

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

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Independent Communications Authority of South Africa

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AMENDMENT OF REGULATIONS ON PARTY ELECTION BROADCASTS, POLITICAL ADVERTISEMENTS, THE EQUITABLE TREATMENT OF POLITICAL PARTIES BY BROADCASTING LICENSEES AND RELATED MATTERS IN RESPECT OF MUNICIPAL ELECTIONS BROADCASTING

I, Kathrina Pillay, Acting Chairperson of the Independent Communications Authority of South Africa ("the Authority") acting on behalf of the Council of the Authority hereby approve and publish the Elections Broadcasting Regulations set out in the Schedule and made by the Authority in terms of section 4(3)(j) of the Independent Communications Authority of South Africa, 2000 (Act No. 13 of 2000) read with sections 4(1), 56, 57, 58 and 59 of the Electronic Communications Act, 2005 (Act No. 36 of 2005).

KATHARINA PILLAY

ACTING CHAIRPERSON

SCHEDULE

1. Definitions

In these regulations “the Regulations” means the regulations published by Government Notice No. R. 203 of 8 March 2011.

2. Amendment of regulation 1 of the Regulations

- 2.1 Regulation 1 of the Regulations is hereby amended by the addition of the following definition after the definition “*the Act*”:

“**BSL**” means broadcasting service licensee;”

- 2.2 Regulation 1 of the Regulations is hereby amended by the addition of the following definitions after the definition “*BSL*”:

“**CCC**” means the Complaints and Compliance Committee as established in terms of section 17A of the ICASA Act;

“**CCC Regulations**” means the Regulations Governing Aspects of the Procedures of the CCC of the Authority, published in Government Gazette No. 33609, Notice No. R 886 on 6 October 2010;

“**Commission**” means the Independent Electoral Commission established in terms of section 3 of the Electoral Commission Act, 1996 (Act No 51 of 1996);”

- 2.3 Regulation 1 of the Regulations is hereby amended by the addition of the following definition after the definition “*ICASA Act*”:

“**Municipal Electoral Act**” means the Municipal Electoral Act, 2000 (Act No. 27 of 2000);”

- 2.4 Regulation 1 of the Regulations is hereby amended by the substitution of the following definition:

“News” means programming that is not current affairs by a broadcaster in which it reports on news events of immediate social, political or economic relevance and on matters of international, national and local significance;”

- 2.5 Regulation 1 of the Regulations is hereby amended by the substitution of the following definition:

“Political Party” means any registered party defined in section 1 of the Electoral Act, 1998 or any alliance of such registered parties, as the case may be, which, for the purpose of any particular election, has, before the commencement of the relevant election period, submitted its list of candidates for the National Assembly or any other legislature contemplated in the Constitution;”

3. Substitution of regulation 4 of the Regulations

The following regulation is hereby substituted for regulation 4 of the Regulations:

“4. Party election broadcasts

- (1) PEB(s) must only be broadcast during the election broadcast period.
- (2) A political party that intends to broadcast a PEB must submit same to the broadcasting service licensee at least five (5) working days prior to the broadcast thereof.
- (3) A public BSL must permit a PEB during an election broadcast period.
- (4) A commercial or community BSL that intends to broadcast PEB(s) must inform the Authority, in writing, of its intention to do so within twenty-one (21) days of the publication of these regulations.
- (5) A BSL that is obliged, or intends to broadcast PEB(s) must ensure that the PEB conforms to the Authority’s technical quality as listed in Schedule 2 of **Annexure A**.
- (6) A BSL to whom a PEB has been submitted by a political party for broadcast must not in any way edit or alter the content of the PEB.

- (7) A BSL that rejects a PEB submitted by a political party for broadcast must, within twenty-four (24) hours of such submission by the political party, furnish the political party concerned with written reasons for the rejection and the political party concerned may alter or edit the PEB and re-submit it to the BSL concerned at least forty-eight (48) hours prior to its scheduled broadcast.
- (8) Where the BSL has rejected a PEB and the political party concerned has confirmed in writing to the BSL that it will not be re-submitting the PEB, then the BSL must within twenty-four (24) hours notify the Authority of such rejection and must also furnish to the Authority written reasons for the rejection.
- (9) A political party who's PEB has been rejected and which has no intention of altering or editing the PEB, may refer the matter to the Authority and inform the concerned BSL of the referral to the Authority, within forty-eight (48) hours of being informed in writing of the rejection.
- (10) A political party that submits a PEB to a BSL for broadcast must ensure that the PEB does not:
 - (a) contravene the provisions of the Municipal Electoral Act, the Electoral Code, the Electoral Act, the Constitution, the Act and the Broadcasting Act; and/or
 - (b) contain any material that is calculated, or that in the ordinary course is likely to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as condoning or lending support to any such act.
- (11) A political party that submits a PEB for broadcast to a BSL, is deemed to have indemnified the BSL against incurred costs, damages, losses, and third party claims arising from the broadcast thereof.
- (12) A BSL that broadcasts PEB must:
 - (a) make available, every day and throughout the election broadcast period, eight (8) time-slots of one (1) minute each for the broadcast of PEB, excluding the top and tail disclaimer;

- (b) do so in accordance with the sequence and timing that will be prescribed by the Authority upon allocation of airtime slots after the publication of these Regulations;
 - (c) ensure that all PEB(s) broadcast by it are clearly identified as such; and
 - (d) ensure that all PEB(s) broadcast by it are identified or announced in a similar manner.
- (13) A PEB must not exceed one (1) minute in duration.
- (14) Content broadcast as a PEB cannot be broadcast as a PA.
- (15) A BSL must not transmit a PEB immediately before or after another PEB or immediately before or after a PA.
- (16) PEB air-time allocated to, but not used by a political party, shall be forfeited by the political party concerned.
- (17) If a political party fails to deliver the PEB to the BSL before the expiry of five (5) days prior to the broadcasting thereof, then the political party is deemed to have forfeited its allocated airtime.
- (18) In the event that a political party elects to forfeit its allocated PEB air-time, then such air-time must not be allocated to another political party but must be used by the broadcaster concerned for the purpose of broadcasting its normal programming.
- (19) In the event that a political party does not wish to use its allocated PEB air-time, the BSL concerned must not, during the relevant time-slot, in any way vary the sequence or scheduling of PEB(s).
- (20) A BSL or political party must not permit or engage in any interference with, or trading in, the sequence or scheduling of PEB(s).
- (21) In the event that a political party has complied with the requirements of regulation 4, and a BSL concerned is unable to broadcast such political party's PEB due to a breakdown in transmission, such PEB shall be broadcast within forty-eight (48) hours from the date on which the PEB was scheduled.

(22) A PEB must not be broadcast after the end of the election broadcast period.

(23) A PEB must be in the language(s) of the relevant BSL.

4. Substitution of regulation 5 of the Regulations

The following regulation is hereby substituted for regulation 5 of the Regulations:

"5. Allocation of air-time in respect of party election broadcasts

Air-time in respect of PEB(s) shall be allocated by the Authority to the registered political parties contesting the municipal elections on the basis of the respective principles set out in Schedule 1 of **Annexure A** of these regulations."

5. Substitution of regulation 6 of the Regulations

The following regulation is hereby substituted for regulation 6 of the Regulations:

"6. Political Advertising

- (1) PA must only be broadcast during the election period and no later than forty-eight (48) hours before polling commences.
- (2) Each PA submitted must indicate clearly the name of the political party and the day, time of broadcast and relevant broadcast service/s for the PA.
- (3) A BSL that intends to transmit a PA must ensure that the advertisement conforms to the Authority's technical quality as listed in Schedule 2 of **Annexure A**.
- (4) A BSL to whom a PA has been submitted by a political party for broadcast must not in any way edit or alter the advertisement.
- (5) A BSL who rejects a PA submitted by a political party for broadcast must, within twenty-four (24) hours of such submission, furnish the political party concerned with written reasons for the rejection and the political party concerned may alter or edit the PA and re-submit the PA to the BSL concerned at least forty-eight (48) hours prior to its scheduled broadcast.

- (6) Where the BSL has rejected a PA and the political party concerned has confirmed in writing to the BSL that it will not be re-submitting the advertisement, then the BSL must within twenty-four (24) hours notify the Authority in writing of such rejection and must also furnish to the Authority written reasons for the rejection.
- (7) A political party whose PA has been rejected and which has no intention of altering or editing the advertisement, may refer the matter to the Authority within forty-eight (48) hours of being informed of the rejection.
- (8) Any complaint lodged with the Authority in terms of sub-regulation (7) will be addressed by the Authority in accordance with regulation 6 of the CCC Regulations.
- (9) Subject to sub-regulation (8), the Authority will, within twenty-four (24) hours of making a determination, communicate to the parties the outcome, which is final and binding on the parties.
- (10) A political party that submits a PA to a BSL for broadcast must ensure that the advertisement does not:
 - (a) contravene the provisions of the Municipal Electoral Act, the Electoral Code, the Electoral Act, the Constitution, the Act and the Broadcasting Act; or
 - (b) contain any material that is calculated, or that in the ordinary course is likely to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as condoning or lending support to any such act.
- (11) A political party that submits a PA for broadcast to a BSL is deemed to have indemnified the BSL against incurred damages, losses, and third party claims arising from the broadcast thereof.
- (12) Content broadcast as a PA cannot be broadcast as a PEB.
- (13) A BSL must not transmit a PA immediately before or after another PA."

6. Substitution of regulation 7 of the Regulations

The following regulation is hereby substituted for regulation 7 of the Regulations:

"7. Complaints

- (1) Any person aggrieved by a PA or PEB may lodge a complaint with the Authority within forty-eight (48) hours of such broadcast.
- (2) Any complaint lodged with the Authority in terms of sub-regulation (1) will be addressed by the Authority in accordance with regulation 6 of the CCC Regulations.
- (3) The Authority must within twenty-four (24) hours of making a determination, communicate to the parties the outcome, which is final and binding on the parties."
- (4) Any complaint lodged with the Authority in terms of sub-regulation 4 (9) will be addressed by the Authority in accordance with regulation 6 of the CCC Regulations.
- (5) Subject to sub-regulation 7 (4), the Authority will, within twenty-four (24) hours of making a determination, communicate to the parties the outcome which is final and binding on the parties.
- (6) Any complaint lodged with the Authority in terms of sub-regulation 7 (7) will be addressed by the Authority in accordance with regulation 6 of the CCC Regulations.
- (7) Subject to sub-regulation 7 (6), the Authority will, within twenty-four (24) hours of making a determination, communicate to the parties the outcome, which is final and binding on the parties.

7. Substitution of regulation 8 of the Regulations

The following regulation is hereby substituted for regulation 8 of the Regulations:

"8. General

- (1) Every BSL and political party must:
 - (a) nominate persons who must be the representatives of that BSL or political party in respect of all matters regulated by, or arising from, these Regulations;
 - and

- (b) within thirty (30) days of the publication of these Regulations notify the Authority in writing of two names, physical and postal addresses, telephone numbers and, where available, cellular phone numbers and e-mail addresses of the nominated persons.
- (2) The Authority and a BSL must recognise the nominated political party representatives as the sole representatives of the political party and will not enter into discussion on PEB's with any other representatives of the political party.
- (3) A political party must direct all communications in respect of PEB's only to the nominated representatives of the BSL and may not engage in discussion on PEB's with any other service or staff member of the BSL.

8. Short Title and Commencement

These regulations are called the Municipal Elections Broadcasts and Political Advertisements Amendment Regulations 2016 and shall come into force upon publication in the Government Gazette.

9. Substitution of Annexure A of the Regulations

The following annexure is hereby substituted for Annexure A of the Regulations:

"ANNEXURE A**SCHEDULE 1****PRINCIPLES OF PEB AIRTIME ALLOCATION**

Basic Allocation
Percentage of slots to be allocated to all parties contesting seats in the Municipal Elections.
District Municipalities List
Percentage of slots to be allocated according to the number of candidates fielded by parties on the District Municipalities list.
Local Municipalities List
Percentage of slots to be allocated according to the number of candidates fielded by parties on the Local Municipalities list.
Proportional representation
The number of seats currently held at District and Local level.

SCHEDULE 2**TECHNICAL STANDARDS AND QUALITY**

- (1) Audio recordings are to be supplied on compact disc or DVD; in mp3 format of broadcast quality.
- (2) Video recordings are to be supplied on compact disc or DVD in mp4 format of broadcast quality.
- (3) Audio and video recordings will be clearly labelled, outlining the name of the political party and appointed nominee.

SCHEDULE 3**GUIDELINES****1. INTRODUCTION**

- 1.1 These guidelines are intended to outline a general approach that should be adopted by BSLs in their coverage of the municipal elections. Elections are an important public event and as such fall within the ambit of news and current affairs. BSLs are encouraged, in the public interest, to provide a full, impartial, and independent coverage of the elections.
- 1.2 The Authority does not intervene in the news and programming operations of the broadcasters. BSLs' role during elections does not differ from their normal journalistic role during non-election periods. Normal ethical considerations will continue to apply. A distinguishing feature of the election period is the obligation to achieve equitable coverage of political parties without abdicating news value judgements.

2. EDITORIAL MATTERS

- 2.1 Section 59 of the ECA prescribes specific requirements for the treatment of political parties during the election period by broadcasters in their editorial programming. The requirements are:
- “(a) If, during an election period, the coverage of any broadcasting service licensee extends to the field of elections, political parties and issues relevant thereto, the broadcasting licensee concerned must afford reasonable opportunities for the discussion of conflicting views and must treat all political parties equitably.
- (b) In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service licensee without such party having been afforded an opportunity to respond thereto in such programme or without the view of such political party having been reflected therein, the broadcasting service licensee concerned will be obliged to afford such a party a reasonable opportunity to respond to criticism.

- (c) If, within 48 hours before the commencement of the polling period or during the polling period, a broadcasting service licensee intends broadcasting a programme in which a particular political party is criticized, the broadcasting service licensee must ensure that the political party is given a reasonable opportunity to respond thereto in the same programme, or to do so as soon as reasonably practicable thereafter”.

- 2.2 The Authority advises broadcasters to take special care during the final 48 hours prior to Election Day. There will be limited time for broadcasters to ensure that political parties' right of reply is honoured during this period. Broadcasters should, therefore, ensure that parties are given time to reply, should this be necessary, within the same programme during this period.

3. EQUITABLE TREATMENT

3.1 Equitable treatment means fair treatment

Each BSL will be expected to treat parties fairly. Equitable treatment is unlikely to be achieved in a single programme but can be achieved in a series of programmes. Each BSL should be consistent in its treatment of contesting parties and of conflicting views.

3.2 Broadcasting service licensee must seek out information.

BSLs should recognise their obligation to the electorate to provide a full and accurate record of events and developments. BSLs should not rely on political parties to bring information to them, but should actively seek out information. Failure to do so will give parties with greater resources inequitable amounts of news coverage.

4. PRINCIPLES TO BE ADHERED TO

To further assist BSLs in fulfilling the requirements of the Act the following principles will apply:

4.1 Fairness

- (a) All news coverage should be fair to all interests concerned;

- (b) Care should be taken to balance the exposure given to the non-political activities of candidates (such as attendance at functions, sporting events etc);
- (c) All parties should receive equitable treatment on current affairs programmes. If the programme intends to feature party representatives, parties contesting the elections must be invited, with reasonable notice, to participate either in the same programme or in a series of programmes; and
- (d) The requirement that broadcasters give an opportunity for conflicting views to be heard should not be interpreted as a requirement that all parties be heard on any subject, only that all views be heard. Nor is it a requirement that all views be heard on the same programme.

4.2 The right of reply to broadcast criticism

- (a) Each BSL should afford all political parties reasonable opportunity to respond to criticism broadcast by that BSL. However, affording parties reasonable time to respond should not amount to forcing BSLs to turn their editorial programmes into a series of replies and replies-to-replies. There should be a distinction between demands for the right to reply to mild or rhetorical criticism, which properly forms part of the cut and thrust of robust political contest; and demands for the right to reply to criticisms which result in clear and immediate damage to a political party.
- (b) With regard to rhetorical criticisms, BSLs must have the flexibility to incorporate responses into their formal news patterns. With regard to damaging criticisms, BSLs should give the offended party an opportunity to respond. The party should be afforded the earliest and most appropriate opportunity to do so. Broadcasters should, however, not allow political parties to use their right to reply to criticism to manipulate or distort the general principle of equity.

4.3 Coverage of government

During the election period, BSLs must recognise that government officials are in a position to use their incumbency to advance their electoral prospects. During the election period, BSLs should regard with particular caution any statement or action by an official of an incumbent party. In particular, BSLs need to ensure that, during the election period, they do not afford the policies of incumbent parties' greater

legitimacy than they would afford those policies or actions if the party was not in government.

4.4 Coverage of non-participating organisations

In providing reasonable opportunity for the discussion of conflicting views, non-participating political parties and organisations affiliated to alliances should not be excluded from debates and news bulletins. They should be included in terms of normal journalistic practice – when the topic is one in which they have a material interest. However, they should not be included with such frequency that they distort the general principle of equity between registered, contesting parties.

4.5 Coverage of election results

BSLs, particularly the public BSL, have an obligation to inform the electorate of the election results, as they become available. Coverage of election results may also include comment, analysis and interpretation. Special care should be taken to ensure the accuracy of all results broadcast.

5. CONCLUSION

The guidelines provide a framework to BSLs covering the elections in which the system of Party Election Broadcasts and Political Advertising will operate.”