

programmes on their usual transmitters which they would not otherwise be authorised to do. The provisions of section 76 appear to authorise the tribunal to approve the operation of a broadcasting station for periods subject to certain procedural requirements. The tribunal has looked at the overall pattern of the Act and considers it consistent with that for section 76 to enable the tribunal to authorise short-term changes to established patterns of broadcasting by existing warrant holders which would not otherwise be authorised by their warrants. It would seem to be inappropriate in the light of section 76 for the tribunal to require amendments to warrants for short-term specific periods.

The situations vary widely and it would be inappropriate of the tribunal to embark here on an elaborate review of the philosophy behind the various types of authorisations it has been granting.

It is sufficient to say that, in respect of this application, the tribunal considers it entirely appropriate to apply the same considerations as it would apply to an amendment to the warrants to permit some commercial broadcasting and, in particular, to take into account the factors set out in section 80 as well as having regard to Government policy as required by section 68.

The only difference is, of course, that the tribunal is conscious that its decision is not a permanent one and unlike a warrant could speedily be revoked if that proved necessary or desirable. It is also aware that once granted there may be a submission to grant a further authorisation or to regard the authorisation as grounds for a permanent warrant amendment.

The tribunal has been careful to set its mind against parties attempting to predispose the tribunal to permanent warrants by obtaining authorisations but this situation is somewhat different. The corporation holds warrants already and wishes to vary its programme format, which it is perfectly entitled to do. The difference is that it wishes to introduce advertising to stations with non-commercial warrants.

If the merits are made out we consider the short-term broadcasting procedure, provided we apply the same principles as we would apply to an application for amendment to the warrant (except as regards the impermanence of the proposal) has a number of advantages in accepting and dealing with an application over dismissing it and requiring an application for amendments to the warrants to be filed:

- (a) The tribunal can fix the period.
- (b) The period is a finite one.
- (c) There is an opportunity to gauge actual public reaction rather than rely on predictive research as to responses of the audience.
- (d) The tribunal can revoke the authorisation at any time.
- (e) The tribunal can ensure that the spirit of the application is adhered to.
- (f) The tribunal can decline to grant any further such applications.
- (g) The tribunal can itself have an opportunity to hear the programmes and actual broadcasts.
- (h) Rights of appeal are not affected.
- (i) An application granted for an amendment may be difficult to revoke or amend as the Act stands.
- (j) If further applications were made the tribunal could from time to time consider new conditions, impose new requirements and establish a closer adherence to the conditions of its approval. In the case of an amendment to a warrant such new terms or conditions would have to be "necessary in the public interest", not merely desirable.

#### *Government Policy and FM Broadcasting*

The tribunal then came to consider the application in the light of statements of the general policy of the Government in relation to broadcasting.

It had clearly been contemplated that, when the programme of conversion of YC-AM stations to FM had been completed, the YC-AM stations would be permitted to carry advertising, except during Parliamentary broadcasts. 1YC and 4YC have not been converted to FM.

The tribunal is considerably concerned about the slow development of the FM *Concert Programme* coverage to Auckland which was authorised in 1984 and which the corporation has declined to carry out because of its own policy of requiring the establishment of a fully commercial 1ZM-FM programme in Auckland before it would commence a *Concert Programme* FM service.

The tribunal accepts that the corporation has applied for the changes to 1ZM and it has not been possible to continue with the hearings for reasons that relate to the tribunal's workload and the procedural requirements of the High Court order.

A close examination of the statements of Government policy clearly indicates that there is nothing in that policy to prevent the corporation from extending the *Concert Programme* FM service to Auckland.

In a notice to the Broadcasting Corporation on 14 August 1985, the Minister stated it was part of the general policy of the New Zealand Government in relation to broadcasting:

"(1) (e) That the young adult programme currently broadcast on the ZM-AM stations should be broadcast from FM stations in such a manner that the programme becomes available progressively throughout New Zealand in conjunction with the extension of the *Concert Programme*."

In pursuance of that general policy in paragraph (3) the Minister directed the corporation:

"(c) Whenever you are authorised to establish a commercial FM broadcasting station, seek to establish at that location, before its establishment or contemporaneously with its establishment, where practicable and where authorised by the tribunal, a FM broadcasting station or a FM broadcasting relay station for the broadcasting of the *Concert Programme*."

In a concurrent notice to the tribunal the Minister informed the tribunal that it was part of the general policy of the Government in relation to broadcasting:

"(1) (e) That the young adult programme currently broadcast on the ZM stations should be broadcast from FM stations in such a manner that the programme becomes available progressively throughout New Zealand in conjunction with the extension of the *Concert Programme*."

The reference to extension is important. It refers to a previous statement of Government policy dated 27 October 1981 in which, in paragraph 2, it was said to be part of the policy:

"(c) That the Broadcasting Corporation of New Zealand should, by the use of frequency modulation (FM) broadcasting, extend its *Concert Programme* to provincial areas in which radio reception of that programme is not at present satisfactory; and

(d) That the Broadcasting Corporation of New Zealand should, as its resources permit, progressively convert the YC stations (which are the stations from which its *Concert Programme* is transmitted) to frequency modulation (FM) broadcasting."

So the Government policy established in 1985 was that where the corporation was authorised to introduce a commercial ZM-FM service it should ensure that there was a *Concert Programme* relay station also established. It also provided that the young adult programme currently broadcast on the ZM stations should be broadcast from FM stations so that it becomes available progressively throughout New Zealand in conjunction with the extension of the *Concert Programme*.

The *Concert Programme* is already broadcast in Auckland and Dunedin and so the Government policy strictly does not involve the establishment of the ZM-FM station in Auckland or Dunedin before a *Concert Programme* relay station can be established on FM in those centres.

The tribunal is faced with a warrant holder which seeks substantial additional revenue having indicated at earlier hearings that it had sums committed to the development of the YC-FM programme from its own resources. Those funds are not now being made available unless the corporation receives commercial ZM-FM approvals.

As far as this tribunal is concerned, the corporation has never detailed an economic or financial basis for the linking of the two. Indeed, at the Palmerston North hearings, it became clear that there was no close economic correlation between the income earned by the ZM-FM service and any surplus generated by it and the costs incurred in the establishment or maintenance of the FM *Concert Programme*.

On that basis it is simply not possible to say that the corporation is unable to provide the FM *Concert Programme* service to areas including New Zealand's largest population centre. We note with grave concern therefore, the failure of the corporation to meet its broad objectives under the Act in this respect. These obligations are often cited to this tribunal—in fact, repeatedly so—to justify some new service the corporation wishes to establish. There is clearly full justification for the establishment of an FM *Concert Programme* service in Auckland and Dunedin which require only the establishment of relay transmitters in premises and on sites already owned by the corporation.

Despite an inquiry from the tribunal when this application was first lodged, no positive response has come from the Corporation. Instead there was a clear statement that the 2 matters were not linked.

At this point the tribunal found it difficult to see how the corporation could justify the additional revenue sought other than in the sense of extending *Sports Roundup* to the winter, when estimated revenue would exceed the cost of this extension of the service.