

The effect will be to limit the Corporation's increasing its local revenue without increasing rates which meets one of the criticisms from 2XS.

There would be no advertising limit placed on 2XS which we believe should be given the flexibility in this market situation in the light of our decision to grant a ZM warrant.

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

It was argued for 2XS that the proposed ZM rates were too low and that it would act as a spoiler in the market. We believe that the condition which we have imposed will, to some extent, limit that. We also consider it likely that the estimate of Radio New Zealand's shares of the market is optimistic.

The relative cost per thousand may not be too far apart if regard is had for the fact that the Corporation claims to stick more rigidly to its carded rates than Mr Summerville, the manager of 2XS, indicated would be the case with 2XS.

(m) *Such matter as may be necessary for the purpose of imposing conditions under section 71A of this Act—*

The Tribunal has had regard to the timing of these proposals. While it accepts that it may be economically feasible and more efficient to instal 2 transmitters with the necessary antennae to commence at the same time, other considerations need to be taken into account.

Normally the Tribunal would have been inclined to require both stations to go on air at the same time, which has the useful effect of limiting the period for negotiation for the co-siting agreement with the Corporation by the Corporation's ambitions to get on the air. It feels that some advantage in the establishment of itself on the FM band needs to be given to the existing operator which has taken the greatest risk in deciding to change of FM.

The Corporation is introducing a new service and this service, the Tribunal considers, should be preceded by the local station having the option of establishing itself on FM.

We consider that a period of 6 months would be adequate for this purpose and we therefore have decided that the commencement date for the Corporation's FM warrant will be not sooner than 6 months after the commencement of broadcasting by 2XS-FM.

The Tribunal has no objection to networking between the 2XS-AM and 2XS-FM stations for new bulletins.

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

The transfer of 2XS to FM is fully in accordance with the Government's policy for the development of FM broadcasting as an integral part of sound radio broadcasting in New Zealand. The Tribunal commends 2XS for making the application and being prepared to make the change.

The ZM application is an expansion on behalf of the Corporation to develop its ZM programme directed to a young market outside the three metropolitan centres. Although it was not contemplated as a part of the overall development of FM broadcasting, there is nothing in previous Government policy which would suggest that this extension may not take place. It is not a network operation solely and a combination of network and local broadcasting puts it in a unique position as far as FM development so far has been concerned.

It is convenient here to consider the effect of Regulation 14A. (S.R. 1981/295)

"14A. (1) A single sound-radio warrant may be issued in respect of—

(a) A frequency modulation broadcasting station; or

(b) Both a frequency modulation broadcasting station and an amplitude modulation broadcasting station.

(2) Notwithstanding section 72 of the Act, but subject to the proviso to that section and to regulation 16A of these regulations, every sound-radio warrant issued in respect of a frequency modulation broadcasting station shall, unless sooner revoked, continue in force for a period to be specified in the warrant, which period shall not exceed 5 years after the date of the issue of the warrant.

(3) Where—

(a) An applicant for a sound-radio warrant in respect of a commercial frequency modulation broadcasting station or in respect of both a commercial frequency modulation broadcasting station and a commercial amplitude modulation broadcasting station is the holder of a sound-radio warrant in respect of a commercial amplitude modulation broadcasting station; and

(b) The Tribunal is satisfied that the frequency modulation station serves or will serve a significant proportion of the same area as the amplitude modulation broadcasting station—

it shall, unless the Tribunal determines that there are special circumstances, be a condition of any warrant granted that the applicant surrender the warrant previously held in respect of the commercial amplitude modulation broadcasting station (whether or not the warrant granted authorises the operation of the commercial amplitude modulation broadcasting station).

(4) Notwithstanding subclause (3) of this regulation, where the Tribunal grants a sound-radio warrant that authorises the operation of a commercial frequency modulation broadcasting station and of a commercial amplitude modulation broadcasting station, the Tribunal may make it a condition of the warrant that the holder of the warrant shall surrender the warrant, to the extent that the warrant authorises the operation of a commercial amplitude modulation broadcasting station, at the expiration of a period to be specified in the warrant, which period shall not exceed 4 years from the date on which the commercial frequency modulation broadcasting station begins broadcasting.

(5) The Tribunal shall specify in every sound-radio warrant issued in respect of a frequency modulation broadcasting station or in respect of both a frequency modulation broadcasting station and an amplitude modulation broadcasting station, the coverage objectives of the frequency modulation broadcasting station to which the warrant relates.

(6) It shall be a condition of every sound-radio warrant issued in respect of a frequency modulation broadcasting station that the holder of the warrant observe in respect of that station the coverage objectives specified in the warrant in respect of that station.

(7) For the avoidance of doubt it is hereby declared that nothing in these regulations excepts sound-radio warrants issued in respect of frequency modulation broadcasting stations from the application of subsections (3) to (5) of section 71 of the Act."

It will be known from the decision of the Tribunal in the case of the Christchurch FM warrants that the Tribunal has already interpreted the regulation in relation to a situation where the Corporation had both a ZB and a ZM operation already operating in the same market when the ZM station was to be changed to FM. The Tribunal has ruled that it does not consider the regulation requires the Corporation to surrender all warrants in the same area.

We saw the regulation as being one which required the Corporation, when transferring a station from AM to FM, to surrender the AM warrant within a period of 4 years. This we considered applied to both private and Corporation stations.

Submissions that a station besides the one changing over to FM should lose its warrant were rejected.

Under Regulation 14A, unless the Tribunal determines that there are special circumstances, the Corporation should have to surrender the 2ZA warrant as a condition of the grant of a ZM-FM warrant.

But the Corporation is proposing the introduction of a new service, not the transfer of 2ZA to FM. The intention of the regulations is that if the Corporation proposed that another station of the 2ZA kind had been proposed for FM then it was reasonable that the 2ZA-AM station should be required to close down within 4 years.

In the present case however, the operation is basically one of a combination of network with some local origination and the station is totally geared to another audience.

In those circumstances the Tribunal does consider that special circumstances exist which enables the Tribunal to exempt the Corporation from the requirement to surrender the 2ZA-AM warrant.

In reality the two stations will be quite different and will serve different markets and different needs. It would be quite incongruous for the Tribunal to find that it was necessary for the establishment of the ZM station for 2ZA to surrender a warrant on some sort of balancing-up operation.

A submission was made that the Corporation should have to give up a warrant for every new one it gets. The Tribunal's report, which recommended the Government policy on which the regulation is based, did not accept that argument.

The facts that the station is not a conversion of 2ZA to FM, that it is serving a different audience from the AM station, and that the FM service for YC Concert Programme listeners will be introduced as a result of this grant, combine to make convincing special circumstances.