

4. A better service would be provided if there was a concentration on the FM service upon the relinquishment of the AM warrant. The different audiences and programme content were well known to the company and to the Tribunal at the time of the FM warrant hearing and should not now be advanced as some new kind of "scenario" to achieve a different decision from the one the Tribunal made at the time.
5. The applicant may not have worked hard enough to sell advertising on the FM station.
6. Two minutes an hour extra advertising will be available following the surrender of the AM warrant which will add to the advertising time available in the Waikato.
7. The 1ZH community programme is available to soak up the listeners who prefer an AM community station. The ownership, private or public, is not an issue in respect of service or popularity of a station.
8. The Corporation plans a ZM-FM station and a YC-AM service in the area.

Hearing

At the request of the applicant the Tribunal gave an urgent fixture for the hearing of this application. At the hearing evidence for the applicant was given by J. S. A. Stubbs, general manager of the applicant company and a former manager of 1ZH Hamilton.

In the course of his evidence and that of M. J. P. Dunlop, for the Corporation, a number of matters were canvassed. The Tribunal does not consider it necessary to traverse all of them in this decision.

Mr Stubbs said the total establishment costs for the station were \$100,000 in excess of the budget figure and that from 4 June 1984 to 31 March 1985 a loss of \$141,749 was made compared with a projected loss of \$29,785. The unaudited results for the 6 months to 30 September 1985 shows a loss of \$52,657.

The surveys had shown that the company was obtaining a reasonable share of the market. The applicant claims that the factors contributing to losses included the higher running expenses, the number of breakdowns which had resulted in "outages" of the signal, the reduced coverage area caused by the temporary antenna, the lack of FM receivers in the area and a sales force inexperienced in selling FM advertising.

Mr Stubbs said that there would be a gap in radio services in the area if Radio Waikato was to go off the air next June and detailed these to the Tribunal. He argued that there was a need for a community AM station in Hamilton as an alternative to the service provided by the Corporation's 1ZH.

The projected revenue for the AM station for the year ended 31 March 1986 was \$1.4 million most of which could not be placed through Radio New Zealand in Hamilton nor carried by the FM station known as 89FM.

The applicant therefore intended to make an application for an AM warrant. That application had not yet been filed because of circumstances referred to by Counsel.

Mr Dunlop, the Head of Planning and Development for Radio New Zealand, pointed out correctly that the imposition of the 2 year period was not by consent. It was a period fixed by the Tribunal and Waikato - Bay of Plenty FM Radio Ltd. need not have proceeded with the FM warrant if IBC had not been prepared to accept the 2-year period rather than the 4 years originally suggested in the application for the FM station.

He referred to the opening address of counsel for Waikato - Bay of Plenty FM Radio Ltd. at the FM hearing, when it was said that the music format would be transferred from AM to FM. Mr Dunlop argued that the difference in format should not constitute a reason for an extension to the AM warrant.

Mr Dunlop said it should be noted that the AM station's revenue had not been seriously affected and he felt there had not been a sufficiently serious attempt to transfer the income to the FM station, which would have an increase of 33 percent in its available inventory (from 6 to 8 minutes) when the AM warrant was surrendered. Mr Dunlop has said that set penetration was consistent with what had been expected. If ZM-FM was given a warrant in the Waikato and Bay of Plenty that would assist the development in FM sales by providing advertisers with a more targeted audience and giving them a choice.

Mr Dunlop claimed that Radio Waikato was perceived to be a music station although he agreed that that perception had been weakened by format changes moving the station into a full service community station. The information he supplied to the Tribunal, he argued, showed that Radio Waikato was perceived primarily as a music station.

He said that Government policy had since changed and AM warrant holders were encouraged to move to FM but with a 6 months simulcasting period the Tribunal should take into account the change of policy.

He said that the Corporation was ready to submit applications for ZM-FM services for Waikato and Bay of Plenty in accordance with the ministerial directive to the Corporation and it was the Corporation's policy to apply for YC-AM services for which an AM frequency would be required.

Mr V. G. Talbot, a broadcasting technician, also gave evidence for the applicant detailing the coverage problems and the "outages".

Decision

The Tribunal sees the matter as comparatively straightforward.

Because its subsidiary company was granted an FM warrant, IBC agreed it would give up its AM warrant in Hamilton, even though the FM station would have a regional coverage extending beyond Hamilton and Waikato. It was prepared to give up that warrant in a period up to 4 years from the date of commencement of the FM station.

In the event, and for the reasons stated in the decision, the Tribunal decided that the AM station should continue for no more than 2 years. It is accepted that this would require the station to close down in June 1986. On 30 August this year the application was made to amend the warrant to extend the time.

No application had been filed by the date of this hearing but it is understood the application will be filed very shortly.

We accept the explanation of reasons for delay but comment that it would have been better if the application had in fact been filed earlier.

The applicant quite rightly points out that there it is now likely that the Tribunal would be unable to deal with the application so that it could make a decision early enough to prevent the station going off the air. This is because, whichever way the decision went, an appeal could be lodged and the appeal would be unlikely to be concluded before June.

Principally, the problem arises because the Tribunal is involved in lengthy hearings for television warrants and would be unable to deal with the AM application until the second half of next year at the earliest.

Furthermore, it is desirable that if this application is to be dealt with, any other applications affecting the same area should be considered at the same time. These would certainly include the Corporation's application for a ZM-FM service and possibly the application for a YC-AM service.

The Tribunal does not consider the other factors raised by the applicant to be relevant as separate grounds for this application. Rather they constitute ground for the application for the warrant itself. The economics of the stations do not particularly concern the Tribunal at this stage since the applicant had to be prepared to use its 2-year period to the best advantage possible to assist itself to develop a viable FM service. We are not convinced that if the AM service did cease that the FM service would be uneconomic.

However, it might prejudice an application for an AM warrant to replace the existing station. If that application was successful it would seem unnecessary for the station to have to close down for some months and then start again. The human and other costs involved would be unnecessary. To some extent this situation is caused by the Tribunal's inability to deal with the application immediately, although we must observe that the applicant has hardly shown great celerity in filing the application for an FM warrant.

None of the evidence convinces us that the Tribunal should revise the 2-year period for dual operation. We do not consider it is necessary for the AM station to continue until 1988 and to that extent we reject the arguments put forward by the applicant in support of the station continuing for that period. We accept only that the station should continue for such period as is necessary for the hearing of the AM application and the determination of any appeal from the Tribunal's decision. A reasonable prediction is that this could be in 1987.

The Tribunal did not accept the legal argument put forward by Mr Hudson on the basis of jurisdiction. But it does accept that more cogent reasons than submitted here would be needed to vary the original decision for a 2-year dual operation.

We do not see the amendment as now granted by the Tribunal as negating the original decision. It is rather a recognition of the desirability of hearing all radio applications for the area at a suitable time next year. An interruption to the television hearings for the purpose of dealing with these matters is not justified and it is better in those circumstances to allow the AM operation to continue. The Corporation did not claim that this would cause it or 1ZH any hardship and indeed no evidence was produced that indicated that the station 1ZH had been seriously harmed by the commencement of the FM station. In the absence of any significant effect on the Corporation the Tribunal does not consider its opposition to the application sustainable provided the AM operation ceases upon the effective date of the decision of the Tribunal on the AM application to be filed shortly.