

advertisements for the performances of organisations such as the Music Federation as well as more "commercial" advertisers. We believe that the advertisers attracted will tend towards institutional and image building advertisements and will not wish to offend the audience.

The Tribunal considered imposing a condition that incorporated the decisions already made by the Corporation as to the advertising format. But the so-called house rules are in some respects only an indication of what is "likely" to be acceptable.

Detailed rules should be passed. From our experience some Radio New Zealand staff are adept at finding ways around the spirit of their own rules. The rules should be clear and firm. But they are best left as house rules.

As the proposal is essentially to make 2YC the originating station for an FM network, it is appropriate to consider the imposition of a format condition, the Tribunal has decided that it is desirable in respect of what amounted to virtually new broadcasting stations that the format be established as that of the existing YC programme format and it will impose a condition that the FM broadcast be in accordance with the existing style and format of YC programme (with the addition of any limited advertising) and that the format for any extended hours be in accordance with the proposals made to the Tribunal and the evidence given to it by the Corporation's witnesses.

There was some argument before us as to the power of the Tribunal to impose any such conditions. We say first that we consider it necessary to have this condition as it is a requirement of section 81 that any new condition imposed on a warrant be necessary in the public interest. We consider it is necessary, not for the purpose of continuing the 2YC AM programme, but because it is originating the FM programmes for what amounts to new stations which are initially being established as relay stations and will together constitute an extensive major network.

The desirability of the condition we have already discussed. It is essential that the position be clearly defined in the warrant in the public interest.

The legality of such a condition was challenged by Mr O'Brien on the basis that it infringed section 71A (1) (e), Broadcasting Act 1976 which permits conditions if they are not in conflict with the provisions of the Act imposing duties or conferring powers on the Corporation. His argument was that the Corporation has a duty under section 24 (1) (a) to provide a range of programmes which will cater in a balanced way for the varied interests of different sections of the community. Therefore any warrant condition, he submits, would be in conflict with the duty and power of the Corporation.

In support of that he points to the different statutory provision for private broadcasters who do not have this obligation. Mr O'Brien submitted that the duty was on the Corporation, not on the Tribunal. The Corporation should decide what the range of programmes should be.

As Mr Giles, for the IBA, has put it, the latter argument takes the matter no further. In fact we consider it points up the fact that this obligation is on the Corporation *as a whole*—not on an individual station nor on each service. Therefore it is possible to restrict the format of any particular station by condition imposed by the Tribunal to ensure that that programme is maintained on that station and that is the only effect. Or it may simply ensure the Corporation carries its obligation to do what it has promised to do at the hearing. It does not conflict with the Corporation's duties. We cannot see that this sort of condition prevents the Corporation from carrying out its tasks and the condition can hardly conflict with the Corporation's duties. It may affect how it carries out its duties.

It is always open to the Corporation to apply for an amendment if circumstances change and it desires to fulfil its statutory function another way.

In view of the fact that the expected advertising revenue of some \$400,000 estimated per annum is being raised solely to assist in the development of the FM network, we do not consider it appropriate to leave the condition open-ended as to time. We note that the Corporation relied solely on this needs for funds for development as the basis for the application. We do not therefore intend that the advertising be permitted indefinitely.

It may also be that conditions will change and the Corporation will no longer require the advertising from this source or may not require it to the same extent.

The Tribunal's condition as to advertising will therefore state that the advertising is to continue until December 1985 and for such further period or periods as the Tribunal may determine but not beyond 31 August 1989. This will also provide an opportunity for any objections to the format or style of advertising to be voiced and may encourage restraint.

Decision

The Tribunal indicates its approval for the FM development plan prepared by the Corporation.

The Hawkes Bay (Mt Erin) and Waikato (Mt Te Aroha) applications are granted.

The other applications will have to be submitted to the Tribunal with specific timetables and proposals for any simulcasting.

The application for advertising is approved on the following terms:

- (a) Advertising shall not exceed 6 minutes in each clock hour.
- (b) Except during the times when the station is broadcasting Parliament or broadcasts to schools, advertising is permitted during the hours of broadcast, until 0600 hours on Sundays, Good Friday, Christmas Day and Anzac Day. Where Anzac Day does not fall on Sunday, advertising is also permitted from 1300 hours to 2400 hours.
- (c) The approval is effective until 31 December 1985 or to such extended date or dates as the Tribunal may from time to time approve at the request of the warrant holder but not later than 31 August 1989.

In view of Miss Wakem's evidence that it is not intended to broadcast continuously the same programme on 2YC and the FM transmitters, it will be necessary for the Corporation to apply for short term authorisations for the separate FM programmes or for warrants.

The following condition will apply to 2YC's warrant:

The warrant holder shall not substantially depart from the basic format and content of its present programmes or the type or extent of the services 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 provided that for any extended hours approved the format and content shall be in accordance with proposals made to and approved by the Tribunal.

It does not appear necessary to impose the condition on the warrants of 1YC, 3YC and 4YC as there is no intention to have them depart from the 2YC format.

Application for extended hours is approved in principle but the specific hours and dates of commencement must be submitted with programme formats.

NOTE: The application did not include any provision for advertising on National Programme stations during relays of the YC programme.

Dated the 25th day of July 1984.

Signed for the Tribunal:

B. H. SLANE, Chairman.

Direction to Broadcasting Corporation of New Zealand in Connection with the Development in New Zealand of a Frequency Modulation (FM) Broadcasting Service

To the Broadcasting Corporation of New Zealand

WHEREAS the Minister of Broadcasting (by a notice which was dated the 27th day of October 1981* and which was given pursuant to section 68 (1) of the Broadcasting Act 1976) gave the Broadcasting Tribunal notice, inter alia, that it is part of the general policy of the New Zealand Government in relation to broadcasting—

- (a) That a frequency modulation (FM) broadcasting service be developed as an integral part of sound-radio broadcasting in New Zealand; and
- (b) That frequency modulation (FM) broadcasting be introduced in New Zealand without delay; and
- (c) That the Broadcasting Corporation of New Zealand should, by the use of frequency modulation (FM) broadcasting, extend its Concert Programme to provincial areas in which radio reception of that programme is not at present satisfactory; and
- (d) That the Broadcasting Corporation of New Zealand should, as its resources permit, progressively convert the YC stations (which are the stations from which its Concert Programme is transmitted) to frequency modulation (FM) broadcasting.

And whereas I have been advised by you that worthwhile progress by you in the development of the YC stations on the basis of frequency modulation (FM) broadcasting can only be assured if some of the costs are offset by commercial YC revenue gained by a combination of sponsorship and a limited level of advertising:

Now, therefore, pursuant to that advice and section 20 (1) of the Broadcasting Act 1976 (as enacted by section 4 of the Broadcasting Amendment Act 1982), I, Ian John Shearer, the Minister of Broadcasting,—

- (1) Give you notice that it is part of the general policy of the New Zealand Government in relation to broadcasting that the development and operation of the YC stations on the basis of frequency modulation (FM) broadcasting be financed, in part, by the introduction of advertising on the YC stations; and