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5. All notice submissions that do not comply with point 2 will be charged full price for the notice submission.
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7. Incorrectly completed forms and notices submitted in the wrong format will be rejected to the customer to be corrected and resubmitted. Assistance will be available through the Contact Centre should help be required when completing the forms. (012-748 6200 or email [info.egazette@gpw.gov.za](mailto:info.egazette@gpw.gov.za))
8. All re-submissions by customers will be subject to the above cut-off times.
9. All submissions and re-submissions that miss the cut-off will be rejected to the customer to be submitted with a new publication date.
10. Information on forms will be taken as the primary source of the notice to be published. Any instructions that are on the email body or covering letter that contradicts the notice form content will be ignored.

You are therefore advised that effective from **Monday, 18 May 2015** should you not comply with our new rules of engagement, all notice requests will be rejected by our new system.

Furthermore, the fax number **012- 748 6030** will also be **discontinued** from this date and customers will only be able to submit notice requests through the email address [submit.egazette@gpw.gov.za](mailto:submit.egazette@gpw.gov.za).

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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

**NO. 896**

**25 SEPTEMBER 2015**



Independent Communications Authority of South Africa  
Pinmill Farm, 164 Katherine Street, Sandton  
Private Bag X10002, Sandton, 2146

**DRAFT 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**

**SEPTEMBER 2015**

## **EXPLANATORY MEMORANDUM**

### **1. Introduction**

The Independent Communications Authority of South Africa ("the Authority") has initiated a process to amend the 2011 regulations<sup>1</sup> relating to party election broadcasts ("PEBs"), political advertisements ("PAs") and the equitable treatment of political parties by the broadcasting licensees and related matters in respect of municipal elections broadcasting. The Authority is empowered in terms of sections 56, 57, 58 and 59 of the Electronic Communications Act of 2005 ("the ECA") to monitor PEBs, PAs and the equitable treatment of political parties by broadcasting licensees during an election period. As this is an amendment, the Authority attach the 2011 Municipal Elections Broadcasting regulations for ease of reference.

### **2. By-elections**

The Authority has not provided for the regulation of by-elections in the past. However, there has been increased requests from political parties for these regulations to cover by-elections over the past few years. The Authority deliberated on the possibility of regulating by-elections and determined that broadcast licensees will not be required to broadcast PEBs and PAs during by-elections due to;

- the financial implications, unpredictability and frequency of the by-elections;
- by-elections are contested by candidates whereas the Act recognise only political parties.

### **3. Political party versus independent candidates**

The Authority realises that the Independent Electoral Commission does allow individual candidates to contest for municipal elections. However, the ECA only recognises political parties. Therefore the regulations will only focus on political parties as per the definition in the ECA.

### **4. PEB slots**

The Authority took a position in 2014<sup>2</sup> that the duration of a single PEB be reduced from two (2) minutes to one (1) minute length. The Authority considered the submission by the SABC where they found that audiences complain about lengthy two-minute slots and of which some political parties have realised tend to drive audiences away rather than getting the message across to them. Some parties have even submitted PEB's of 30 or 45 seconds after being advised about this by their agencies, effectively opting not to use their allocated two minutes. They believe that it would

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<sup>1</sup> Regulations on party election broadcasts, political advertisements, the equitable treatment of political parties by broadcasting licensees and related matters during municipal elections published in General Notices 202 and 203 of 08 March 2011, Government Gazette No. 34086

<sup>2</sup> Regulations on party election broadcasts, political advertisements, the equitable treatment of political parties by broadcasting licensees and related matters published in General Notice 101 of 17 February 2014, Government Gazette No. 37350

be beneficial to both audiences and political parties to reduce the slots to one (1) minute for the following reasons:

1. Parties will be motivated to develop crisp, clear, attention-getting PEB's which will better hold audience attention; and
2. The amount of available PEB's slots can effectively be doubled and by so doing address the challenge that the Authority always has in accommodating more parties on an equitable basis. This will allow the Authority to double the number of PEBs from four (4) slots to eight (8) slots per day.

This position still applies for the allocation of PEBs during the Municipal Elections Broadcasting.

## INVITATION FOR WRITTEN REPRESENTATIONS

In terms of section 4 (4) of the ECA, interested persons are hereby invited to submit their written representations regarding the Draft Regulations on party election broadcasts, political advertisements, the equitable treatment of political parties by broadcasting licensees and related matters during municipal elections published herewith by the Authority. A copy of the Draft Regulations will be made available on the Authority's website at <http://www.icasa.org.za> and in the Authority's Library at Block D, No. 164 Katherine Street, Pinmill Farm, (Ground Floor at Block D), Sandton between 09h00 and 16h00, Monday to Friday.

Written representations must be submitted to the Authority by no later than 16h00 on 13 November 2015 by post, hand delivery or electronically (in Microsoft Word) and marked specifically for the attention of: Mamedupe Kgatshe, Manager – Content Services at delivery address: Block A, Pinmill Farm, 164 Katherine Street, Sandton. Where possible, written representations should also be e-mailed to: [mkgatshe@icasa.org.za](mailto:mkgatshe@icasa.org.za) and [granyile@icasa.org.za](mailto:granyile@icasa.org.za) or sent by facsimile: (011) 566-3260. All telephone enquiries should be directed to (011) 566-3259; between 10h00 and 16h00, Monday to Friday.

Written representation(s) received by the Authority pursuant to this notice will be made available for inspection by interested persons at the Authority's library and on its website and such copies will be obtainable upon payment of the prescribed fee.

At the request of any person who submits written representations pursuant to this notice, the Authority may determine that such representations or any portion thereof is to be treated as confidential in terms of section 4D of the Independent Communications Authority of South Africa Act No. 13 of 2000 ("the ICASA Act"). Where the request for confidentiality is refused, the person who made the request will be allowed to withdraw such representations or portion(s) thereof.

Persons submitting written representations are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral presentations.

  
.....  
**MS NOMVUYISO BATYI**  
COUNCILLOR  
DATE: 21/09/2015

**ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005)**  
**REGULATIONS**

The Independent Communications Authority of South Africa has, under 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), made the regulations in the schedule.

**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:

“**Party**” means a political party registered in terms of section 15 of the Electoral Commission Act, or any alliance of such registered political parties, that has nominated candidates and submitted a list or lists of those candidates in accordance with section 27 of the Electoral Act, and includes any organisation that, group of people which, or person who, acts in support of such a registered political party;”

### 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 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 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 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 party for broadcast must, within twenty-four (24) hours of such submission, furnish the party concerned with written reasons for the rejection and the 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 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 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) Any complaint lodged with the Authority in terms of sub-regulation (9) will be addressed by the Authority in accordance with regulation 6 of the CCC Regulations.
- (11) Subject to sub-regulation (10), 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.
- (12) A 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 likely to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as promoting any such act.
- (13) A 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.
- (14) 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.
- (15) A PEB must not exceed one (1) minute in duration.
- (16) Content broadcast as a PEB cannot be broadcast as a PA.
- (17) A BSL must not transmit a PEB immediately before or after another PEB or immediately before or after a PA.
- (18) PEB air-time allocated to, but not used by a party, shall be forfeited by the party concerned.
- (19) If a party fails to deliver the PEB to the BSL before the expiry of five (5) days prior to the broadcasting thereof, then the party is deemed to have forfeited its allocated airtime.

(20) In the event that a party elects to forfeit its allocated PEB air-time, then such air-time must not be allocated to another party but must be used by the broadcaster concerned for the purpose of broadcasting its normal programming.

(21) In the event that a 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).

(22) A BSL or party must not permit or engage in any interference with, or trading in, the sequence or scheduling of PEB(s).

(23) In the event that a party has complied with the requirements of regulation 4, and a BSL concerned is unable to broadcast such 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.

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

(25) 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 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 party for broadcast must not in any way edit or alter the advertisement.
- (5) A BSL who rejects a PA submitted by a party for broadcast must, within one (1) day of such submission, furnish the party concerned with written reasons for the rejection and the 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 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 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 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 party that submits a PA 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) 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.”

## **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 party must:

- (a) nominate persons who must be the representatives of that BSL or 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 party representatives as the sole representatives of the party and will not enter into discussion on PEB's with any other representatives of the party.
- (3) A 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 the Municipal Elections Broadcasts and Political Advertisements Amendment Regulations 2015 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

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.

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

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:

- “(1) 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.
- (2) 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.
- (3) 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”.

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**

- ◆ All news coverage should be fair to all interests concerned;
- ◆ Care should be taken to balance the exposure given to the non-political activities of candidates (such as attendance at functions, sporting events etc);

- ◆ 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;
- 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; and
- Content of PEB's may not be derogatory of any other party or individual.

#### **4.2 The right of reply to broadcast criticism**

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.

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.”





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