

*Reasons for Decision*

The Tribunal has given a number of decisions in relation to short term authorisations for holiday periods.

This situation is somewhat different from most of those.

It relates to a major metropolitan area.

The service to be provided would be one in FM stereo.

As FM stereo broadcasting in the area has been approved by the Tribunal it is inevitable that an FM station will be established permanently in Wellington.

In the meantime a holiday service for a period of 2 months does appear to be desirable in the public interest.

It is unlikely to divert any audience permanently. The simulcasting of Radio Windy will be at times when there is only a small audience.

Occurring at this time of the year, it will bring less disruption to existing listening patterns than at any other time. If the BCNZ succeeds in the 2ZM-FM appeal hearing then there is no reason why this station should harm the introduction of the 2ZM-FM simulcast when the Corporation is ready to proceed. The existence of more than one station on the VHF band would tend to promote the switching to that band by the listener rather than inhibit it.

There is no reason, apart from the economic effect, why 2ZM should not experience some short term FM competition.

As to the economic effect the only revenue figures given to the Tribunal by the BCNZ were in relation to November when no broadcast was proposed. As to those percentages, if they refer to total inventory a third of that inventory is available only during the 8 hours at night when advertising demand is very low—as are the audiences. The actual state of the BCNZ sales figures for November may well be more than satisfactory.

The Corporation does not assist its position at all by putting forward the economic argument with a broad sweep of percentage responses for a different month yet providing no detailed information relating to the period proposed for broadcasting.

Furthermore the Corporation argues both that it needs protection in December for its major advertising sales during that period and also protection for January because that is a very poor month. The Corporation cannot really have it both ways.

In the absence of any better information than it can deduce from the statements made by the applicant and by the BCNZ in opposition, the Tribunal cannot conclude that there would be any significant effect on the pre-Christmas revenues of the Corporation. The effect in respect of the January revenue of 2ZM, which is small anyway, will not be so significant as to outweigh the advantages in the public interest of providing the stereo FM service to Wellington listeners over that period.

The Tribunal's warrant decision comment as to a permanent fourth station's effect on the market is not directly applicable to a short term situation.

The Tribunal has allowed low powered FM services previously. The difference is that this service is not low sited but there is precedent for that in Wellington. The Tribunal has also allowed short term stations to relay programmes during the evening to dawn period from stations whose signals are already heard in the area. Indeed the BCNZ has been granted that in AM applications.

The Tribunal can understand the Corporation's concern that an alternative service will no doubt be compared with that provided by 2ZM, but the low power will provide a distinct difference.

The Tribunal, appreciates the difficulty the Corporation finds itself in as the successful warrant applicant but unable to commence broadcasting in the FM mode. We do not see, however, why the Corporation should begrudge the Wellington audience a temporary Christmas FM music station in the meantime.

This application is not an open ended one for future broadcasting. It is in essence a holiday period application. We permitted an earlier start date because of the lack of evidence from the Corporation of any significant damage to its income during the pre-Christmas period.

The Tribunal has taken into account the fact that broadcasting cannot start on 30 November and it will be some days into December before the service can commence.

The 2 months period for filing was waived.

The application was granted. The maximum minutes of advertising per clock hour will be 8. This limitation will apply also to the period of networking with 2XW.

The attention of the applicant was drawn to the letter from the Wellington City Council objecting to the use of the description "Summer City Radio" for the station.

Dated the 5th day of December 1985.

Signed for the Tribunal:

B. H. SLANE, Chairman.

Decision No. 20/85

BRO 104/85

*Before the Broadcasting Tribunal*

IN THE MATTER of the Broadcasting Act 1976, and in the matter of an application for a short term broadcasting authorisation the Broadcasting Corporation of New Zealand for a commercial FM-VHF broadcasting station in Wellington:

*Chairman:* B. H. Slane.

*Members:* A. E. Wilson and R. Boyd-Bell.

DECISION

ON 30 October 1985 the applicant applied for a short term broadcasting authorisation to originate FM broadcasts from Mt Kaukau from 1 January 1986 to 25 March 1986 to relay the programme of 2ZM Wellington on a frequency modulation VHF transmission.

The applicant said the purpose was to complete the range of radio services available to the Wellington public by simulcasting the present 2ZM-AM service on FM.

The Tribunal has granted (Decision 30/84) a warrant for a commercial FM station for Wellington which would be co-sited with the television transmitter at Mt Kaukau. That decision permitted a period of simulcasting with the existing 2ZM-AM service.

Unsuccessful applicants have appealed to the High Court against that decision.

The applicant said that the result of the appeal might be announced prior to 1 January 1986, the date on which it wished to commence broadcasting under the short term broadcasting authorisation. If that did occur and the decision was favourable the applicant would uplift its warrant immediately.

If the decision were delayed beyond 1 January 1986 the Corporation would, by 1 February 1986, apply for a further set of authorisations to continue broadcasting beyond 25 March.

The applicant did not state what it proposed would occur if the appeal were successful and the grant of the warrant to 2ZM was quashed by the Administrative Division of the High Court.

The Tribunal learned by independent inquiry that the appeal was set down for hearing on 2 December 1985.

In support of the application the applicant said the FM service would satisfy the music and information needs of the young adult segment of the Wellington radio audience; would stimulate interest in the FM band and thus increase FM set penetration; would enable the 2ZM listening public to experiment with FM listening and invest in FM capable receivers; would provide advertisers with a cost efficient method of reaching a young adult audience; 2ZM would curtail its commercial content to a maximum of 8 minutes per hour as stipulated in the Tribunal decision 30/84; and the station would be different from 2ZB and Radio Windy, the other commercial stations broadcasting in Wellington.

The application was opposed by Capital City Radio Ltd., the holder of the warrant for Radio Windy.

*Decision*

The application was put forward on the basis that:

1. It should be granted because the applicant has been granted a warrant.
2. It should be able to commence broadcasting whether or not its appeal had been dealt with by 1 January.
3. Broadcasting would continue until it had secured its warrant when it would presumably broadcast under that warrant.

After giving preliminary consideration to the application the Registrar was directed to write to the applicant and inform it that the Tribunal did not consider it appropriate to grant the application before a decision was given by the High Court on the appeal. If the applicant would prefer to have a decision declining the application this could be done or it could stand adjourned until the decision of the High Court is known. At that stage the Tribunal would have to have regard to other submissions that might be made.

The Tribunal's view was not reached after full consideration of the intrinsic merits of the application nor of submissions in opposition. The Tribunal confined itself to a consideration of whether it was appropriate, before an appeal had been heard and determined, for the Tribunal to grant an authorisation which carried into substantial effect the decision against which an appeal had been lodged.

The Tribunal acknowledges that the grant of the authorisation could have been timed to cease upon any decision of the High Court which overturned the decision of the Tribunal to grant the warrant to 2ZM, but no such proposal was made to it.