

All research, including the Radio New Zealand survey, clearly pointed to substantial interest in the provision of a truly local service.

The corporation survey evidence did show high support for popular music on FM for teenagers and young adults. Their music needs, however, have to be considered along with those of the under 40 audience as a whole. We consider they will be met (along with others' needs) to a reasonable degree by the Energy Enterprises format and, more specifically later, by the additional choice of ZM/FM.

- (h) The requirement that frequencies be utilised in the public interest:

There were no submissions relevant to this heading.

- (i) The desirability of avoiding monopolies in the ownership or control of news media:

The Action FM station was supported by Taranaki Newspapers Ltd. which, before the hearing, reduced its proposed interest from 40 percent to 14.9 percent.

We have had some regard to the New Zealand News (and Brierley Investments Ltd. as the majority shareholder in New Zealand News) ownership and dominance of the print media services available in Taranaki to both public and advertisers.

FM applications involving newspaper ownership are, in terms of Government policy, to be taken on their merits but the tendency towards dominance in this case is also a factor to which we should give some weight. That will be slight in this case because the interest in the warrant is less than a prescribed interest.

Both the private stations would introduce a news service to the area. A ZM/FM service would also have some different news but would use the basic New Zealand wide Radio New Zealand News service which is already available on 2ZP.

A private operator would introduce different news sources. Energy's would introduce one not associated with existing media in Taranaki.

- (j) The hours during which the applicant proposes to broadcast programmes:

Energy Enterprises Ltd. would provide a 24-hour locally originated programme service. Action FM proposed an 18-hour a day service on week days initially. In the particular circumstances we consider this a slight disadvantage compared with the fuller service offered by Energy.

The ZM service would be 24 hours a day but only 4 hours of it would be fully locally originated. Local information would be inserted into the programme at some other times but there are some limitations on this. It will be seen as a network operation for about half the day and a network dominated one for about 8 of the remaining hours and at weekends.

Although the corporation claimed the ZM/FM service would have local news, weather, etc. inserted for up to 18 hours a day, the level of local programming proposed indicates a much less topical local service for the evening hours.

- (k) The extent of advertising matter which the applicant proposes to broadcast:

The corporation proposed no limit on advertising volume.

Both private applicants proposed that there should be self-imposed limits of 8 minutes per hour. The tribunal considers such limits should be imposed by the tribunal as conditions. It is always open for parties at a later stage to apply for amendments, particularly where there is some FM competition.

During the period that Energy Enterprises is operating as a solo operation its maximum minutes per hour would be limited to 8.

In view of the effect on the private station of the corporation's operations, the ZM/FM station will be limited to 6 minutes per hour.

Although the corporation claimed that there was no basis for giving some protection to a new private applicant, the tribunal must take account of the enormous resources and ability of the corporation in both its selling organisation and its network privileges to sell advertising competitively. We consider that, for an initial period at least, it is important that there be some restriction on the market. The effect of the restriction of course is to benefit both 2ZP and the private station. The benefits do not fall entirely to the private operator.

- (l) The proposed rates and changes to be made in respect of advertising programmes:

There was criticism levelled at the corporation budgeting on a 100 percent sale of inventory and the effect this had on rates.

There were also allegations that the ZM/FM rate was unrealistically low. These were countered by the corporation which considered them consistent with its charge for ZM/FM services elsewhere on a 10 percent market share.

The tribunal would be concerned if there was any so-called "predatory pricing" being undertaken by the corporation but it considers this unlikely if available advertising minutes were limited to 6 per hour.

- (m) Such matters as may be necessary for the purposes of imposing conditions under section 71A of this Act:

We have referred to the 51 percent shareholding of Energy Holdings Ltd. in Energy Enterprises. As this company has a prescribed interest—and a controlling one—it will be necessary to impose conditions making it a condition that, as long as Energy Holdings ("Holdings") has a prescribed interest in the warrant, it will be a condition of the warrant that—

(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.

- (n) All relevant evidence or representations made at the hearing.

- (o) Such other matters as may be prescribed in regulations in that behalf:

Regulation 15A of the Broadcasting Regulations requires the tribunal to have regard to the general policy of the Government in relation to the development of FM broadcasting as an integral part of sound-radio broadcasting in New Zealand.

The tribunal is required by section 68 of the Broadcasting Act 1976 to have regard to the policy of the Government.

In our Nelson decision (decision No. 15/87) we set out our understanding of the effect of the 2 sections of the Act, i.e., section 80 and section 68. We have also given consideration to the Government policy stated in the ministerial notices referred to and detailed in that decision. Our general position on the Government policy question set out fully in that decision is the position we have taken here.

Regard to Government policy in this instance has resulted in our giving a more favourable decision to the ZM/FM application. While we would not have placed the Action FM application ahead of it, the weight we gave the policy influenced us in our decision to grant the ZM/FM application at this stage rather than decline the application and suggest a further application would be considered at some indefinite date in the future.

We believe the ZM/FM service should, as a second priority, follow and not commence contemporaneously with the private operation which we consider to be more desirable in overall terms and in time scale.

After careful consideration then, the tribunal has concluded that it should grant 2 warrants, 1 to Energy and 1 to the BCNZ for a ZM/FM station, with the ZM/FM warrant deferred until 12 months after the commencement of broadcasting by Energy.

We accept that the FM Concert programme, which would be "piggy-backed" into the area on the ZM/FM programme, may be thus deferred. The corporation may well consider that since the actual operations of the ZM station are not closely linked with its support for the cost of the FM installation, and since the corporation's revenue on its own estimates may in fact increase on the commencement of the Energy Enterprises station, it may be appropriate to take the opportunity to install and co-site a Concert Programme transmitter with the private FM transmitter and commence the service at the same time. The unusual delay in the completion of this decision will have been of some benefit to the corporation. That may allow a more positive view to be taken on the commencement of the Concert Programme FM service.

Our comments on the Nelson situation are pertinent. In Taranaki, the corporation may well decide in public interest terms whether it is as important to introduce the ZM/FM service (a commercial operation) or the Concert Programme in FM stereo.