advertising would offer radio as a means of reaching an "upper demographic specialist national" audience.

(n) *All relevant evidence of representations received by it at the hearing*

The Tribunal received a large number of representations, and has read all of them. It has also heard lengthy evidence and submissions at its hearings. The Tribunal has been concerned that financial and economic pressures have forced the Corporation into a policy which has obviously upset a large proportion of its listeners to the YC network.

On the other hand the Tribunal does not consider that the programme material itself is inherently and fundamentally entitled to be free from association with any advertising material.

It is more likely that the reality of the objections lies in the nature of the YC music listener who tends to be a person less likely to receive commercial messages voluntarily. But it must be recalled that many of those who advised us that cricket was a sport with which it was quite impossible to have any commercial material associated will have to acknowledge that that has been done on television, and what is more, has been done without the enormous objection that occurred when it was proposed in relation to cricket radio commentaries.

What is clear however is that the advertising material and the nature and style of it needs to be carefully tailored to the programme material, and needs to respect the type of listener. It must also be recognised that some sacrifice in this respect might need to be made in order to allow people who live in areas not at present served to enjoy the programme so much admired and enjoyed by metropolitan listeners. The selfishness which underlay some of the submissions made to us, needs to be acknowledged.

On the other hand we consider the Music Federation of New Zealand's submission a thoughtful and positive one which was more concerned with the major priorities of establishing the Concert Programme on FM stereo throughout New Zealand rather than the personal tastes of the individual listeners, as far as advertising was concerned.

The stated purpose of permitting advertising was to provide revenue for use for capital development. The Tribunal has therefore indicated its intention not to permit the advertising to outlast the purpose. The maximum period justifiable would appear to be 5 years.

(o) *Such other matters as may be prescribed in regulations in that behalf*

The regulations require the Tribunal to have regard to the Government's policy for the development of FM broadcasting in New Zealand as an integral part of sound radio broadcasting. It is convenient to note here the statement of Government policy in the direction to the Corporation and the previous statements of Government policy contained in directions given by the Minister of Broadcasting. For convenience the ministerial directions will be appended to this decision.

The Tribunal has had to take account of Government policy anyway, simply because it is the policy of the Government not to increase the licence fee. That led to the policy to finance the development in part by advertising.

We take the point that we should not give equal weight to the ministerial direction on its own, and we do not give equal weight to it with the other factors under section 80. In some respects and in some aspects of the application the Government policy carries considerable weight. This is particularly so in relation to the extension of services to provincial areas and the extension of hours.

In others we have not been convinced that it is a factor which should outweigh other considerations.

(It is necessary to note, because it has been overlooked in the past, that Regulation 15A (Broadcasting Regulations 1977, Amendment No. 5, S.R. 1981/295) requires that the Tribunal have regard to the policy of the Government under which a FM broadcasting service is to be developed as an integral part of sound radio broadcasting in New Zealand. That policy becomes a section 80 consideration.)

We also note that the Corporation has adapted Government policy to its own objectives. Having recommended the policy it now decides not to adopt it, to resist conversion and to favour additional transmitters to add to those at present held by the Corporation.

The Issues

The applications fall into two major issues. To develop the network by FM transmission and to finance this in part by advertising. (The extension of hours has already been referred to.)

The proposal to advertise was hotly contested and is dealt with separately:

Network Development

The other proposals generally brought support from listeners to the Concert Programme but we noted a lack of enthusiasm by existing listeners in the main centres (as represented by Friends of the Concert Programme). Those who already had the programme on the existing AM service placed less importance on extending the