Investigation report no. BI-436

| Summary |  |
| --- | --- |
| **Licensee** | Sunshine FM Radio Association Incorporated |
| **Station** | 4SFM |
| **Type of service** | Community broadcasting—radio |
| **Dates of broadcasts** | 25 September 2018  28 September 2018 |
| **Relevant legislation** | Paragraph 9(3)(b) of Schedule 2 to the *Broadcasting Services Act 1992* [time limit for sponsorship announcements] |
| **Date Finalised** | 18 December 2018 |
| **Decision** | No breach of paragraph 9(3)(b) of Schedule 2 to the *Broadcasting Services Act 1992* [time limit for sponsorship announcements] |

Background

On 10 October 2018, the Australian Communications and Media Authority (the ACMA) received a complaint that the licensee of 4SFM, Sunshine FM Radio Association Incorporated (the licensee), was exceeding the five minutes per hour permitted for sponsorship announcements. The complaint raised concerns that between 10.00 am and 11.00 am on 25 September 2018, and between 3.00 pm and 5.00 pm on 28 September 2018, sponsorship announcements, including paid interview spots, exceeded the limit of five minutes per hour.

On 4 October 2018, the ACMA commenced an investigation under section 170 of the *Broadcasting Services Act 1992* (the BSA) into the licensee’s compliance with the licence condition at paragraph 9(3)(b) of Schedule 2 to the BSA [time limit for sponsorship announcements].

The licensee

The licensee represents the mature-age community interest in the Nambour RA2 licence area. The licensee has held a long-term community broadcasting licence since 9 December 2002. The expiry date of the current licence is 8 December 2022.

Assessment and submissions

This investigation has taken into account the following material:

* the complaint received by the ACMA on 10 October 2018
* copies of the broadcasts between 10.00 am and 11.00 am on 25 September 2018, and between 3.00 pm and 5.00 pm on 28 September 2018
* copies of documents provided by the licensee to the ACMA on 24 October 2018.

Other sources used in this investigation are identified in the report, where relevant.

In assessing content against the BSA, the ACMA considers the meaning conveyed by the material, including the natural, ordinary meaning of the language, context, tenor, tone and any inferences that may be drawn. This is assessed according to the understanding of an ‘ordinary reasonable’ listener.

Australian courts have considered an ‘ordinary reasonable’ listener to be:

A person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person does not live in an ivory tower, but can and does read between the lines in the light of that person’s general knowledge and experience of worldly affairs.[[1]](#footnote-1)

Once the ACMA has ascertained the meaning of the material that was broadcast, it then assesses compliance with the relevant licence condition.

Issue: Did the licensee exceed the time limit for sponsorship announcements?

Relevant provisions of the *Broadcasting Services Act 1992*

**9 Conditions applicable to services provided under community broadcasting licences**

[…]

1. A community broadcasting licensee may broadcast sponsorship announcements on a particular community broadcasting service. However, they must not run in total for more than:

[…]

(b) […] 5 minutes in any hour of broadcasting on that service.

[…]

1. In working out the length of time devoted to the broadcasting of sponsorship announcements, account is not to be taken of the broadcasting by a community broadcasting licensee of any of the following:
2. material that publicises programs to be broadcast by the licensee;
3. material that promotes the licensee’s products, services or activities for the broadcast of which the licensee does not receive any consideration in cash or in kind;
4. community information or community promotional material for the broadcast of which the licensee does not receive any consideration in cash or in kind;

Finding

The licensee did not breach paragraph 9(3)(b) of Schedule 2 to the BSA between 10.00 am and 11.00 am on 25 September 2018.

The licensee did not breach paragraph 9(3)(b) of Schedule 2 to the BSA between and 3.00 pm and 4.00 pm and 4.00 pm and 5.00 pm on 28 September 2018.

Reasons

The complainant submitted that:

On a regular basis, 4SFM is breaching its hourly limit of commercial sponsorship. It is selling interviews on a commercial basis: Fridays at 3:45, “What’s on in Noosa”, thanks to Noosa Ferry Cruise. Julie Schaeffer, financial planner, on irregular Tuesdays and Thursdays. Sunseeker Caravan’s Friday afternoons at 4:45, called Sunshine FM’s Big Weekend, but it’s a sales segment.

[…]

These interviews all run more than 5 minutes in themselves and would not be broadcast if they weren't sold […] These sponsorship announcements, apart from not being tagged as such, push hourly sponsorship well over licence condition limits.

A licensee is permitted to broadcast five minutes of sponsorship announcements in any hour of broadcast. For the purposes of calculation, an hour of broadcast is taken from the start of each hour. A sponsorship announcement acknowledges financial support of the licensee by a person or support of a program broadcast on a service provided under the licence. The duration of a sponsorship announcement includes the acknowledgment of support and play-in/play-out music to the announcement.[[2]](#footnote-2)

The ACMA makes the following observations regarding the ‘interviews’ specified by the complainant.

**25 September 2018, between 10.00 am and 11.00 am**

**Julie Schafer’s finance segment, sponsored by ESA Services**

The sponsorship announcement for ESA Financial Services was broadcast at 10.39 am on 25 September 2018. The announcement included the statement, ‘its station sponsor, Julie Schaeffer here, from ESA Financial Services’. It is considered the sponsorship announcement acknowledged the financial support of the sponsor. The announcement ran for 29 seconds and, when taken together with other sponsorship announcements broadcast during the hour, did not cause the licensee to exceed the hourly limit.

**28 September 2018, between 3.00 pm and 4.00 pm**

***What’s on in Noosa*, sponsored by Noosa Ferry Cruise**

Paragraph 9(5) of Schedule 2 to the BSA provides for certain material to be excluded in calculating the duration of sponsorship announcements in an hour of broadcast, including promotions of programs to be broadcast[[3]](#footnote-3). Accordingly, the program promotion for *What’s on in Noosa* (broadcast at 3.28 pm on 28 September 2018), which included a sponsorship announcement for Noosa Ferries, has not been taken into account in working out the length of time devoted to the broadcast of sponsorship announcements.

The program segment, *What’s on in Noosa*, was broadcast at 3.50 pm on 28 September 2018 and ran for 2 minutes and 6 seconds.

The segment was preceded by a 10-second intro, which included the words, ‘With thanks to our sponsor, the Noosa Ferry cruise, time to take a look at *What’s on in Noosa*’. The segment was followed by a 25-second outro, which included the words, ‘It’s all brought to you by our sponsor, Noosa Ferry cruises’. The intro and outro therefore acknowledge the financial support of Noosa Ferry Cruises.

As Noosa Ferry Cruises was the sponsor of the program segment, the durations occupied by the intro and outro have been included in calculating the hourly limit.

Between the intro and the outro, the segment included information about upcoming activities in the licence area, including concerts and school holiday activities:

Firstly, let’s talk about school holidays, because there is so much to see and do. You’ve really gotta check out this website if you are looking for things for the kids to do. Noosa spring school holiday guide 2018. Now, there is so much there. From things that are happening at the Noosa aquatics centre, there’s sand castle classes, sailing school set-up. You’ve got the Tewantin splash park, Noosa ten-pin bowling and so much more, many more to mention, but there’s a full list of activities covering the second week of the school holidays as well.

[…]

As far as live music goes, at the Lion’s club RSL tonight, you can see Rachael Allen - she’s on the stage from 6pm and it’s free. At the Peregian beach hotel, you can see Hayden Hack tonight from seven o’clock. Benjie’s on at the Noosa Yacht Rowing club, that’s from 4 till 6. Blackwater duo are on at the Tewantin Noosa RSL tonight from 8 o’clock. […].

Paragraph 9(5)(c) of Schedule 2 to the BSA specifies that account is not to be taken of community information or community promotional material in calculating the amount of sponsorship broadcast in an hour, provided a licensee did not receive any consideration in cash or in kind.

The ACMA considers that the information about upcoming activities was community information or community promotional material for the following reasons:

* the segment does not include details on ticket prices (except where events were free), nor does it actively promote specific venues other than to provide factual information on the location of events
* the announcements appear to meet the needs of the community served by the licensee
* the businesses identified are not financial supporters of the station.

As such, the exemption at paragraph 9(5)(c) of Schedule 2 to the BSA applies and did not cause the licensee to exceed the five minutes for sponsorship announcements in that hour.

**28 September 2018, between 4.00 pm and 5.00 pm**

***Sunshine FM’s Big Weekend*, sponsored by Sunseeker Caravans**

*Sunshine FM’s Big Weekend* was broadcast at 4:47 pm on 28 September 2018 and ran for 1 minute and 37 seconds. The segment consisted of an interview with John from Sunseeker Caravans. The interview was preceded and followed by a pre-recorded sponsorship announcement for Sunseeker Caravans, which included the words ‘Station Sponsor’.

The announcer did not introduce John as being from Sunseeker Caravans, but as the interview was framed by pre-recorded sponsorship announcements, it was evident that he was speaking for the company. In particular, it is noted that the interview ended with the statement, ‘If people want to know some more information, they can come and see John’. An ordinary reasonable listener is likely to have understood John to be with the station sponsor, Sunseeker Caravans.

Accordingly, the duration of this interview was added to the five minutes permitted for sponsorship announcements in that hour, but it did not cause the licensee to exceed the hourly limit.

Taking into account the above, the ACMA has worked out the durations of the sponsorship announcements listed at **Attachment A**. The ACMA has calculated that:

* between 10.00 am and 11.00 am on 25 September 2018, the licensee broadcast 3 minutes and 45 seconds of sponsorship announcements
* between 3.00 pm and 4.00 pm on 28 September 2018, the licensee broadcast 3 minutes and 3 seconds of sponsorship announcements
* between 4.00 pm and 5.00 pm on 28 September 2018, the licensee broadcast 4 minutes and 19 seconds of sponsorship announcements.

Accordingly, the ACMA is of the view that the licensee did not exceed the five minutes per hour permitted for sponsorship announcements on either 25 September 2018 or 28 September 2018 and, as such, did not breach paragraph 9(3)(b) of Schedule 2 to the BSA.

**ATTACHMENT A**

**10.00 am to 11.00 am – 25 September 2018**

|  |  |  |  |
| --- | --- | --- | --- |
| Sponsor | Start Time | Duration | Comment |
| Barbeques Galore | 10:03:29 | 0:07 | Pre-recorded |
| Noosa Ferry | 10:05:06 | 0:07 | Pre-recorded |
| Traffic Intro – Terrace Seafood | 10:05:14 | 0:10 | Pre-recorded |
| Terrace Seafood | 10:24:20 | 0:29 | Pre-recorded |
| Silva Spoon | 10:24:50 | 0:29 | Pre-recorded |
| Sheepskin Opal | 10:25:20 | 0:29 | Pre-recorded |
| Competition – BBQ Galore voucher | 10:39:46 | 0:28 | Live Read |
| ESA Finance | 10:39:49 | 0:29 | Hi, its station sponsor Julie Schaeffer here from ESA Financial Services. Retirement planning can be a bit overwhelming, how much money will you need, where will you invest, which super fund, what about Centre Link – do you qualify? On Wednesday October 17th, we are hosting a workshop to discuss all aspects of retirement planning, come and meet me and get some of your questions answered. No sales pitch, nothing to sell, just good old-fashioned experience to share. Call ESA to book your free seat on 5445 6044. |
| Brocky’s TV | 10:40:15 | 0:28 | Pre-recorded |
| Buderim Pharmacy | 10:40:44 | 0:29 | Pre-recorded |

**Total Duration of Sponsorship Announcements: 3** minutes and **45** seconds

**3.00 pm to 4.00 pm – 28 September 2018**

|  |  |  |  |
| --- | --- | --- | --- |
| Sponsor | Start Time | Duration | Comment |
| Taps | 15:00:08 | 0:15 | Pre-recorded |
| Kawana Blinds | 15:03:39 | 0:07 | Pre-recorded |
| Polar Power and Refrigeration | 15:05:09 | 0:10 | Pre-recorded |
| Queensland RV | 15:29:35 | 0:29 | Pre-recorded |
| Aveo Peregian Springs Retirement Village | 15:30:05 | 0:30 | Pre-recorded |
| Noosa Ferry Cruises – What’s On in Noosa | 15:50:06 | Intro 0:10  Outro 0:25 | With thanks to our sponsor, the Noosa Ferry cruise, time to take a look at *What’s on in Noosa*, and of course coming up shortly, your chance to win a family pass to go for a cruise on the Noosa Ferry.  Just a few things you can check out at Noosa this weekend. And its all brought to you by our sponsor Noosa Ferry cruises, the easy and relaxing way to explore Noosa, check out their website, its noosaaferry.com and if you want to go for a ride, I’ve got a $60 family pass to the first caller who jumps on the blower, Ring this studio number: 5450 1080. First callers on the ferry. |
| Pacific Kia Motors | 15:50:06 | 0:30 | Pre-recorded |
| Terrace Seafood | 15:50:37 | 0:27 | Pre-recorded |

**Total Duration of Sponsorship Announcements: 3** minutes and **3** seconds

**4.00 pm to 5.00 pm – 28 September 2018**

|  |  |  |  |
| --- | --- | --- | --- |
| Sponsor | Start Time | Duration | Comment |
| Eco Fridges | 16:00:10 | 0:13 | Pre-recorded |
| Maher Digby | 16:03:29 | 0:09 | Pre-recorded |
| German Tech - Solar | 16:26:31 | 0:29 | Pre-recorded |
| Chapter Tow Interiors | 16:27:01 | 0:26 | Pre-recorded |
| Kawana Automatic | 16:27:28 | 0:29 | Pre-recorded |
| Sun Seeker Caravans | 16:46:45 | 0:28 | Pre-recorded  […] Stop dreaming and start exploring, come and visit the home of sunseeker caravans at 49 Bowman road Kanoundra or visit sunseekercaravans.com. Station Sponsor. |
| Sunshine FM’s Big Weekend | 16:47:14 | 1:37 | **Announcer**: Sunshine FM’s Big Weekend with John, hello John.  **John**: How you goin’?  **Announcer**: Not bad for an afternoon, ready to go home and start my weekend.  **John**: Well, half your luck mate, some of us have to work Saturday’s.  **Announcer**: Do ya? Wow. Well if I wanted to come in and see on Saturday and talk to you about technology because there are so many different things you can put in a van these days. The technology has gone out of control hasn’t it.  **John**: It certainly has. We’ve come a long way from a box with a bed and some wheels under it. And people essentially want all the mod cons. To give you an indication of what we’ve got vans back at the moment with fully automatic satellite dishes on them: you pull up on matter where you are in Australia, in the middle of nowhere; push a button it'll spin around on the roof, tune itself in you can connect your Foxtel box up to it so you can watch the goal for the football of the racing wherever you are.  **Announcer**:And listen that's really that's amazing.  **John**: It is we, actually, our lighting at the moment is controlled by remote control. If I'm lying in bed and the one of the children want to go the toilet, I can turn the light on without even getting out of bed. Or if I hear a bit of rustling outside, I can push a button and have the outside light come on.  **Announcer**: Look**,** listen, unless my kids can take their phones and their iPods away on holidays, without that sort of technology they're not going to come away without those.  **John**: You're not only not wrong and not just that you probably not going to get much of a holiday if they don't have some getaway. Yeah so all of our caravan bunks and all of our caravan beds actually have dual USB ports next to them, so you can have all of the devices on charge at the same time.  **Announcer**:So smart  **John**: The radio’s Bluetooth so they can sit there and put all their favourite songs over the radio when of course they can't listen to you.  **Announcer**: So vans have come a long way from a technology point of view.  **John**: They certainly have and the way they going, who knows where they're going to end up in another few years from right now.  **Announcer**: If people want to know some more information they can come and see John. John thanks again for joining me and I’ll see you next Friday. |
| Sun Seeker Caravans | 16:48:51 | 0:28 | Pre-recorded  At Sunseeker caravans […] Station Sponsor. |

**Total Duration of Sponsorship Announcements: 4** minutes and **19** seconds

1. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-1)
2. *ACMA Community Broadcasting Sponsorship Guidelines 2008*, p. 15 at https://www.acma.gov.au/-/media/Community-Broadcasting-and-Safeguards/Advice/pdf/Community-Broadcasting-Sponsorship-Guidelines-2008.PDF [↑](#footnote-ref-2)
3. Paragraph 9(5)(a) of Schedule 2 to the BSA. [↑](#footnote-ref-3)