

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date heard: 4 October 2019

CASE NO: 353/2019

In RE: **AGANANG FM**

REFERRED TO THE CCC BY THE COMPLIANCE DIVISION ICASA

TRIBUNAL: Prof JCW van Rooyen SC (Chairperson)
 Councillor Nomonde Gongxeka-Seopa
 Mr Peter Hlapolosa
 Mr Mzimkulu Malunga
 Dr Jacob Medupe
 Mr Jack Tlokana

From CCA: Ms. Busisiwe Mashigo (Manager) and Ms. Fikile Hlongwane (Senior Manager)

From the Respondent Mr. Thabo Leping, Mr. Obakeng Mahlate and Mr Tebogo Leping

Officials present: Ms Lindisa Mabulu (Coordinator of the CCC) and with her Mr Siyakha Plaatyi

JUDGMENT

JCW van Rooyen

[1] The allegation before the CCC, as filed by the Compliance Division of ICASA in terms of section 17B of the ICASA Act, is that the Respondent community radio station, which is licensed by ICASA, has, during the General Election period 2019, contravened the Regulations on Party Election Broadcasts and Political Advertisements. It failed, as required by the Regulations, to clearly identify

¹ The Complaints and Compliance Committee ("CCC") is an Independent Administrative Tribunal set up in terms of the Independent Communications Authority Act 13 of 2000. Its constitutionality as an independent Administrative Tribunal in terms of section 33 of the Constitution has been confirmed by the Constitutional Court. It, inter alia, decides disputes referred to it in terms of the Electronic Communications Act 2005. Such judgments: are referred to Council for noting and are, on application, subject to review by a Court of Law. The Tribunal also decides whether complaints (or internal references from the Compliance and Consumer Affairs Division at ICASA) which it receives against licensees in terms of the Electronic Communications Act 2005 or the Postal Services Act 1998 (where registered postal services are included) are justified. Where a complaint or reference is dismissed the matter is final and only subject to review by a Court of Law. Where a complaint or reference concerning non-compliance is upheld, the matter is referred to the Council of ICASA with a recommendation as to an order against the licensee. Council then considers a sanction in the light of the recommendation by the CCC. Once Council has decided, the final judgment is issued by the Complaints and Compliance Committee's Coordinator.

before and after a party election broadcast that what was to be broadcast and what had been broadcast amounted to a Party Political Advertisement.

BACKGROUND

[2] The CCA submitted that Aganang FM had contravened the Regulations on Party Election Broadcasts and Political Parties 2014, as amended (“the Election Regulations”). Regulation 6(12) of the Election Regulations provides as follows:

“A broadcasting service licensee that broadcasts a PA must ensure that all PA’s broadcast are:

- (a) Clearly identified through a top and tail disclaimer; and*
- (b) Are announced in a similar manner.”*

SUMMARY OF THE COMPLAINT

[3] The Election Broadcasting Monitoring team of the CCA, observed that on the dates and times as follows below:

- (a) 14 April 2019 at 14:55;
- (b) 18 April 2019 at 11:05 and 14:45:08; and
- (c) 20 April 2019 at 15:03 and 16:05

Aganang FM broadcast *Vryheidsfront Plus* and a *Democratic Alliance* political adverts without the top and tail disclaimers, in contravention of the Elections Regulations.

[4] On 17 July 2019, the CCA advised Aganang FM of the alleged contravention.

On 19 July 2019, the Licensee responded as follows:

The omission was attributable to the fact that on the said dates, the Licensee requested previous presenters of the station, who are no longer employed by the Radio Station, to return to the station to celebrate the 10th year anniversary of the station. The former presenters were given an up-skill training on machinery, to enable them to hold the fort while current presenters attended the Liberty Radio Awards. That is when the non-compliance occurred. Aganang FM has apologised for the contravention and indicated that it lacked oversight during the period concerned.

[5] On the 19th July 2019, the CCA replied advising that it was not satisfied with the response and that Aganang FM ought to have ensured that there were measures in place throughout to avoid such contraventions from happening. The matter would, accordingly, be referred to the CCC, which would hold a hearing on the matter.

RELIEF SOUGHT

[6] The CCA seeks the following: Appropriate penalties as prescribed by section 17E (2)(b) and (e) of the ICASA Act read with the Regulations, which prescribe a Maximum fine of R1 million Rand.

RESPONSE TO COMPLAINT

Background

Contravention of Regulation 6(12) of the National and Provincial Party Elections Broadcast and Political Advertisements Regulations, 2014, as amended.

[7] This is a formal communiqué to acknowledge receipt of the letter sent on 17 July 2019 and accept the content as explained on the said document. We also want to state on record our preparations leading to the 2019 National and Provincial Election as one of the most inclusive workshops that we ever attended as the Station in order to avoid non-compliance. As the Station Manager, I made sure that the entire executive team from Head of News, Marketing Manager and Programmes Manager including myself responded to all the invitations from ICASA and the IEC. We also had internal workshops for our presenters including news readers to prepare them for the Election.

[8] On the said dates, as confirmed in the letter, we requested our previous presenters of the station who are employed in other fields to come back to the station to celebrate our 10th year anniversary from 13 April 2019 as an acknowledgement to appreciate their contributions over the years. The aim was to surprise our listeners with the presence of their favourite former presenters on the day. The former presenters were given up-skilling training on the equipment to hold the fort while the current presenters attended the Liberty Radio Awards. The non-compliance happened around that time as highlighted on the Authority's letter. The presenters are trained to follow the hot-log of the show including playing the disclaimer before running any political

advertisements or during open calls in all our current affairs slots - but on this occasion we lacked oversight.

[9] There is no other explanation that we can provide other than presenters choosing or forgetting to play the disclaimer before political advertisements. The disclaimer audio clip is separated from the political promos and a split second was encouraged to the presenter before running the political advert in order to make sure that the length of the political advert is not confused with the top and tail disclaimer.

[10] The political parties mentioned used the ICASA political advertisement allowance and there was no monetary gain for the station.

We are available to subject ourselves to the Complaints and Compliance Committee to state our case.

FINDING BY THE CCC

[11] Party Political advertisements are permitted during an election period as an exception to the general rule that radio and television must be party political neutral. Party political advertisements must, however, be broadcast in such a manner that the neutrality of a radio station remains in place. Special steps must, accordingly, be taken, as per the Regulations, to uphold this principle.

[12] Except in very exceptional cases, the Legislature (which is ICASA for purposes of these advertisements) would explicitly or by implication expect the Courts and a Tribunal such as the CCC, to not make a finding against a broadcaster where intention to contravene a regulation or negligence is absent. What thus remains to be decided is whether the contravention by *Aganang* of the Regulation was culpable. It has often been stated by the CCC that the mere fact that an omission to abide by legislation or a licence condition in terms of legislation is *legally* attributable to a licensee, is dependent on whether it had intentionally or negligently not abided by such legislation.² There might be instances in legislation where negligence or intention to contravene are not even required – so-called absolute responsibility. However, the approach of the CCC in regard to relevant legislation has been that intention or negligence is required before a contravention is found. Of course, there may be such

² According to the Supreme Court, there are some cases where a conviction may be made without *culpa* or *dolus* (= negligence or intention)

instances in future cases, but we have not come across such instances in the 11 years of the CCC's existence.

[13] The matter of ownership and control of a licence is a matter of public interest. To only hold licensees who have acted with intention (which includes the foresight of unlawfulness, so-called *dolo malo* conduct) responsible would go against the clear legislative intention to prohibit party political advertisements to be broadcast without due warning that the broadcaster is not putting forward its own view. Negligence would thus also be sufficient for a finding to be made against a licensee. There could, of course, be cases of serious negligence (so-called *culpa lata*) which would lead to an increase in the fine imposed. On the other hand there are also cases of lighter negligence (so-called *culpa levis*). There is no ground to find that the omission by Aganang was intentional. The question is, however, whether the licensee was negligent and whether it could possibly even have amounted to a case of gross negligence, which would increase the fine. Guidance can be sought from statements of the law by Judges and also at common law.

[14] The legal question is what a reasonable licensee would have done in the same circumstances. In *Re Castell-Castell* 1970 (4) SA 19 (R) Goldin J stated as follows:

The meaning of 'serious negligence' has been considered in a number of reported cases. (See *Bertholdi v Central South African Railways*, 1910 T.P.D. 141 at pp. 143-5; *van Breda, N.O v Victoria Falls & Transvaal Power Co. Ltd.*, 1916 AD 325 at pp. 336, 352, 353; *Johnson v Marshall, Sons & Co. Ltd.*, 1906 A.C. 409 at pp. 411-2, 414 and 414-7; *Van der Heever v Perry*, 1926 S.R. 78). The correct approach, in my view, is to determine in the first place whether the conduct of the appellant constituted or involved negligence, and, if that is found to be the position, it then becomes necessary to decide whether his negligence can be described as 'serious' negligence. In deciding whether the appellant was negligent on the facts of this case, it is necessary to determine whether he was guilty of

'an omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent man would not do'....

The appellant was aware of the fact that he should ascertain whether it was safe to pick up the snake and applied his mind to this problem. As I have mentioned before, he examined the snake, he observed the injuries it sustained, that it was motionless, and he placed the butt of his rifle upon the snake's head and it did not display any signs of life. As a person who had

handled snakes over a long period of time and was aware of their habits and behaviour, he came to the conclusion that it was safe to pick up the snake.

I am of the view that appellant was guilty, as the ultimate consequences prove, of an error of judgment. It must be borne in mind that the Appeal Board held that it was his duty 'to clear the snake from the road'. There is no evidence, however, to support the conclusion of the Appeal Board

'that he must have known or should have known that if he picked up the snake by the tail there was a risk that it would have bitten him'.

Appellant's evidence, as to how and why he arrived at his decision to pick up the snake and that he was experienced in performing such a task, is not in dispute. There is no evidence concerning what other steps or precautions a reasonable man should or would have taken in these circumstances.

Goldin J stated as follows in *In Re Castell v Castell* 1970(4) SA 22:

The question really is whether he acted in a reasonable and prudent manner in determining whether it was safe to pick up the snake, and on the undisputed facts before me I am of the view that there is no justification for finding that his disability was caused by his negligence. As events turned out, he was guilty of an error of judgment, but that an error of judgment may not amount to negligence is recognized in *Steenkamp v Steyn*, 1944 AD 536 at p. 553, where the CHIEF JUSTICE said:

'Plaintiff misjudged the situation, and that was an error of judgment, but unless such error of judgment was culpable, in the sense that a reasonably careful driver would not have been guilty of it, it was not negligence.'

(See also *Rex v Du Toit*, 1947 (3) SA 141 (AD) at p. 146).

In my view, appellant's error of judgment on the undisputed facts was such as a reasonably careful person might commit. It is not unusual for reasonable persons or experts to be guilty of an error of judgment which does not amount to negligence. It is obviously necessary to avoid being wise after the event by determining the culpability of a person on the basis of the known consequences of his conduct.

[15] In *Stella Tingas, MV: Transnet Ltd t/a Portnet v Owners of the MV Stella Tingas* 2003 (2) SA 473 (SCA) Scott JA stated as follows in regard to what gross negligence means:

[7] I shall assume, without deciding, that the exemption would not apply if the pilot were found to have been grossly negligent. Gross negligence is not an exact concept capable of precise definition. Despite dicta which sometimes seem to suggest the contrary, what is now clear, following the decision of this Court in *S v Van Zyl* 1969 (1) SA 553 (A), is that it is not consciousness of risk-taking that distinguishes gross negligence from ordinary negligence. (See also *Philotex (Pty) Ltd and Others v Snyman and Others; Braitex (Pty) Ltd and Others v*

Snyman and Others 1998 (2) SA 138 (SCA) at 143C) This must be so. If consciously taking a risk is reasonable there will be no negligence at all. If a person foresees the risk of harm but acts, or fails to act, in the unreasonable belief that he or she will be able to avoid the danger or that for some other reason it will not eventuate, the conduct in question may amount to ordinary negligence or it may amount to gross negligence (or recklessness in the wide sense) depending on the circumstances. (*Van Zyl's case supra* at 557A - E.) If, of course, the risk of harm is foreseen and the person in question acts recklessly or indifferently as to whether it ensues or not, the conduct will amount to recklessness in the narrow sense, in other words, *dolus eventualis*; but it would then exceed the bounds of our modern-day understanding of gross negligence. On the other hand, even in the absence of conscious risk-taking, conduct may depart so radically from the standard of the reasonable person as to amount to gross negligence (*Van Zyl's case supra* at 559D - H). It follows that whether there is conscious risk-taking or not, it is necessary in each case to determine whether the deviation from what is reasonable is so marked as to justify it being condemned as gross. The Roman notion of *culpa lata* included both extreme negligence and what today we would call recklessness in the narrow sense or *dolus eventualis*. (See *Thomas Textbook of Roman Law* at 250.) As to the former, with which we are presently concerned, Ulpian's definition, D50.16.213.2, is helpful: 'culpa lata is extreme negligence, that is not to realise what everyone realises' (*culpa lata est nimia neglegentia, id est non intellegere quod omnes intellegunt*). Commenting on this definition, Lee in *The Elements of Roman Law* 4th ed at 288 describes gross negligence as being 'a degree of negligence which indicates a complete obtuseness of mind and conduct'. Buckland in *A Textbook of Roman Law* 3rd ed at 556 suggests that what is contemplated is a 'failure to show any reasonable care'. Dicta in modern judgments, although sometimes more appropriate in respect of *dolus eventualis*, similarly reflect the extreme nature of the negligence required to constitute gross negligence. Some examples are: 'no consideration whatever to the consequences of his acts' (*Central South African Railways v Adlington & Co* 1906 TS 964 at 973); 'a total disregard of duty' (*Rosenthal v Marks* 1944 TPD 172 at 180); 'nalatigheid van 'n baie ernstige aard' or 'n besondere hoë graad van nalatigheid' (*S v Smith en Andere* 1973 (3) SA 217 (T) at 219A - B); 'ordinary negligence of an aggravated form which falls short of wilfulness' (*Bickle v Joint Ministers of Law and Order* 1980 (2) SA 764 (R) at 770C); 'an entire failure to give consideration to the consequences of one's actions' (*S v Dhlamini* 1988 (2) SA 302 (A) at 308D). It follows, I think, that to qualify as gross negligence the conduct in question, although falling short of *dolus eventualis*, must involve a departure from the standard of the in fact reasonable person to such an extent that it may properly be categorised as extreme; it must demonstrate, where there is found to be conscious risk-taking, a complete obtuseness of mind or, where there is no conscious risk-taking, a total failure to take care. If something less were required, the distinction between ordinary and gross negligence would lose its validity.

[16] That a serious mistake was made by trusting erstwhile employees (famous as they are) to manage the election promotions is clearly negligent. It is true that the members of the Respondent had an alternative function which they attended, but the management should have made a more effective arrangement. In fact, the CCC is of the view that the standard for gross negligence was met as defined by the Courts with full understanding for human error. The control over election broadcasts is an important duty and to have left it to ex-employees to keep the necessary controls in place, amounts to not closely having complied with what should have been done. However, the criterion set for gross negligence as set out in the *Stella* matter quoted above was met. The Management left the broadcasts in the hands of ex-presenters, which is understandable from a listener perspective but not from a legal perspective.

[17] The management was clearly grossly negligent. When an important advertisement must meet a standard set in a regulation it is simply not reasonable to leave ex-employees in charge. The management of a radio station has an important task. A community obtains the right and unique privilege, according to South African Law, to be entrusted with the use of public property: a part of the airwaves. The licence and the Regulations which govern the licensee, are made by a Regulator which is entrusted to regulate the airwaves by section 192 of the Constitution of the Republic of South Africa. Its task is an onerous one: to ensure a balanced use of the airwaves, which was ignored by pre-Constitutional apartheid laws and policy. The licensee is, however, also entrusted with being a Keeper of the Constitution for the airwaves granted to it by ICASA and the Laws made under its Authority. In the present matter it goes even deeper: the right of a listener, who may vote for any Party of her or his choice, is at stake. The Regulation is clear and was also especially, as an innovation, brought to the notice of licensees who took part in information sessions of ICASA. The manager of the radio station acknowledged at the hearing that representatives from the radio station attended these sessions and were aware of the addition to the Regulations.

Finding

RADIO AGANANG IS FOUND TO HAVE CONTRAVENED REGULATION 12(6) of the REGULATIONS ON PARTY ELECTION BROADCASTS, POLITICAL ADVERTISEMENTS, THE EQUITABLE TREATMENT OF POLITICAL PARTIES BY BROADCASTING LICENSEES AND RELATED MATTERS five TIMES. ALSO, THAT IT HAD BEEN GROSSLY NEGLIGENT IN THESE OMISSIONS: 14 April 2019 at 14:55;18 April 2019 at 11:05 and 14:45:08; and 20 April 2019 at 15:03 and 16:05

ADVICE TO COUNCIL AS TO AN ORDER

The Regulations prescribe a maximum penalty of R1 million.³

Previous 2014 order

[18] The station was found to have contravened the Election Regulations during the 2014 local elections. Its advertisements had been lengthier than the limit prescribed.

The Radio Station was ordered to broadcast the finding of the CCC and the order made by Council. It was also fined R2000. In comparison with the previous contravention, the present contraventions are much more serious. *Gross* negligence was also found in contrast with the previous matter, where negligence was found.

Present Order

1. Firstly, Aganang must for five **consecutive** weekdays broadcast an apology as set out hereunder in English and Tswana a newscast between 07:00 and 21:10.
2. Secondly, a fine of R10 000 is imposed, R6000 of which is suspended until after the next general municipal election – the condition being that if Aganang, during any election broadcast contravenes the Regulations (as attached and also as possibly amended at that stage) the R6000 will become payable within the term set by Council at that stage *PLUS* the order which is imposed for the matter which has *then* been before the CCC and Council.
3. The present order, as advised, thus reads as follows:

[1] Aganang must the first week after this order is issued broadcast in Tswana and English once per day for five consecutive days as its **first** item on its **news** service the following statement at a time between 07:00 and 20:10 – in Tswana

³ See the Regulations as attached to this judgment.

and then in English in the same News Bulletin. The times of the broadcasts must be notified by email to the Broadcasting Manager: CCA at least 24 hours before the broadcast. Such broadcast may not be accompanied by any background music or sounds and the item must read formally by the **Station Manager, who must declare on air that he is the Station Manager:**

The Independent Communications Authority of South Africa has found that this station was grossly negligent in not having abided by the General Election Regulations 2019 on five occasions. It broadcast five party election broadcasts without adding before and after the advertisement that this was a party political advertisement. This is in conflict with the ICASA Election Regulations, which requires such statements to be made before and after the advertisement. Radio Aganang extends its apology to its listeners and ICASA for these contraventions.

The same must be broadcast in Tswana in the Tswana newscasts, as follows:

Bothati jo bo ikemetseng jwa Ditlhaeletsano tsa Afrika Borwa (The Independent Communications Authority of South Africa) e laotse gore seteishene kgaso se dirile phoso e e masisi ka go sa tlotle melao wa ditlhopo (General Election Regulations 2019) ka makgetlho a le matlhano. E gasitse dipapatso tsa mekgatlho ya dipolotiki (party election broadcasts) di le tlhano mme e sa tlhalosa pele le morago ga dipapatso tseo gore ke dipapatso tsa mekgatlho ya dipolotiki (party political advertisement). Mogato o, o kgatlhanong le melao wa ditlhopo (ICASA Election Regulations) o o gapeletsang gore dipapatso tsa mofuta o, di tlhalosiwe ka go nna jalo. Seteishene sa Aganang se rata go kopa maitshwarelo mo bareetsing ba sona le ba Bothati jo bo ikemetseng jwa Ditlhaeletsano tsa Afrika Borwa (ICASA) ka go tlola melao e e setseng e builwe.

An electronic copy of each broadcast, with time of broadcast, must be sent to the Broadcasting Manager: CCA by e-mail within 48 hours from the last broadcast.

[2] Secondly, a fine of R10 000, of which R6000 is suspended until after the next General Municipal Election, must be paid to ICASA within sixty calendar days from when this judgment is issued. The latter amount is thus: R4000.

The Broadcasting Manager: CCA will provide the radio station with the bank details of ICASA and the Broadcasting Manager: CCA must be copied with proof of payment within 24 hours from when the payment was made.

J. C. W. van Rooyen

JCW VAN ROOYEN SC

REGULATIONS ATTACHED

**REGULATIONS ON PARTY ELECTION BROADCASTS, POLITICAL
ADVERTISEMENTS, THE EQUITABLE TREATMENT OF POLITICAL PARTIES
BY BROADCASTING LICENSEES AND RELATED MATTERS**

Published under General Notice 101 in *Government Gazette* 37350 of 17 February 2014 and amended by:

GN 245	GG 42249	2019/02/25
GN 534	GG 42374	2019/04/02

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ANNEXURES

ELECTIONS BROADCASTING REGULATIONS

SCHEDULE

1. Definitions

In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Electronic Communications Act, 2005 (Act No. 36 of 2005) will bear such meaning, unless the context indicates otherwise:-

“**the Act**” means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

“the Authority” means the Independent Communications Authority of South Africa, established in terms of [section 3\(1\)](#) of the ICASA Act;

“Broadcasting Act” means Broadcasting Act, 1999 (Act No. 4 of 1999);

“BSL” means broadcasting service licensee;

“CCC” means the Complaints and Compliance Committee established by the Authority in terms of [section 17A](#) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

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

“Commission” means the Independent Electoral Commission established by [section 3](#) of the Electoral Commission Act, 1996 (Act No. 51 of 1996);

“Constitution” means the Constitution of the Republic of South Africa 1996;

“current affairs programme” means a program that is not a news bulletin but which focuses on and includes comment on and interpretation and analysis of issues of immediate social, political or economic relevance and matters of international, national, regional and local significance;

“election broadcast period” means the period within which party election broadcasts may be transmitted, such period commencing 120 hours after the allotment of time slots by the Authority and ending 48 hours before polling commences;

“election period” means the period commencing with the date on which the election day is proclaimed and ending on the day immediately following upon the day on which candidates of any of the political parties are declared elected;

“Electoral Act” means the Electoral Act, 1998 (Act No. 73 of 1998);

“Electoral Code” means the Electoral Code of Conduct as set out in [Schedule 2](#) of the Electoral Act;

“Electoral Commission Act” means the Electoral Commission Act, 1996 (Act No. 51 of 1996);

“ICASA Act” means the Independent Communications Authority of South Africa Act, 2000, (Act No. 13 of 2000);

“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;

“PA” means political advertisement;

“**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;

“**PEB**” means a party election broadcast;

“**polling day**” means the day proclaimed by the President of the Republic in terms of [section 49\(2\)](#) of the Constitution, as read with [section 17](#) of the Electoral Act, as being the day on which voting for the National Assembly will take place;

“**SABC**” means the South African Broadcasting Corporation Limited, a statutory body established in terms of the Broadcasting Act, 1999 (Act No. 4 of 1999).

2. Purpose of the regulations

The purpose of these Regulations is to prescribe the framework and guidelines under which PEB(s) and PA(s) shall be conducted and carried by the BSLs, during the national and provincial elections.

3. Application of these regulations

These regulations are applicable:-

- (a) during the election period;
- (b) to broadcasting service licensees; and
- (c) to political parties contesting the national and provincial elections.

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 broadcasting service licensee must permit a PEB during an election broadcast period.
- (4) A commercial or community broadcasting service licensee that intends to broadcast PEB must inform the Authority, in writing, of its intention to do so within thirty (30) days of the publication of these regulations.
- (5) A broadcasting service licensee that is obliged, or intends to broadcast PEB must ensure that the PEB conforms to the Authority’s technical quality as listed in [Annexure C](#) of these regulations.

- (6) A broadcasting service licensee, 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 broadcasting service licensee that rejects a PEB submitted by a party for broadcast must, within 24 hours of such submission:-
 - (a) furnish the party concerned with written reasons for the rejection:-
 - (i) the party concerned may alter or edit the PEB and re-submit it to the broadcasting service licensee concerned at least 48 hours prior to it being broadcast.
- (8) Where the broadcasting service licensee has rejected a PEB and the party concerned has confirmed in writing to the broadcasting service licensee that it will not be re-submitting the PEB, then the broadcasting service licensee must within 24 hours notify the Authority of such rejection and must also furnish to the Authority written reasons for the rejection.
- (9) A party whose PEB has been rejected and has no intention of altering or editing the PEB, may refer the matter to the Authority and inform the concerned licensee of the referral to the Authority, within 48 hours of being informed in writing of the rejection.
- (10) The Authority must address a notice received in terms of regulation 4(9), in accordance with [regulation 6](#) of the CCC Regulations.
- (11) Subject to regulation 4(10), the Authority must, within 48 hours of receiving the said notice, make, and communicate to the parties, a determination which is final and binding on the parties.
- (12) A party that submits a PEB to a broadcasting service licensee for broadcast must ensure that the PEB does not:-
 - (a) contravene the provisions of the Electoral Code, the Electoral Act, the Constitution, the Act and the Broadcasting Act; and
 - (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.
- (13) A party that submits a PEB for broadcast to a broadcasting service licensee, is deemed to have indemnified the broadcasting service licensee against incurred costs, damages, losses, and third party claims arising from the broadcast thereof.
- (14) A broadcasting service licensee that broadcasts PEB must:
 - (a) make available, every day, throughout the election broadcast period, ten (10) time-slots of fifty (50) seconds 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 determined by the Authority upon allocation of airtime slots after the publication of these regulations;
 - (c) ensure that all PEB broadcasts are clearly identified; and
 - (d) ensure that all PEB broadcasts are announced in a similar manner.
[Subreg. (14) substituted by GN 245/2019 w.e.f 25 February 2019]
- (15) A PEB must not exceed fifty (50) seconds in duration.
[Subreg. (15) substituted by GN 245/2019 w.e.f 25 February 2019]
- (16) Content broadcast as PEB cannot be broadcast as PA.
- (17) A broadcasting service licensee 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 broadcasting service licensee 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 broadcasting service licensee concerned must not, during the relevant time-slot, in any way vary the sequence or scheduling of PEB(s).
- (22) A broadcasting service licensee 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 this regulation 4, and a broadcasting service licensee concerned is unable to broadcast such party's PEB due to a breakdown in transmission, such PEB shall be broadcast within 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 broadcasting service licensee.

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 national and provincial elections on the basis of the respective principles set out in [Annexure A](#) of these regulations.

[Reg. 5 substituted by GN 534/2019 w.e.f. 2 April 2019]

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) A broadcasting service licensee that intends to transmit a PA must ensure that the advertisement conforms to the Authority's technical standards and quality as listed in [Annexure C](#) of these regulations.
- (3) A broadcasting service licensee, to whom a PA has been submitted by a party for broadcast, must not in any way edit or alter the advertisement.
- (4) A broadcasting service licensee who rejects a PA submitted by a party for broadcast must, within 24 hours of such submission:-
 - (a) Furnish the party concerned with written reasons for the rejection:-
 - (i) the party concerned may alter or edit the PA and re-submit the PA to the broadcasting service licensee concerned at least 48 hours prior to it being broadcast.
- (5) Where the broadcasting service licensee has rejected a PA and the party concerned has confirmed in writing to the broadcasting service licensee that it will not be re-submitting the advertisement, then the broadcasting service licensee must within 24 hours notify the Authority in writing of such rejection and must also furnish to the Authority written reasons for the rejection.
- (6) A party whose PA has been rejected and has no intention of altering or editing the advertisement, may refer the matter to the Authority within 48 hours of being informed of the rejection.
- (7) The Authority must address a notice received in terms of regulation 6(6), in accordance with [regulation 6](#) of the CCC Regulations.
- (8) Subject to regulation 6(7), the Authority must, within 48 hours of receiving the said notice, make, and communicate to the parties, a determination which is final and binding on the parties.
- (9) A party that submits a PA to a broadcasting service licensee for broadcast must ensure that the advertisement does not:-
 - (a) contravene the provisions of 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.

- (10) A party that submits a PA for broadcast to a broadcasting service licensee, is deemed to have indemnified the broadcasting service licensee against incurred costs, damages, losses, and third party claims arising from the broadcast thereof.
- (11) Content broadcast as PA cannot be broadcast as PEB.
- (12) A broadcasting service licensee that broadcasts PA must ensure that all PA broadcasts are:
 - (a) clearly identified through a top and tail disclaimer; and
 - (b) are announced in a similar manner.
[Subreg. (12) substituted by GN 245/2019 w.e.f. 25 February 2019]

7. Complaints

- (1) In the event of any person being aggrieved by any PA or PEB that person may lodge a complaint with the Authority within 48 hours after such broadcast has occurred.
- (2) Any complaint lodged with the Authority in terms of regulation 7(1) shall be addressed by the Authority in accordance with [regulation 6](#) of the CCC Regulations; and
- (3) The Authority shall, within 48 hours of receiving a complaint, communicate to the parties, the outcomes of such complaint.

8. General

- (1) Every broadcasting service licensee and party must:-
 - (a) nominate persons who must be the representatives of that broadcasting service licensee or party in respect of all matters regulated by, or arising from, these Regulations;
 - (b) within 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 broadcasting service licensee will recognise the nominated party representatives as the sole representative of the party and will not enter into discussion on PEB's with any other representatives of the party. Similarly, a party must direct all communications in respect of PEB's only to the nominated representatives of broadcasting service licensee and may not engage in discussion on PEB's with any other service or staff member of the Authority and broadcasting service licensee.

9. Penalty

Failure by a broadcasting service licensee to comply with these Regulations will result in a fine not exceeding one million rand (R 1 000 000, 00).

10. Short title and commencement

These regulations are called National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014 and shall come into force upon publication in the *Government Gazette*.

ANNEXURES

Annexure A: Formulae for airtime allocation in respect of PEBs

Annexure B: Guidelines

Annexure C: Technical standards and quality

ANNEXURE A

PRINCIPLES FOR AIRTIME ALLOCATION IN RESPECT OF PEBs

Basic allocation	
Percentage of slots to be allocated to all political parties contesting seats in the National and Provincial Elections.	50%
Number of seats currently held	
Percentage of slots to be allocated to political parties according to seats currently held at National and Provincial level.	25%
Number of seats fielded	
Percentage of slots to be allocated to the number of candidates fielded by parties at National and Provincial level.	25%

[Annexure A substituted by GN 534/2019 w.e.f. 4 April 2019]

ANNEXURE B

GUIDELINES

1. INTRODUCTION

These guidelines are intended to outline a general approach that should be adopted by broadcasting service licensees in their coverage of the 2014 general elections. General elections are an important public event and they clearly fall within the area of news and current affairs. Broadcasting service licensees 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. Broadcasting service licensees' 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 Act lays down 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 broadcasting service licensee 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 broadcasting service licensee should be consistent in its treatment of contesting parties and of conflicting views.

3.2 Broadcasting service licensee must seek out information.

Broadcasting service licensees should recognise their obligation to the electorate to provide a full and accurate record of events and developments. Broadcasting service licensees 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 broadcasting service licensees 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.

4.2 The right of reply to broadcast criticism

Each broadcasting service licensee should afford all political parties reasonable opportunity to respond to criticism broadcast by that broadcasting service licensee. However, affording parties reasonable time to respond should not amount to forcing broadcasting service licensees 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, broadcasting service licensee must have the flexibility to incorporate responses into their formal news patterns. With regard to damaging criticisms, broadcasting service licensee 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 equitability.

4.3 Coverage of government

During the election period, broadcasting service licensees must recognise that government officials are in a position to use their incumbency to advance their electoral prospects. During the election period, broadcasting service licensees should regard with particular caution any statement or action by an official of an incumbent party. In particular, broadcasting service licensees 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 equitability between registered, contesting parties.

4.5 Coverage of election results

Broadcasting service licensees, particularly the public broadcasting service licensee, 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 in essence therefore will provide a framework to broadcasting service licensee covering the elections in which the system of Party Election Broadcasts and political advertising will operate.

ANNEXURE C

TECHNICAL STANDARDS AND QUALITY

- (1) Audio and video recordings will be clearly labelled, outlining the name of the political party and nominated representative.
- (2) The technical standards are as follows:
 - Television
 - 16:9 HD format; and
 - Delivered by File Transfer Protocol, Hard drive or USB.
 - Radio
 - Format: MP3 or MP2;
 - Sample rate: 48 KHz;
 - Bit rate: 384 bps;
 - Stereo - Left and Right channels; and

Delivered by USB.

[Annexure C substituted by GN 245/2019 w.e.f. 25 February 2019]