



Electoral Commission
Tē Kaitiaki Take Kōwhiri

2002 GENERAL ELECTION

WRITTEN DECISION OF THE ELECTORAL COMMISSION ON ALLOCATIONS OF TIME AND MONEY TO POLITICAL PARTIES FOR BROADCASTING OF ELECTION PROGRAMMES

1. Introduction

- 1.1 The Electoral Commission ('the Commission') is required by sections 70A to 79C of the Broadcasting Act 1989 ('the Act') to allocate time made available by broadcasters and to allocate money appropriated by Parliament to enable political parties to meet all or part of the costs of broadcasting election programmes. Unless otherwise stated, section references in this decision are to sections of the Act.
- 1.2 The Commission began the allocation process for the 2002 general election on 11 April 2002, with a view to issuing allocations in mid-July 2002. The Prime Minister's announcement on 11 June that the general election would be held on 27 July meant that the Commission had to issue allocations as soon as possible after the hearings of political parties' submissions on 17 and 18 June. The allocations of money and of time for opening and closing addresses provided by Television New Zealand Limited ('TVNZ') and Radio New Zealand Limited ('RNZ') were issued on 19 June, and the allocations of free and discounted time provided by other broadcasters were issued on 21 June. This written decision formally records the Commission's allocation decisions and its interpretation and application of the statutory criteria.
- 1.3 Some parties' submissions to the Commission questioned the legislative provisions relating to the election broadcasting allocation system and the broadcasting of election programmes. While those matters are outside the scope of the allocation process for the 2002 general election, in 1996 the Commission recommended that there should be a fundamental review of the allocation regime. After the 1999 general election, the Commission made further recommendations for legislative change relating to election broadcasting. No legislative changes have been made to the law relating to election broadcasting since 1996. The Commission's report to any select committee inquiry into electoral law and practice which is undertaken after the 2002 general election will again stress the need for a comprehensive review of the current legislation concerning election broadcasting.

2. The statutory provisions

- 2.1 The time to be allocated by the Commission is that made available by broadcasters, either free of charge or at discounted rates, in response to an invitation issued by the Commission to broadcasters pursuant to section 71. In addition, Television New Zealand Limited (TVNZ) and Radio New Zealand Limited (RNZ) are required by section 77A(3) to make time available for opening and closing addresses on one free-to-air television channel with national coverage in the case of TVNZ, and on National Radio in the case of RNZ. Opening and closing addresses must be broadcast between 7.00pm and 9.00pm. Closing addresses must be broadcast in the last week of the election period (section 77A(1)).
- 2.2 In every year in which Parliament is due to expire, the Commission is required by section 70A to insert a notice in the *Gazette* specifying a date by which any political party that considers it will qualify for an allocation of time or of money must give notice in writing to the Commission that it considers itself so qualified. By section 70A(3) each political party that considers it will qualify for an allocation of time or money must give notice to the Commission in writing. The notice must contain the information set out in section 70C and must state either that the party is registered on the Register of Political Parties or that the party intends to apply for registration in order to be registered at least three months before the date on which the Parliament is due to expire. Alternatively, if the party considers it qualifies under section 75(1)(a)(ii), the notice must state the names of at least five persons who have declared their intention of becoming constituency candidates for the party at the general election and must state the electorates for which those persons intend to be candidates.
- 2.3 The money to be allocated is that appropriated or deemed to be appropriated by Parliament as notified by the Minister of Justice to the Commission pursuant to section 74. By letter dated 31 October 2001, the Associate Minister of Justice notified the Commission that the amount so appropriated for the next general election would be \$1.85 million excluding GST (\$2.081 million including GST). This is the same amount as was appropriated for the 1990, 1993, 1996 and 1999 general elections.
- 2.4 In April 2002, the member of the Commission representing the Government raised with ministers the adequacy of the fund in view of the large number of parties eligible for an allocation and the increase in broadcasting costs since the 1999 general election. The Associate Minister of Justice replied in May 2002 that it would not be possible for the Government to consider an increase in the fund at that late stage.
- 2.5 Section 75 specifies the criteria which political parties must meet in order to be eligible for an allocation of time and money for a general election and the matters to which the Commission must have regard when determining allocations of time and money to eligible parties:

75. Criteria in relation to allocation of money and time to political parties

- (1) The Electoral Commission shall not allocate any time to a political party under section 73 of this Act or make under section 74A of this Act an allocation of money to a political party unless,—
 - (a) In the case of a general election,—
 - (i) That party was registered on the Register of Political Parties at least 3 months before the dissolution of Parliament for that general election; or
 - (ii) Persons belonging to that party or group of related political parties were, by section 70D of this Act, deemed, at least 3 months before the dissolution of Parliament for that general election, to be constituency candidates at that general election for at least 5 seats in the House of Representatives; and ...
- (2) The Electoral Commission shall, in allocating time to a political party under section 73 of this Act or in making under section 74A of this Act an allocation of money to a political party, have regard to—
 - (a) The number of persons who voted at the immediately preceding general election for that party and for candidates belonging to that political party; and
 - (b) The number of persons who voted at any by-election held since the immediately preceding general election for any candidate belonging to that political party; and
 - (c) The number of members of Parliament who,—
 - (i) In the case of a general election, were members of that political party immediately before the expiration or dissolution of Parliament; and ...
 - (d) Any relationships that exist between a political party and any other political party; and
 - (e) Any other indications of public support for that political party such as the results of public opinion polls and the number of persons who are members of that political party; and
 - (f) The need to provide a fair opportunity for each political party to which subsection (1)(a)(i) of this section applies to convey its policies to the public by the broadcasting of election programmes on television.
- (3) Notwithstanding anything in subsection (1) or subsection (2) of this section, an allocation made under section 73 of this Act of time in an election period or a decision made under section 74A of this Act in respect of an election period may be made before the beginning of the election period.

- 2.6 Section 69(1) defines the election period as beginning on writ day and ending with the close of the day preceding polling day.

3. The allocation process for the 2002 general election

- 3.1 The Commission issued an invitation to 268 broadcasters, broadcasting stations and broadcasting industry associations on 11 April 2002. Broadcasters' replies were due to be provided by 14 May 2002 and those received by that date were required to be distributed to political parties and the Minister of Justice by 21 May 2002 (section 72). Broadcasters' replies received after 14 May were distributed to parties and the Minister at the end of each week. Sections 5 and 8 of this decision outline

broadcasters' replies concerning time for opening and closing addresses and concerning other free or discounted time.

- 3.2 A notice from the Commission published in the *Gazette* on 11 April 2002 specified 1 May 2002 as the due date for parties to give notice to the Commission if they considered they qualified for an allocation. Copies of the *Gazette* notice were sent to all registered parties, all applicants for registration of a party then before the Commission, and all other parties known to the Commission. In response to the Commission's notice, 15 registered parties or groups of related political parties gave notice. One registered party declined to be considered for an allocation. Two non-component registered parties did not give notice, and in June 2002 the Commission cancelled both their registrations on the grounds that they did not have the membership numbers required to remain registered.
- 3.3 Notices from three unregistered parties stated that they intended to apply for registration in order to be registered at least three months before Parliament is due to expire. One of those parties notified the Commission of the names and electorates of 5 persons who had declared their intentions of becoming electorate candidates for the party. The announcement that the general election would be held on 27 July 2002 and that Parliament would be dissolved on 18 June 2002 meant that none of those parties was eligible for an allocation for the 2002 general election under section 75(1)(a)(i) or section 75(1)(a)(ii).
- 3.4 Section 76C sets out changes to the broadcasting allocation regime which apply if the writs are issued for a general election either before the Commission has issued an invitation to broadcasters to provide time, or before broadcasters' replies have been distributed to political parties and the Minister of Justice. Because the changes made by section 76C affect the eligibility requirements for political parties and the allocation procedures the Commission must follow, and in view of media reports that a general election could be called for July or August 2002, the Commission sought an opinion from the Crown Law Office in late May 2002 on the application of section 76C should a general election be called before the expected time of October/November 2002. That advice concluded that section 76C ceased to apply once the 21 May deadline for distribution of broadcasters' replies had passed.
- 3.5 As required by section 76, the Commission invited 15 parties or groups of parties which gave notice to meet with the Commission and be heard. Hearings of parties were held on 17 and 18 June. The hearings were held in public. Nine parties were heard in person, and five parties were heard by telephone audio-conference. One party did not wish to be heard.

4. Allocations of time and money under section 75(2)

- 4.1 The Commission took the various procedural and other steps required by the Act before making the allocations of time and money. These included meeting with and hearing political parties and consulting with broadcasters and considering their

comments. In reaching its decisions concerning allocations of broadcasting time and money the Commission considered all the written and oral submissions made to it. Commissioners were unanimous in making all the allocations and the other decisions recorded in this decision.

- 4.2 Having considered the written and oral submissions of political parties, the Commission decided that the following registered political parties were eligible for an allocation of money and time for broadcasting election programmes in relation to 2002 general election:

ACT New Zealand
 Aotearoa Legalise Cannabis Party
 Christian Heritage Party
 Libertarianz
 Mana Māori Movement
 New Zealand First Party
 New Zealand Labour Party
 NMP
 One New Zealand Party
 Outdoor Recreation NZ
 The Alliance
 The Greens, The Green Party of Aotearoa/New Zealand
 The New Zealand National Party
 United Future New Zealand

- 4.3 The Commission decided that, in view of the statement of the secretary of The People's Republic of Aotearoa/New Zealand during the hearing of the party's submission that the party did not intend to nominate electorate candidates or submit a party list at the election, the party was not eligible for an allocation of time or money.
- 4.4 In allocating time and money to eligible parties the Commission is required to have regard to the matters set out in section 75(2)(a) to (f). The Commission has decided that this written decision ought to record its conclusions about the way in which it considered and applied the matters specified in section 75(2).
- 4.5 In relation to the interpretation of section 75(2), the Commission first notes that though the wording of section 75(2) ('... shall ... have regard to') may conceivably leave it open to argument that the Commission is able to consider other matters, all other considerations point to the contrary, including the lack of any paragraph in section 75(2) permitting the Commission to take into account such other matters as it considers relevant. Accordingly the Commission has decided that it can only consider the matters specified in section 75(2). The Commission notes that these matters do not allow it to distinguish between parties on the basis that some may, for example, be single-issue parties. Nor does section 75(2) allow the Commission to distinguish between parties contesting the Māori electorate seats and parties which are not. The Commission notes, however, that the allocations of broadcasting time and funds have

to be made against the background of the time made available by broadcasters, together with any relevant matters which arise out of the required consultations with parties and broadcasters, and the amount of money made available by Parliament. However none of these matters is specifically included in section 75(2).

4.6 Section 76A empowers the Commission in certain circumstances to vary an allocation made to a party of time or money where, among other things, the party fails to submit a party list or the number of persons who are constituency candidates belonging to a political party or group of related political parties changes. Accordingly the Commission requested parties to advise whether they intended to nominate a party list and to state the total number of electorate seats (General and Māori) which they intend to contest at the 1999 general election.

4.7 The Commission records its interpretations of the allocation criteria in section 75(2) as follows:

(a) The number of persons who voted at the immediately preceding general election for that party and for candidates belonging to that political party.

Under this head the Commission has taken into account the percentages of total votes cast for parties and candidates of that party at the 1999 general election as recorded in the official election statistics published by the Chief Electoral Office.

(b) The number of persons who voted at any by-election held since the immediately preceding general election for any candidate belonging to that political party.

No by-elections have been held since the 1999 general election.

(c) The number of members of Parliament who, in the case of a general election, were members of that political party immediately before the expiration or dissolution of Parliament.

In the Commission's view, this criterion refers to MPs' memberships of extra-parliamentary parties rather than their memberships of parliamentary parties. Accordingly the Commission sought information from each party on the number of MPs who were members of the extra-parliamentary party immediately before the dissolution of Parliament for the 2002 general election.

(d) Any relationships that exist between a political party and any other political party.

This paragraph appears to be intended to allow the Commission to treat umbrella parties and their component parties as one entity so that there is no element of double counting when allocations are made. These relationships are also referred to in sections 73(3) and 74A(5).

(e) Any other indications of public support for that political party such as the results of public opinion polls and the number of persons who are members of that political party.

(i) The results of public opinion polls

In respect of polls recording the party votes, the Commission has taken account of the results of 11 One Network News/Colmar Brunton polls, 6 CM Research/NFO TV3 polls, 11 *National Business Review/Insight* polls and 3 *New Zealand Herald/DigiPoll* polls, all of which were published from 1 July 2001 to 18 June 2002. The Commission did not take other published polls into account or the results of parties' own polling. The Commission took account of poll results for parties registered since July 2001 from the month following registration.

Because the support for parties can vary between the party votes and the electorate votes, the Commission also considered the results of polls relating to each vote where these were available. In respect of polls recording the electorate votes, the Commission had available to it the results of 11 One Network News/Colmar Brunton polls and 6 CM Research/NFO TV3 polls, all of which were published from 1 July 2001 to 18 June 2002.

In order to ensure a consistent comparison between these polls, the Commission considered results for 'decided voters' only and did not adjust published results to take account of 'don't know' or 'would not vote' responses or of refusals to participate in the polls.

(ii) The number of persons who are members of that political party

The Commission requested the parties to provide a statutory declaration stating the number of current financial members of the party. The Commission also advised all parties that it would not be able to give any consideration to the membership criterion if the party decided not to provide this information. Because some parties regard membership numbers as sensitive, the Commission agreed to accept their membership information in confidence, in so far as it is able to do so under the Official Information Act 1982 and the general law.

(iii) Other indications of public support

Various parties urged the Commission to have regard to other indications of public support such as media coverage and public profile, the number of names on the party's mailing list, the number of letters written by party members to newspaper editors, and the number of submissions the party had made to Parliament. In view of the difficulties of obtaining reliable information about these matters for all parties, the Commission decided it should not take any account of such matters as indications of public support.

(f) The need to provide a fair opportunity for each political party to which subsection (1)(a)(i) of this section [viz. section 75] applies to convey its policies to the public by the broadcasting of election programmes on television.

The Commission first notes that (with the exception of paragraph (d)) all the previous criteria relate to the likely extent of a political party's voter or public support. Paragraph (f) is, however, of a different quality. It applies to each party eligible to be considered for an allocation because it was registered three months before the dissolution of Parliament for the 2002 general election. The paragraph appears by implication to be intended to incorporate the notion that the party has nominated a party list. It refers to providing each such party with 'a fair opportunity' to convey its policies to the public by the broadcasting of election programmes 'on television', which is acknowledged to be much the most expensive and accessible broadcasting medium.

A 'fair opportunity' must be an opportunity which is fair or equitable in all the circumstances, which include the extent to which the party satisfies the other criteria in paragraphs (a) to (e). The fact that a party is unable to purchase television time with its own funds is also important. The overall size of the fund available for allocation is also an important factor. The allocations of money have to be made from an appropriation which has not changed since the 1990 election but which now must be spread over more eligible parties, none of which is permitted to purchase broadcasting time with its own funds. If, therefore, the Commission makes no allocation of money to a minor party, that party cannot buy *any* broadcasting time; and, if the allocations to minor parties absorb part of the funds which would otherwise go to other parties, the latter are disadvantaged because they, too, cannot purchase additional broadcasting time with their own funds.

The Commission does not think that, in the context of paragraph (f), any real significance as a differentiating factor can be given to the fact that a party is nominating constituency candidates for all or most electorates, since a party submitting only a list of candidates will also wish to campaign on a nationwide basis.

- 4.8 Parties' submissions generally supported the Commission's previous practice of dividing the eligible parties into a number of categories based on the extent to which they satisfied the criteria in section 75(2). Parties were, however, divided on the number of categories there should be, although there was a general consensus that while the categories should be treated differently, the parties in each category should receive equal allocations of time and money.
- 4.9 Based on its consideration of paragraphs (a), (b), (c) and (e) of section 75(2), the Commission decided that the eligible parties fell into five discernible categories, as follows (parties are listed in alphabetical order in each category):

Category 1 New Zealand Labour Party; The New Zealand National Party.

Category 2 ACT New Zealand; New Zealand First Party; The Greens, The Green Party of Aotearoa/New Zealand.

Category 3 The Alliance.

Category 4 Christian Heritage Party; United Future New Zealand.

Category 5: Aotearoa Legalise Cannabis Party; Outdoor Recreation NZ.

Category 6: Libertarianz; Mana Māori Movement; NMP; One New Zealand Party.

4.10 The Commission agreed with proposals that parties in the same category should receive the same allocations of money and time. The Commission particularly noted that submissions from both the New Zealand Labour Party and The New Zealand National Party supported this approach by agreeing that those parties should receive equal allocations of time and money.

4.11 The Commission decided that the requirements of section 75(2), including paragraph (f), would be met by the following allocations on money to each of the parties in each category:

Category 1: \$615,000 (incl. GST).

Category 2: \$166,300 (incl. GST).

Category 3: \$100,000 (incl. GST).

Category 4: \$75,000 (incl. GST).

Category 5: \$25,000 (incl. GST).

Category 6: \$12,500 (incl. GST).

4.12 It should be noted that the Commission has not imposed any requirement that money allocated to a party must be spent on buying television time. A party can, therefore, elect to spend its allocation of money on buying time for radio advertising. Submissions by parties indicated a strong preference for the ability to divide funds allocated by the Commission as they saw fit between buying television time, buying radio time and the costs of producing television and radio advertisements. The Commission notes, however, that the Government Volume Incentive Discounts (VIDs) negotiated from time to time between some broadcasters and the Department of the Prime Minister and Cabinet are applicable to the rates charged by those broadcasters for broadcasting parties' election programmes on television and radio. Parties are permitted to spend their own funds on production costs (see section 9 of this decision).

- 4.13 Table 1 on page 11 of this decision shows the allocations of money to each eligible party in each category.

5. Time provided by TVNZ and RNZ for opening and closing addresses

- 5.1 TVNZ is required by section 77A(3) to make time available for opening and closing addresses on one free-to-air channel with national coverage. TVNZ offered free time of 72 minutes for opening addresses, and 24 minutes for closing addresses on Television One. As in 1999, TVNZ proposed to recover some of its costs by broadcasting non-political commercial advertising between opening addresses and between closing addresses.
- 5.2 RNZ is similarly required under section 77A(3) to make time available for opening and closing addresses, on the service known as National Radio. RNZ offered free time of 72 minutes for opening addresses and 24 minutes for closing addresses.
- 5.3 Both TVNZ and RNZ made proposals in relation to the scheduling of these programmes. Neither TVNZ nor RNZ made proposals for the allocation of time to parties or for the order in which opening and closing addresses should be broadcast. The Commission discussed with each broadcaster the hours of broadcast of opening and closing addresses, and records its appreciation of the willingness of both broadcasters to be flexible in accommodating these broadcasts within their schedules.
- 5.4 The actual date on which the first opening address will be broadcast is traditionally a matter for the Prime Minister to decide, and the Commission was advised that this would occur on Friday 28 June. TVNZ agreed to broadcast 48 minutes of opening addresses on Television One between 7.30pm and 8.30pm on that night, and to broadcast 24 minutes of opening addresses between 7.00pm and 7.30pm on the following night. The closing addresses will be broadcast on Television One on Friday 26 July between 7.30pm and 8.00pm.
- 5.5 RNZ agreed to broadcast 48 minutes of opening addresses on National Radio between 8.05pm and 9.00pm on Friday 28 June, and to broadcast 24 minutes of opening addresses on National Radio between 7.05pm and 7.30pm on the following night. The closing addresses will be broadcast on National Radio on Friday 26 July between 8.05pm and 8.30pm.
- 5.6 Section 77A(4) provides that the Commission shall determine the amounts to be paid on account of the broadcaster's production costs of every opening address and every closing address. A part of that cost is the pre-broadcast checking that TVNZ and RNZ must carry out and the associated administration. In conformity with previous practice, the Commission invited TVNZ and RNZ to indicate their costs. TVNZ has offered to bear such costs itself. RNZ sought a small budget allocation which the Commission has accepted; see Table 1 on page 11 of this decision. It should be noted

that this sum is deducted from the total appropriation available for allocation among eligible parties.

- 5.7 The Commission decided that parties in Categories 1-5 would be allocated time for opening and closing addresses on TV1 and National Radio and that the parties in Category 6 would not be allocated time for this purpose. Having consulted both broadcasters as required by section 75A(a) and (b), the Commission decided, pursuant to section 73, to make the allocations to each eligible party in each category of free time for opening and closing addresses on TV1 and National Radio that are recorded in Table 1 below.

6. Allocations made by the Commission of money and of time provided by TVNZ and RNZ for opening and closing addresses

- 6.1 The following table sets out the allocations made by the Electoral Commission to eligible political parties of the money deemed to have been appropriated by Parliament, and the Commission's allocations of the free time TVNZ and RNZ have provided for opening and closing addresses:

Table 1
Allocations to political parties of money for all or part of the costs of election programmes and of free time for opening and closing addresses on Television One and National Radio

	Allocation (incl. GST)	opening address (minutes)	closing address (minutes)
New Zealand Labour Party	\$615,000	12.0	4.0
The New Zealand National Party	\$615,000	12.0	4.0
ACT New Zealand	\$166,300	8.0	2.5
New Zealand First Party	\$166,300	8.0	2.5
The Greens, The Green Party of Aotearoa/New Zealand	\$166,300	8.0	2.5
The Alliance	\$100,000	6.0	2.0
Christian Heritage Party	\$75,000	5.0	1.5
United Future New Zealand	\$75,000	5.0	1.5
Aotearoa Legalise Cannabis Party	\$25,000	4.0	1.0
Outdoor Recreation NZ	\$25,000	4.0	1.0
Libertarianz	\$12,500	0	0
Mana Māori Movement	\$12,500	0	0
NMP	\$12,500	0	0
One New Zealand Party	\$12,500	0	0
Broadcasters' production costs			
TVNZ	\$0		
RNZ	\$2,100		
Total	\$2,081,000	72	24

7. Order of opening and closing addresses

7.1 The Commission invited parties to make submissions on the order of opening and closing addresses. Again there was a disparity of views. The Commission decided it was appropriate for the first opening address to be given by the Prime Minister, to be followed on the same night by the opening address of the Leader of the Opposition and then by the opening addresses of the three parties in Category 2. The opening addresses of the parties in Categories 3, 4 and 5 would be broadcast on the following night. Ballots were held to determine the order of the opening addresses of the parties in Categories 2, 4 and 5. The same order of categories would be used for closing addresses, but the order of the parties in each category will be the reverse of their order for opening addresses. TVNZ will broadcast non-political advertising between blocks of opening addresses and between blocks of closing addresses.

7.2 The order of the opening addresses was therefore as follows:

Friday 28 June: New Zealand Labour Party
 The New Zealand National Party
 The Greens, The Green Party of Aotearoa/New Zealand
 New Zealand First
 ACT New Zealand

Saturday 29 June: The Alliance
 Christian Heritage Party
 United Future New Zealand
 Outdoor Recreation New Zealand
 Aotearoa Legalise Cannabis Party

7.3 The order of the closing addresses will be as follows:

Friday 26 July: The New Zealand National Party
 New Zealand Labour Party
 ACT New Zealand
 New Zealand First
 The Greens, The Green Party of Aotearoa/New Zealand
 The Alliance
 United Future New Zealand
 Christian Heritage Party
 Aotearoa Legalise Cannabis Party
 Outdoor Recreation New Zealand

8. Offers of time made by other broadcasters

8.1 Other time provided for opening and closing addresses

Two broadcasters other than TVNZ and RNZ offered time for opening and closing addresses. The Commission notes that offers from some of these broadcasters were not clear on whether the time was being offered for use by political parties or for use by individual electorate candidates. The Commission has no responsibility for the allocation of any time which broadcasters may wish to provide for broadcasting of election programmes on behalf of individual electorate candidates, and any such time is not covered by the allocations which follow.

The Commission is required to allocate this time for opening and closing addresses among eligible political parties, and has consulted each affected broadcaster about the proposed allocations. The Commission has decided that allocations of the time for opening and closing addresses offered by these broadcasters should be in the same proportions as the allocations of the time provided by TVNZ and RNZ as set out in Table 1 above, as follows:

Table 2
Allocations of time provided for opening and closing addresses
(other than time provided by TVNZ and RNZ)

	% of time for opening address	% of time for closing address
New Zealand Labour Party	16.7	17.0
The New Zealand National Party	16.7	17.0
ACT New Zealand	11.1	10.6
New Zealand First Party	11.1	10.6
The Greens, The Green Party of Aotearoa/New Zealand	11.1	10.6
The Alliance	8.3	8.5
Christian Heritage Party	6.9	6.4
United Future New Zealand	6.9	6.4
Aotearoa Legalise Cannabis Party	5.6	6.4
Outdoor Recreation NZ	5.6	6.4
Libertarianz	0	0
Mana Māori Movement	0	0
NMP	0	0
One New Zealand Party	0	0
Total	100.0	99.9

(The percentages for closing addresses do not add to 100% due to the rounding of individual allocations.)

The Commission decided that the orders of broadcasts of opening and closing addresses on these stations would be those given in paragraphs 7.2 and 7.3 for opening and closing addresses broadcast by TVNZ and RNZ.

8.2 Other time provided free or at discounted rates

Fifteen broadcasters offered other time for election programmes free of charge; 44 broadcasters offered other time for election programmes at discounted rates. The Commission notes that offers from some of these broadcasters were not clear on whether the time was being offered for use by political parties or for use by individual electorate candidates. The Commission has no responsibility for the allocation of any time which broadcasters may wish to provide for broadcasting of election programmes on behalf of individual electorate candidates, and any such time is not covered by the allocations which follow.

The Commission is required to allocate these offers of time among the eligible parties, and has consulted each affected broadcaster about the proposed allocations. The Commission has allocated the time offered by these broadcasters in the same proportions as the allocations of money shown in Table 1 above, as follows:

Table 3
Allocations of time provided free or at discounted rates
(other than time provided for opening and closing addresses)

	% of time
New Zealand Labour Party	29.6
The New Zealand National Party	29.6
ACT New Zealand	8.0
New Zealand First Party	8.0
The Greens, The Green Party of Aotearoa/New Zealand	8.0
The Alliance	4.8
Christian Heritage Party	3.6
United Future New Zealand	3.6
Aotearoa Legalise Cannabis Party	1.2
Outdoor Recreation NZ	1.2
Libertarianz	0.6
Mana Māori Movement	0.6
NMP	0.6
One New Zealand Party	0.6
Total	99.9

(The percentages of time do not add to 100% due to the rounding of individual allocations.)

9. Conditions concerning expenditure of allocations

- 9.1 The Commission is empowered by section 74A(2) to include in its decisions conditions concerning the manner in which any political party or group of related political parties is to expend its allocation. Political parties were invited to make submissions on conditions which should be applied to this expenditure.

- 9.2 The predominant submission was that parties should receive bulk allocations of money as in 1996 and 1999. Parties submitted that they should have the discretion to use their allocations to best advantage as they saw it. The Commission has accepted this view.
- 9.3 The following conditions were made by the Commission pursuant to section 74A(2)(b) and section 74A(3). They affect political parties and broadcasters.
1. Each political party and group of related political parties is to report to the Commission –
 - (a) the values (including GST) of its election programme bookings as those bookings are made; and
 - (b) the values (including GST) of the production costs which are to be paid from the party's allocation as those production arrangements are made.
 2. Funds allocated to a political party are to be used only for the purpose of purchasing radio or television time for election programmes or meeting the cost of production of election programmes. They cannot be put to other uses, such as print advertising.
 3. Political parties may not use their own funds to purchase television or radio advertising time, but may use their own funds for production costs.¹
 4. Time or money allocated to a political party or group of related political parties cannot be transferred to another party. Parties are also reminded that under section 74A(5) money cannot be allocated to an individual party if that party has received an allocation as part of a group of related political parties.
 5. Payments by a party for broadcasting of election programmes on a community access broadcasting station or other station which requires payment for such broadcasts are to be made from the party's allocation.
 6. Payment by a party to a broadcaster of a donation or other sum in relation to the purchase of time to broadcast an election programme on behalf of the party must be made from the party's allocation. Any donation or other sum relating to the production costs of a party's election programme may be paid from the party's allocation or from its own funds.
- 9.4 The Commission draws the attention of parties and broadcasters to the fact that the sums allocated by the Commission include GST. Parties should be aware that

¹ Parties should note that funds allocated by the Commission do not count as a party election expense under paragraph (g) of the definition of "election expenses" in section 214B of the Electoral Act 1993. However, if a party spends its own funds on production costs, that expenditure is counted as an election expense. Electorate candidates may use their own funds for the purchase of broadcasting time, but the costs of those broadcasts are counted among the candidates' election expenses (section 213 of the Electoral Act).

broadcasters' ratecards often do not include GST, and do not include the Volume Incentive Discounts (VIDs) negotiated from time to time between some broadcasters and the Department of the Prime Minister and Cabinet for the costs of broadcasting time on television and radio which are paid from public funds.

- 9.5 The attention of parties and broadcasters is also drawn to the requirement in section 79B(1) that –

No broadcaster shall offer or give to any political party, whether by way of a reply under section 71A of this Act or otherwise, terms for broadcasting time that are more favourable than those offered or given to any other political party that buys or expresses an interest in buying comparable time from that broadcaster.

Section 79B(2) contains a similar provision in respect of candidates.

10. Submission of Accounts

- 10.1 The Commission circulated to parties its proposed method of handling the payment of accounts submitted to it by parties for production and advertising costs. Comments were invited. There was general acceptance of the method of authorisation and control of expenditure by the parties which responded. The Commission adopted the procedures for authorising and submitting accounts with minor amendments consequent upon the general election being held on 27 July 2002.

11. Variations to allocations

- 11.1 Section 76A provides that the Commission may vary an allocation made to a party in specified circumstances, including the failure of a party to submit a party list pursuant to section 127 of the Electoral Act 1993. Section 76A(4), however, further limits the circumstances in which an allocation may be varied in cases 'where effect has been given in whole or in part to an allocation'.
- 11.2 The Chief Electoral Officer announced on 4 July 2002 that the submission of the Libertarianz party list had not been in accordance with section 127 of the Electoral Act 1993 and that the list had consequently been rejected. The party had received an allocation of \$12,500 (incl. GST) but had not received an allocation of time for opening or closing addresses on TVNZ or RNZ. All other parties receiving an allocation submitted party lists and nominated electorate candidates in accordance with the intentions they stated to the Commission.
- 11.3 The Commission had sought an urgent opinion from the Crown Law Office in 1999 on the interpretation of section 76A and in particular of section 76A(4). That opinion had concluded that there was some doubt about the application of the phrase 'where effect has been given in whole or in part to an allocation'. Accordingly the Commission asked for information from the Libertarianz party on any actions taken in respect of the

party's allocation of money, and sought further advice from the Crown Law Office on the interpretation of section 76A in the light of the information provided by the party.

- 11.4 The Commission met on 8 July 2002 to consider whether to vary the allocation of money made to the Libertarianz party. It decided to reduce the allocation of money to the Libertarianz party to \$5,000 (incl. GST), with \$7,500 (incl. GST) reallocated to the parties in Categories 1-4 according to each party's percentage of the total funds allocated to parties in those categories. Table 4 shows the revised amounts allocated to each party:

Table 4
Revised allocations of money, 8 July 2002

	Allocations (incl. GST)	Adjustments to allocations (incl. GST)	Revised allocations (incl. GST)
New Zealand Labour Party	\$615,000	+\$2,331	\$617,331
The New Zealand National Party	\$615,000	+\$2,331	\$617,331
ACT New Zealand	\$166,300	+\$630	\$166,930
New Zealand First Party	\$166,300	+\$630	\$166,930
The Greens, The Green Party of Aotearoa/New Zealand	\$166,300	+\$630	\$166,930
The Alliance	\$100,000	+\$380	\$100,380
Christian Heritage Party	\$75,000	+\$284	\$75,284
United Future New Zealand	\$75,000	+\$284	\$75,284
Aotearoa Legalise Cannabis Party	\$25,000	\$0	\$25,000
Outdoor Recreation NZ	\$25,000	\$0	\$25,000
Libertarianz	\$12,500	-\$7,500	\$5,000
Mana Māori Movement	\$12,500	\$0	\$12,500
NMP	\$12,500	\$0	\$12,500
One New Zealand Party	\$12,500	\$0	\$12,500
Broadcasters' production costs			
TVNZ	\$0	\$0	\$0
RNZ	\$2,100	\$0	\$2,100
Total	\$2,081,000	\$0	\$2,081,000

All parties were notified of the revised allocations by fax on 8 July 2002.

Signed for and on behalf of the Commission:

[A. A. T. Ellis]

..... Date: 25 July 2002

Hon Justice Ellis
President of the Commission

Members of the Commission: Hon Justice Ellis (President)
Chief Judge Joe Williams (Māori Land Court)
Ms Belinda Clark (Secretary for Justice)
Hon David Caygill (deputy – Mr Lloyd Falck), representing
the Government
Mr John Isles, representing Opposition parties
Dr Paul Harris (Chief Executive)
