

Decision No. 10/86
BRO 22/86

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976, and in the matter of applications for a short term broadcasting authorisation by SKI RADIO LIMITED:

Chairman: B. H. Slane.

Members: Anne E. Wilson and Robert Boyd-Bell.

REASONS FOR DECISIONS

THE applicant applied for a short term authorisation for an FM station at Queenstown from 14 June 1986 to 13 September 1986 to transmit from 6 a.m. to midnight daily to carry not more than 8 minutes commercial content during peak hours and not more than 6 minutes in off peak hours.

The purpose was to present a music orientated programme with specialist talk elements at particular times. The justification for the application was said to be that there was no locally originated programme available to Queenstown people other than Radio Central's weekday breakfast show. It was claimed there was a need for a locally originated programme, but the existing AM transmitters did not provide adequate reception characteristics in some areas, the expansion of Queenstown justified the FM service, it would not have any adverse effects on other media and that the station would participate in the winter festival.

Submissions were made by the New Zealand Journalists Union and opposition to the grant was lodged by Radio Otago Ltd. the warrant holder for 4XA Alexandra. That station has a relay station in Queenstown for its continuous AM service.

The station also has a short term authorisation to permit local origination of a breakfast programme. This short term authorisation was granted for a limited period in accordance with the Act.

The Tribunal has for many years taken the position that when short periods of local origination from a relay begin, the appropriate authority is a short term broadcasting authorisation rather than a full warrant for the relay station. If the local origination remains a comparatively small proportion of broadcast hours, then annual application can be made for a short term authorisation for a series of broadcasts which is a more appropriate procedure than warranting a full station which provides only a small amount of local origination.

It is not necessary here to traverse all the submissions that were put forward in opposition and in response to that opposition. The Tribunal decided to grant an authorisation for a period of 28 days in one sequence and allowed the applicant to choose the commencement day so that it would cover most of the special events it wanted to feature.

The applicant has twice applied for extensions of this period and these have been declined. The applicant has also asked for reasons for the decision and for the refusal to extend the period of the authorisation. As the reasons are the same it is appropriate to deal with them in this decision.

The applicant has said it intends to apply for a full warrant for the area. The Tribunal has on a number of occasions made statements regarding the proper use of short term broadcasting authorisations.

In Decision No. 22/84 the Tribunal considered applications for short term broadcasting authorities in New Plymouth.

In that case the full time operator in the area was the BCNZ which pointed out the unfair economic effects some applications had on the full time operator which provided a year round public service.

The Tribunal said:

"It is clear however that neither applicant seemed to understand the purport of previous decisions of the Tribunal and the rulings made in particular short term applications which had a bearing on this decision.

"Applicants should not consider that they are entitled to come into a market and run a station for a short time over a buoyant period and withdraw from the market sufficient advertising to make their venture viable. Nor should potential warrant applicants consider that they have a right to move into an area and try themselves out on a basis that it will be at no cost to them.

"There is no doubt that there is an element of 'warming up' the area for the warrant application and to claim as a merit in an application the conduct of a short term authorisation. In a decision as long ago as March 1979 in respect of the BCNZ's application for an authorisation at Levin (Dec 1/79), and in respect of applications by Radio Rhema, we have traversed a number of issues arising from this type of application.

"The Tribunal considers such of the factors under section 80 of the Act as may be applicable.

"The Tribunal referred to some of the issues in granting authorisations which were referred to in submissions, but without reference to the reasons given. The reasons were relevant but we quote only one passage from Dec 20/83 (Radio Kapiti Ltd. and Fifeshire Music Co. Ltd.):

The Tribunal is concerned that stations can appear for short periods in these circumstances and then start to spread their broadcast time from the immediate holiday period which might be regarded as the week before Christmas and continuing through until the end of January and move into the more lucrative November/December pre-Christmas advertising.

The Tribunal has taken a generous view as to the activities of short term stations over the holiday periods, but it must have regard to the revenue of stations which are required to provide a year round service.

While it has been accepted that the activities of the stations over the holiday period will have some impact on the local station, this was much less if they broadcast only from just before Christmas through to a date in January."

"In the case of the present applicants we do not consider that we would be entitled to refuse outright the opportunity of some broadcasting to provide that additional element of radio over the holiday period. . .

"It should be said that the Tribunal has formed an opinion quite clearly that a principal purpose of the applications is to do some FM broadcasting in an area where it might be expected to bring some audience support and indeed assist an application for a full time warrant.

"We consider the objection of the BCNZ proved to be justified on a number of grounds and in particular on the grounds of the damage which could be done to their revenue by this brief and inexperienced incursion into the market place. If such applicants wish to have the experience they should regard the experience to some extent as a part of the cost of their warrant application, but such short term activity is not an essential part of any application and gives no priority or territorial rights to any applicant.

"In pure terms of service to the people of the area the Energy Enterprises application was longer than could be justified for a short term authorisation. The Tribunal looks for a particular purpose for such authorisations and the holiday period has traditionally provided one, as have particular areas which are not adequately covered at all by commercial radio, special events, centenaries, gatherings of particular groups, weekend fund raising efforts and the like. In this case the reason for the lengthy broadcast primarily appeared to be to provide the revenue for the broadcast itself.

"These broadcasts do little to promote FM radio because the standards achieved in both signal strength and programming seldom accord with the standards which might be expected from a permanent station for the programming that might finally be decided upon as appropriate for any other station which might be licensed for the area. FM is firmly established by permanent warrant holders and experimental broadcasts from temporary sites add nothing to available knowledge.

"The Tribunal was faced with two applications, one of which presented a slightly better case than the other (in relation to programming) but which was for an excessive period.

"The Tribunal decided that it would not prefer one applicant to the other and would give them both a period of 28 days and let them select the period, provided it was not early enough to interfere significantly with the pre-Christmas trading of ZZP."

Having regard to the fact that this application is the first from Ski Radio Limited we can see no justification for a grant longer than 28 days. The applicant seems to believe that it is entitled to move into an area served by a warrant holder and broadcast for a substantial period during a peak period of trading as of right.

The Tribunal is not prepared to prefer an applicant simply because the applicant says it intends to make an application for a permanent warrant.

The Tribunal has long standing notice of an application from Radio Otago Ltd. for a permanent warrant for the Queenstown station. The Tribunal has deferred any scheduling of this application due to other business. The Broadcasting Corporation have indicated possible interest in making a similar application.

In all the circumstances it would be quite wrong to give what would amount to semi-permanent status by an extension for any period longer than 28 days.

Furthermore, there are factors that were raised in opposition to this short term application which would become more important to the Tribunal in considering a longer period of broadcast. Those factors have not weighed too heavily because of the short period of 28 days which has been approved.