

It is convenient here to consider Mr MacLaren's argument that regulation 14A required the surrender of the 2ZP warrant if the ZM/FM station was granted a warrant. We find the position to be the same as in our Manawatu decision (No. 14/85) and that special circumstances exist, namely that ZM/FM is not a conversion of 2ZP, that ZM/FM is serving a different audience from 2ZP and the introduction of the Concert Programme FM service. The reasoning is set out in the Manawatu decision.

Decisions

The Action FM application is declined.

The tribunal grants a warrant to Energy Enterprises Ltd. on the following conditions:

1. The coverage will be as defined by the technical evidence.
2. News media ownership will be limited to 30 percent.
3. The usual restriction on networking with the usual exemptions at present applying to private stations.
4. There will be the usual advertising conditions and also a limit of 8 minutes per clock hour on advertising while it is the only commercial FM station broadcasting.
5. The warrant holder shall not substantially depart from the basic format and content of its proposed programmes or the type or extent of the services intended to be provided at the time of the grant of the warrant without the prior consent of the Broadcasting Tribunal and subject to any conditions which the tribunal might impose in the public interest:

Provided however if the corporation's ZM/FM station is broadcasting the warrant holder may extend its target audience to an older age group.

6. The usual condition as to technical standards.
7. The station will co-site with the Television New Zealand installation on Mount Egmont.
8. The warrant will lapse if broadcasting does not commence within 1 year of this decision or final determination of any appeal against this decision or such further period as the tribunal may determine.
9. As long as Energy Holdings Ltd. has a prescribed interest in the warrant—
 - (a) Any change in the shareholding of Holdings which results in any person obtaining a prescribed interest in the warrant indirectly will require the consent of the tribunal.
 - (b) Any disposal by Holdings of its shares in the warrant holder
 - to any news media company or
 - to any person who will then hold a prescribed interest will require the approval of the tribunal.

The BCNZ will be granted a warrant for ZM/FM on the following conditions:

1. That the broadcasting commence not sooner than 12 months after the commencement of broadcasting by Energy Enterprises Ltd.
2. The warrant will lapse if broadcasting does not commence within 3 years of the commencement of broadcasting by Energy Enterprises or within 4 years of this decision or the final determination of any appeal against this decision (whichever shall be the later) or such further period as the tribunal may determine.
3. Broadcasting shall not commence earlier than the time when Concert Programme FM broadcasting is commenced or will concurrently commence.
4. The warrant holder shall not substantially depart from the basic format and content of its proposed programmes or the type or extent of the services intended to be provided at the time of the grant of the warrant without the prior consent of the Broadcasting Tribunal and subject to any conditions which the tribunal might impose in the public interest.
5. The usual condition as to technical standards.
6. The usual condition on advertising and a limit of 6 minutes per clock hour.
7. The station will co-site with the Television New Zealand installation at Mount Egmont.

Concert Programme

It is convenient to refer here to evidence filed by the corporation to support the establishment of a FM Concert Programme relay of 2YC.

The tribunal approved in 1984 the establishment of such a station. The tribunal has approved the amendment to the 2YC warrant with the coverage area being the area served by television transmission from Television New Zealand at Mount Egmont.

Signed for the tribunal:

B. H. SLANE, Chairman.

Decision No. 17/87

BRO 10/83

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976, and in the matter of an application by RADIO PACIFIC LTD. for amendment of sound radio warrant AM-501XP:

Chairman: B. H. Slane.

Member: Ann E. Wilson.

DECISION

Dated the 25th day of June 1987

IN its earlier decision (decision No. 8/84) the tribunal granted an amendment deleting condition 4 (d) of the warrant which related to the limit of 10 percent on any shareholding in Radio Pacific Ltd.

The applicant also sought to delete the condition 4 (b) which arose from an undertaking by the warrant holder.

The tribunal indicated in decision No. 8/84 that it would delete that condition and substitute the one applied for modified to require that significant elements of programming be directed to the listening needs of a multicultural audience.

The tribunal encouraged the parties to come to some agreement about the wording of that substitute condition but this proved impossible. After considering the submissions carefully the Tribunal has decided to impose the condition indicated in the following form.

In substitution for condition 4 (b), the following condition will apply:

"The warrant holder shall not substantially depart from the basic format and content of its proposed programmes or the type or the extent of the services intended to be provided in August 1983 (at the time of the hearing of the application to amend this condition) without the prior consent of the Broadcasting Tribunal and subject to any conditions that the tribunal might impose in the public interest:

Provided however that the warrant holder is required to respond to the specific needs identified in the application for a warrant—namely, to foster the cultural identity of minority ethnic groups in Auckland and to develop community involvement, health education and a caring understanding society and to that end shall ensure that significant elements of programming shall be directed to meeting those specific needs and other needs of a multicultural audience within the talk/talk-back format."

This condition is intended to require the warrant holder to take specific steps to reflect the various ethnic elements among Auckland listeners in its on-air staff and guests, and to comply with this condition it is likely to have to apply resources additional to those which might otherwise be considered adequate.

In the light of submissions made to the tribunal it should be made clear that the tribunal found:

1. That at the time of the original grant of the warrant, the tribunal had no statutory power to impose conditions. The conditions were those contained in an undertaking at the time of an appeal to the High Court by the applicant for the warrant.
2. That the original proposal was not for a multi-lingual ethnic station.
3. That there are limitations on the types of audience which can be catered to and the types of programmes which can be provided within the talk/talk-back format. If the station had a wider format which encompassed extensive music, then some of the objectives might be met musically.

Finally, the tribunal observes that participation in talk-back is open to all people in Auckland. It considers that Radio Pacific should encourage Aucklanders of all races to participate, and that if hosts were to encourage racist or bigoted callers the station may not appear to members of ethnic minorities as one which encouraged their participation. The performance of hosts, their very identities, and the use of guests who have cross-cultural understanding would make it clear that such participation is actively encouraged.

Signed for the tribunal:

B. H. SLANE, Chairman.