

Evidence

In support of the application, evidence was given by Mr M. F. King, editor of sport for Radio New Zealand, and Mr J. G. McElwhinney, head of marketing.

Mr King described the extent of the present *Sports Roundup* coverage from 10.30 a.m. to 7 p.m. and he described the audience percentage share from an Auckland survey in 1986.

The 1986-87 season started on 29 December and is due to continue until 29 March 1987.

At times in the February/March months there is conflict with the afternoon session of Parliament when the House sits between 2 p.m. and 5 p.m. as Parliamentary broadcasts which are heard in the afternoons on 1YC and 4YC take precedence. The present practice is not to broadcast *Sports Roundup* in Auckland and Dunedin on these occasions.

However, Radio New Zealand's policy was to provide ball by ball commentaries on cricket tests on the Auckland/Dunedin national radio stations 1YA and 4YA for the period that they clash with the sittings of the House.

With the escalation in both the quantity and quality of winter sport, Radio New Zealand proposes to introduce a winter *Sports Roundup* in 1987 which would allow the broadcast coverage of all major provincial and international rugby, rugby league and soccer. Although the major percentage of the games would be played over the weekend, there was a growing number of mid-week matches being scheduled.

Winter *Sports Roundup* would also allow improved coverage of the second tier of sport which Radio New Zealand had been unable to broadcast. This would include annual secondary school championships in the major interest codes and would give an opportunity to extend coverage to men's and women's annual hockey championships and women's netball.

Mr King explained that local stations presently broadcast certain rugby matches and these might only be broadcast in 1 or possibly 2 centres from which the teams were drawn. These broadcasts might still continue but there might well be coverage on the *Sports Roundup* programme.

Mr McElwhinney said the programme would work within the existing radio advertising rules which allowed for a maximum of 18 minutes per hour but that it was most unlikely that this would be reached. It was however likely that at certain times of the day such as lunchtime, there may be a higher commercial content while for the rest of the time there might be up to 6 minutes an hour of commercial and sponsorship credit references.

He considered the *Sports Roundup* programme would provide "a unique environmental opportunity for national advertisers" for national coverage. It would include new advertising and would introduce new advertisers to other commercial radio stations as well. The programme would not necessarily be sold to sponsors on the basis of programme rating points or advertising schedule performance analysis. He saw the programme as a "value-added opportunity" for national advertisers who would perceive it as an addition to their current level of advertising activity. He thought that some of the revenue would be drawn from "below the line" or "non-media expenditure" which might normally be spent on sponsorship. It would tie in with the sponsorship packages. Mr King mentioned increased costs compared with the figures given in evidence in 1981 both in payments to sports commentators and Post Office line fees.

Mr McElwhinney acknowledged that a local station such as 1ZB is at present able to take excerpts from commentaries in *Sports Roundup* for use in its commercial format and thus earn revenue. He told Mr Giles that no attitudinal research had been undertaken and that the nature of *Sports Roundup* was ball by ball commentaries. He was unable to explain in detail the estimated cost of \$411,000 but he estimated \$150,000 would be attributable to the winter *Sports Roundup* expanded coverage.

The IBA evidence was given by Mr B. G. Impey, executive director. Mr Impey gave evidence on behalf of private operators and the Independent Broadcasters Association. He indicated the *Sports Roundup* programme was one which the corporation had an established history of broadcasting as an aspect of its statutory obligations under section 17 and section 24 of the Act and it was difficult to see how advertising could be claimed as being essential to permit the continuation of the high standard of sports programmes. The IBA considered the application was motivated by a desire to achieve some revenue to the corporation.

Mr Impey said that 1ZB would take up to 3 excerpts an hour of commentaries from the YC *Sports Roundup* programme and was able to sell advertising in conjunction with its own sports programme.

A similar situation might well apply in other centres.

Submissions

The IBA submissions can be summarised as follows:

1. *Jurisdiction*—Mr Giles submitted that the mechanism for application for authorisations under section 76 to permit the origination of short-term periods of broadcast, without full warrant applications and scrutiny, did not allow the broadcasting of only advertising. The programmes themselves could be broadcast under the existing warrants and there was no need for a short-term broadcasting authorisation. An application for amendment to the warrant should be made. It was necessary to focus on what section 76 actually authorised, not what it might be desirable to have provision for the tribunal to authorise.

2. *Previous decision of the Broadcasting Tribunal on Concert Programme advertising*—Mr Giles submitted that the tribunal had reluctantly agreed to advertising on the YC programme for 5 years to assist in funding the YC-FM conversion. The capital expenditure justified was \$5.2 million with annual expenditure costs of \$600,000.

However the position had changed: there had been an increase in the licence fee; 1YC had not been converted to FM; the policy to convert the YC network as set out in the Ministerial direction had not been accomplished and the purpose of the present application was purely to derive revenue.

3. *Consistency*—A consistent body of tribunal decisions on short-term broadcasting authorisations authorised a pattern of special service of a total radio programme. The tribunal had been cautious about end-on-end periods of broadcast and most applications related to elements of original programming. He acknowledged that the procedure may well have been used to permit advertising on television outside normal commercial hours but he would, if involved in such an application, have objected to the practice.

4. Merits—

(a) The programme had been around since 1957, it was non-commercial in nature and the interest from advertisers was not sufficient to justify the authorisation; the existence of the programme was an acknowledgement of an obligation under the Act—subsections 17 and 24.

(b) The overall cost was insignificant in relation to the BCNZ's operations; there was no real detail given; the tribunal was asked to speculate on the costs for the winter programme and there was no final resolution of the hours and format.

(c) A significant part of the audience would listen to non-commercial stations and would get programmes with a commercial flavour. This had been proposed without any audience research and would deprive some listeners in some areas of a totally commercial-free option.

He urged that in the public interest the application be declined.

In support of the application Mr Hudson said that section 76 provides that if a qualifying organisation which was not a warrant holder applied for a short-term broadcasting authorisation to broadcast an identical format on the basis that it was to be commercial, the tribunal would have unquestioned jurisdiction. Section 76 made it clear that warrant holders had exactly the same rights as non-warrant holders. Since the previous decision on advertising on the YC stations the corporation was funding additional programmes through the *Concert Programme* FM stations and undertook that commitment without any licence fee increase. The fee was lifted in October 1986 by much less than the inflation adjusted figure.

Mr Hudson submitted that the broadcast would be for a finite period; that the notice and direction from the Minister of Broadcasting of 14 August made it clear that the policy of the Government was that advertising programmes should not be broadcast on the *Concert Programme*; the applications were consistent with that policy and with the future use of the YC-AM transmitters proposed in that policy.

The short-term authorisation procedure was used to authorise broadcast of separate programmes of limited duration originated on several of the corporation's relay stations and had been used to vary the days on which television advertising could be broadcast.

Total radio-advertising revenue was predicted to exceed \$90 million in the year ended 31 March 1988 and the estimated revenue the corporation expected to achieve by the proposed broadcasts was about 0.5 percent of that. The programme was not normally broadcast in peak advertising time and by its nature was only likely to attract a limited range of advertising. If it was going to take advertising revenue from existing stations then its greatest impact would be on the corporation's other commercial stations. As there were 37 commercial radio stations in New Zealand the impact would not be at all significant on any one of them.

Legal Issues

The tribunal has previously granted short-term broadcasting authorisations to permit existing warrant holders to broadcast