Independent Communications Authority of South Africa

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COMPLAINTS AND COMPLIANCE COMMITTEE

DATE HEARD: 27 OCTOBER 2026 **CASE NO:525/2026**

DEMOCRATIC ALLIANCE (DA) **COMPLAINANT**

19 BROADCASTING SERVICE LICENSEES **RESPONDENT**

CCC MEMBERS:
Judge Thokozile Masipa – Chairperson
Ms Catherine Mushi - Councillor
Mr Thato Mahapa - Member
Adv Luthando Mkumatela
Mr Monde Mbanga- Member
Mr Thato Mahapa - Member
Ms Ngwako Molewa - Member

FROM THE OFFICE OF THE CCC:

Ms Meera Lalla – Manager: CCC
Mr Thamsanqa Mtolo – CCC Assessor
Ms Amukelani Masia – CCC Admin

LEGAL REPRESENTATIVES:

Counsel for the Complainant: Adv. Pranisha Maharaj-Pillay
Instructed by: Venesen Reddy (MINDE SCHAPIRO & SMITH INC)

Counsel for the Respondent:

1. **Mr Sabelo Mabuza** - Instructed by: Thinane Mabuza INC

    - Appearing for: Alfred Nzo, Eden FM, Inanda FM, Jozi FM, Star FM, Unitra Community Radio, Valley FM, Westside FM, Izwilomzansi, Sajonisi Youth Radio, Star FM

2. **Mr Philly Moilwa with Mr Tommy Sadike**

- Appearing for SABC Radio: Motsweding FM, Munghana Lonene FM, Radio 2000 and Umhlobo Wenene

3. Mr Faizal MJ Suleman and Shabir Basha

- Appearing for Radio Al Ansar

JUDGEMENT

Judge Thokozile Masipa

INTRODUCTION

1. The Complainant in this matter is the Democratic Alliance ("DA"), a political party contesting the upcoming Local and Municipal elections, to be held on 4 November 2026, which has been allocated slots for the broadcasting of Party Electoral Broadcasts (PEBs) in accordance with the Municipal Party Elections Broadcasts and Political Advertisements Regulations, as amended[1].

2. The DA was allocated a number of slots for the broadcast of its PEBs in accordance with the schedule developed in terms of the framework and guidelines governing the broadcasting of PEBs by Broadcasting Service Licensees during the municipal elections.

3. The DA conducted independent monitoring and identified several PEBs that were not aired or broadcast by BSLs, contrary to the approved schedule.

4. The DA engaged with the BSLs, some of whom undertook to broadcast PEBs in alternative slots to make up for the missed broadcasts. In some instances, the undertaking was conditional on the Regulator's approval.

[1] The latest amendment was published on 2 April 2026 in Government Gazette 54459

5. The DA then brought an urgent complaint against the affected BSLs in terms of regulation 2(1) read with regulation 6 of the Regulations Governing Aspects of the Procedures of the Complaints and Compliance Committee of the Independent Communications Authority of South Africa ("CCC Regulations") and seeks the urgent treatment of its complaint.

6. The DA seeks findings of non-compliance with

   6.1. Regulation 4(12)(b) of the Municipal Elections Party Elections Broadcasts and Political Advertisements Regulations, 2011, as amended ("Regulations");
   6.2. Regulation 4(20), insofar as interference with the prescribed schedule is established; and, alternatively, with Regulation 4(21), where a transmission breakdown is established, and the applicable consultation and replacement-broadcast obligations were not met

THE PARTIES

7. The Complainant is the Democratic Alliance (DA), a registered political party which is contesting the upcoming Local and Municipal elections to be held on 4 November 2026.

8. The Respondents are:

   8.1. Community Broadcasters who have opted to broadcast PEBs in accordance with Regulation 4(4) of the applicable regulations, including: Alfred Nzo Community Radio, Eden FM, Inanda FM, Ingwane FM, Izwilomzansi, Jozi FM, Modiri FM, Newcastle Community Radio, Rhodes Music Radio, Radio Al Ansaar, Sajonisi Youth Radio, Star FM, Unitra Community Radio, Valley FM, Westside FM. These licensees are holders of Community Radio Broadcasting Service Licenses, who have opted to broadcast PEBs in accordance with Regulation 4(4) of the applicable regulations.

8.2. The South African Broadcasting Corporation ("SABC"), a public national broadcaster, provides public broadcasting services as defined in section 1 of the Electronic Communications Act, 2005 ("the ECA and the Broadcasting Act of 1999 ("the Broadcasting Act") and is obliged to permit the broadcasting of PEBs during the election period in terms of Regulation 4(3) of the Regulation. The complaint relates to the following services of the SABC: Motsweding FM, Munghana Lonene FM, Radio 2000 and Umhlobo Wenene.

9. Unless otherwise indicated, the Respondent refers to all the BSLs identified above.

THE COMPLAINT

10. In its complaint, the DA submits the following:

"*This urgent complaint concerns failures to broadcast the DA's allocated party election broadcast ("PEB") slots identified in Annexure A. Those failures were identified through independent monitoring of broadcasts between 4 and 18 October 2026 and have been assessed against the available delivery records and station responses.*

The DA seeks a determination of non-compliance with the Municipal Elections Party Elections Broadcasts and Political Advertisements Regulations, 2011, as amended ("Regulations"), and lawful corrective relief to restore the lost broadcast opportunities.

The complaint is lodged under regulation 2(1) of the Regulations Governing Aspects of the Procedures of the Complaints and Compliance Committee of the Independent Communications Authority of South Africa ("CCC Regulations"), together with an application for urgent treatment under regulation 6(1). As a complaint under the Election Rules, it is deemed urgent under regulation 6(3), unless the chairperson determines otherwise.

The DA's media agency, Torque Media, commissioned Afstereo to monitor whether the DA's PEBs aired in their allocated slots. Afstereo recorded its monitoring findings in Daily Reconciliation reports, identifying, among other things, slots in which the DA's PEBs were recorded as not broadcast.

The DA submitted the PEB material intended for the slots identified in Annexure A to the relevant stations on the dates set out in that annexure.
The DA did not elect to forfeit any of the slots identified in Annexure A or advise the relevant stations that it did not intend to use those allocations."

11. The DA sought relief which included, amongst others, the following:

11.1. that the complaint be dealt with urgently under regulation 6 of the CCC Regulations and that the chairperson direct an expedited procedure, with shortened periods for responses, any necessary reply and the determination of the complaint, to secure a determination and appropriate corrective relief by 27 October 2026,

11.2. that each respondent be directed, within the shortened period prescribed by the chairperson, to:

11.2.1. state whether it admits or disputes each missed broadcast attributed to its station or stations in Annexure A;
11.2.2. provide the relevant playout logs and broadcast recordings;
11.2.3. explain the reason for each admitted or established failure to broadcast;
11.2.4. where it relies on a transmission breakdown, provide the records supporting that explanation, details of its consultation with ICASA and evidence of whether and when the affected PEB was subsequently broadcast
11.2.5. where it contends that a missed broadcast has been made good, identify the original missed allocation and the corrective broadcast separately, supplying the date, actual broadcast time, playout log and recording of the corrective broadcast, together with details of ICASA's involvement, and distinguishing it from the DA's existing allocations
11.2.6. identify each admitted missed broadcast that remains unremedied and propose specific corrective dates and time bands for ICASA's urgent consideration,

11.2.7. identifying any regulatory impediment requiring resolution; and

11.2.8. confirm that the DA's material is available for broadcast and that its remaining allocated PEB slots will be honoured, identifying immediately any difficulty that may prevent compliance:

12. The DA further requested the CCC to make findings of non-compliance:

12.1. with regulation 4(12)(b), in respect of each allocated PEB established not to have been broadcast in accordance with the prescribed sequence and timing,

12.2. with regulation 4(20), insofar as the evidence establishes that a respondent permitted or engaged in interference with the prescribed sequence or scheduling of PEBs; and

12.3. alternatively, where a missed broadcast resulted from a transmission breakdown and the DA had complied with regulation 4, with regulation 4(21), insofar as the relevant respondent failed to comply with its consultation and replacement-broadcast obligations.

13. The DA further requested the CCC to recommend to ICASA such lawful corrective measures as are necessary to restore the lost broadcast opportunity. In particular, insofar as corrective broadcasts may lawfully be directed, the DA requests that ICASA:

13.1. direct the relevant respondent to broadcast a replacement DA PEB for each established missed broadcast not already lawfully made good;

13.2. fix the corrective schedule urgently, with broadcasts in time bands comparable to the missed allocations, so far as lawfully and practically possible, and in all events before the broadcast period ends on 1 November 2026;

13.3. require each respondent to confirm implementation to ICASA and the DA promptly after each corrective broadcast, supported by the relevant playout log and recording;

13.4. ICASA verify implementation of the corrective measures and compliance with the DA's remaining allocations, through prompt production and assessment of the relevant playout logs, recordings and available monitoring evidence.

14. In its reply, the DA summarises the responses received and notes the following conclusion:

14.1. No licensee contends that the DA failed to deliver its PEB material in time for any of the slots pursued in this complaint, or that the DA was in any other way responsible for any failure

14.2. Several stations expressly admit specific failures. Others acknowledge missed broadcasts in general terms or undertake to make good without addressing every allocation separately. Valley FM acknowledges that three PEBs were broadcast outside their allocated hours. These responses substantially narrow the dispute, but the findings and outstanding corrective broadcasts must still be determined allocation by allocation.

14.3. Only Radio Al Ansaar has disputed monitoring findings with playout records, and only for four slots. Valley FM raises a general doubt about the monitoring of its station, but produces no logs or recordings for the 14 slots it does not address

14.4. Two licensees, Ingwane FM and Modiri FM, have not responded at all. Star FM has filed a notice to abide. Together they account for 11 slots.

14.5. No licensee claims to have followed the transmission-breakdown procedure in regulation 4(21), which requires the licensee, after consulting the Authority, to broadcast the affected PEB within 48 hours.

15. In the DA's view, "*what remains, therefore, is mainly the question of remedy. On that question the DA's position is simple. Every missed slot must be made good by a further broadcast, in addition to the DA's remaining allocations, in a broadly comparable time band, before 1 November 2026, and with proof provided to the Authority".*

SUBMISSION BY THE COMPLAINANT

16. At the hearing, the DA's counsel made submissions that mirrored the written submissions. Counsel emphasised the importance of restoring the lost opportunity caused by the missed broadcast through an additional broadcast authorised by ICASA, while there is still time to reach voters before the election broadcast window closes on Sunday 1 November.

17. Counsel further reiterated the licensees' submissions evidencing their preparedness to reschedule the missed broadcasts to make up for the missed broadcast of the PEBs as appropriate remedial action.

18. Counsel requested the CCC to expedite its decision and to "*issue its findings today and transmit them urgently to the authority so that a decision on corrective action can follow*". In substantiating the DA's case for the relief sought, Counsel also emphasised the following responsibilities of ICASA:

    18.1. Sections 4(3) and (d) of the ICASA Act required ICASA to monitor and enforce compliance with the statutory and regulatory framework.
    18.2. Section 4(3)(g) empowers it to require the relevant documents and information from licensees.
    18.3. Sections 4(3)(n) and (p) provide ICASA with investigative and adjudicative powers to determine whether the statutory requirements have been met and to determine not only an appropriate penalty, but also a remedy.

19. However, Counsel also conceded the following two important issues:

    19.1. Where transmission breakdown prevents broadcasts, regulation 4(21) imposes a further obligation. Specifically, after consulting with the authority, the station must broadcast the affected PEB within 48 hours of its scheduled date. Operational errors do not constitute a transmission breakdown and must be assessed against the primary obligation imposed by regulation 41(2)(b).
    19.2. An original failure and a subsequent corrective broadcast are separate questions.

20. As noted earlier, only two PEBs are attributed to transmission breakdowns; the balance of the non-broadcasts are not.

21. The DA's main concern was a practical approach to provide a suitable opportunity to reach listeners, which could be achieved by providing airtime comparable to the DA's initial allocation. This was against the backdrop of consideration of various alternatives suggested by the affected licensees, including using the DA's other slots or airtime not included in the allocated scheduled slot time, but at a comparable time slot, to make up for the missed allocated slot.

22. It was contended that the CCC has the power to recommend an effective remedy, while acknowledging that the legal question is whether an established failure to deliver allocated airtime can be remedied by corrective scheduling under the statutory framework.

23. The source of the power, it was submitted, resided in the ICASA Act read together with the authority's responsibility for election broadcasting, including:

    23.1. Regulation 4(21),
    23.2. Section 17B of the ICASA Act, which gives the CCC two related functions, being (1) to investigate and make findings on complaints of non-compliance, and (2) to make recommendations to the authority necessary or incidental to the performance of the authority's function or the achievement of the statutory objects.

24. In relation to the latter, it was further submitted that those objects include fairness and diversity of views in broadcasting, as well as the discharge of ICASA's functions of monitoring and enforcing regulatory compliance, among others.

25. Ultimately, it was argued that ICASA should take corrective action within the statutory process, which includes the necessary consultation and safeguards provided by Regulation 4(21), which addresses situations where a PEB cannot be broadcast because of a transmission breakdown. It was submitted that this

imposes a specific duty on the station, after consulting a broadcaster, to broadcast the missed PEB within 48 hours of the original scheduled date. It was also conceded, however, that this provision does not describe most of the failures before the CCC in this complaint, as many do not rely on transmission breakdowns but on scheduling errors or presenter negligence.

26. A missed broadcast that does not arise from a transmission breakdown should not cause an irretrievable loss of the broadcast opportunity for a party and leave the authority only in a position to punish after the opportunity has passed, in the DA's view.

27. In closing, the DA indicated that it was ready and prepared to accept a correction through the provision of an additional and suitable opportunity to reach listeners, as tendered by the BSLs, which would be akin to a settlement as allowed under section 17E(2), read with Regulation 4A of the CCC Regulations.

28. Considering the tendered opportunity to remedy the missed broadcasts, the urgency of the matter, and a willingness to resolve the matter through settlement, the CCC requested the parties to engage and consider whether settlement would be possible and what the terms would be.

29. The Respondents agreed to engage in exploration of a settlement and to consider the DA's proposed approach of identifying replacement broadcast slots.

ICASA's SUBMISSION

30. In response to the proposed engagement, ICASA noted several challenges which I'll summarise as follows:

    30.1. There may not be sufficient slots remaining for allocation of the missed broadcasts.
    30.2. The regulation only allows ICASA to make exceptions. When there's a breakdown in transmission.

31. In ICASA's view, the regulations treat separately non-broadcast that results from a transmission breakdown, which can be addressed within the ambit of Regulation 4(21), and non-broadcast that is not caused by a transmission breakdown or is not the result of a transmission issue. The latter is a non-compliance issue that does not fall within the ambit of Regulation 4(21) and does not have a remedy in the nature sought by the DA.

32. The CCC then requested the parties to consider in their deliberations the treatment of broadcasts missed due to a breakdown in transmission separately from those not aired or broadcast for reasons other than a breakdown in transmission.

33. Notwithstanding the concerns raised, and having ventilated their respective views on the prospect of a settlement, the parties proceeded to engage and deliberate on the probability of a settlement. In the CCC's view, the outcome of the engagement could serve to assist it if:

    33.1. The parties settle on a remedy that is within the ambit of remedies envisaged by the regulatory framework; or
    33.2. If the parties are unable to agree, they would narrow the issues to be determined on an urgent basis.

ENGAGEMENT BETWEEN THE PARTIES

34. Upon resumption of the hearing, counsel for the DA furnished a summary of the position which appeared to be agreed upon by the parties. In terms of the summary, it appears there were effectively three categories of BSLs, being:

    34.1. BSLs who admit the failure to broadcast, as alleged, and who submit that they have already broadcast a remedial broadcast in another timeslot to make up for the missed broadcast. This remained subject to verification by ICASA.
    34.2. BSLs who admitted failing to broadcast the PEBs as alleged and tendered slots for the remedial broadcast. For these BSLs, the parties also considered the unallocated slots available per province available for

allocation towards remedial broadcasts, which the DA was also willing to accept.

34.3. BSLs in respect of which there are limited unallocated broadcasts available, which means for those BSLs, there will not be an opportunity to allocate a slot for the remedial broadcast. For these BSLs, it remained for ICASA to impose a sanction in accordance with the regulations.

35. There remained the question posed by the CCC, being whether the proposed settlement, if agreed upon, was one available within the ambit of the regulations.

36. That question was not directly answered.

37. However, it remained clear that the DA sought remediation for the missed broadcast of the PEBs, and the Respondents were not only unopposed to that remedy, but were willing to consider alternatives beyond the allocated schedule to provide it. Although providing a remedial broadcast slot may not have been within the ambit of what the regulation envisaged, the DA was prepared to accept it.

38. However, from a regulatory perspective, providing a remedial slot would not render the licensee compliant, as it would remain in contravention of regulation 4(14)(b) because the remedial slot would fall outside the allocation determined by ICASA. While this remained a regulatory concern, the DA was not interested in it. Its primary focus remained the "*question of remedy... Every missed slot must be made good by a further broadcast, in addition to the DA's remaining allocations, in a broadly comparable time band, before 1 November 2026, and with proof provided to the Authority"* as this provides a suitable opportunity to reach listeners.

THE CCC'S FINDINGS

39. It is common cause that the majority of the missed broadcasts are not attributed to a breakdown in transmission, as envisaged in Regulation 4(21). The exceptions are in respect of

39.1. Radio Inanda, which submits that the one missed slot was attributed to a power failure;

39.2. Westside FM, which attributes the failure to broadcast the PEB to "*an unintended technical or operational difficulty rather than any deliberate action intended to prejudice the Democratic Alliance*"; and

39.3. Radio Al Ansaar, which disputes the alleged non-compliance in respect of the alleged missed broadcasts. However, in its written submission, Radio Al Ansaar submits that it informed the DA "*of four dates allocated to Radio Al Ansaar for the purposes of rectifying the missed advertisement*". However, a cursory reading of its papers suggests it meant to clarify that, of the five alleged non-transmissions of PEBs, only one was conceded, and alternative make-up slots were provided for the DA to elect a suitable one.

40. Consequently, the primary question remains then whether the remedy proposed by the parties was one capable of being accepted as a settlement within the ambit of the Regulations, read with regulation 4A of the CCC Regulations. The relevant provisions of these regulations provide as follows:

> *"4. The settlement agreement, in terms of sub-regulation (3), must address the following issues:*
>
> *(a) The allegations of non-compliance;*
> *(b) Jurisdiction;*
> *(c) Admissions to the allegations of contravention;*
> *(d) Mitigating factors and steps taken by the licensee to remedy the complaint and ensure that similar complaints will not be lodged in the future;*
> *(e) Proof of authorisation of legal representatives to enter into settlement agreements on behalf of the parties; and*
> *(f) Any other relevant considerations."*

41. The CCC's primary concern, notwithstanding that the DA and the Respondents seem to be *ad idem* on a remedial approach, remains the concern raised by ICASA. Put succinctly, there is no legal provision that authorises the CCC to

amend or to add or to supplement the schedule of allocations for the broadcast of PEBs during the election period.

42. During its deliberation, the CCC was provided with a proposed settlement agreement through the DA's attorneys of record. ; which provided:

1. *ICASA has confirmed that a station which missed an allocated DA party election broadcast ("PEB") may make good that missed broadcast in an available unallocated slot on ICASA's published schedule. A copy of the schedule can be accessed via link : [link removed] on ICASA's website. The DA accepts that arrangement;*
2. *Where a comparable unallocated slot is available, the station must use that slot. Where no comparable unallocated slot is available, the DA will accept any other available unallocated slot on the published schedule;*
3. *Each station concerned must write to the DA, copying ICASA, confirming the date and time of each unallocated slot it will use to make good a missed PEB. The confirmation must identify the original missed allocation to which each corrective broadcast relates;*
4. *Each corrective broadcast must be additional to, and not in substitution of, the DA's remaining allocated PEBs*.

43. The statement in clause 1 that ICASA had confirmed a particular mechanism is recorded as an assertion in the proposal, not as an independent finding of formal authorisation by the Authority.

44. In the discharge of its functions, the CCC is enjoined to consider whether the proposed settlement addresses all the elements required in terms of Regulation 4A of the CCC Regulation. A proposed agreement must also be legally capable of implementation.

45. Given that this hearing was convened on an urgent basis, the proposed settlement was considered against the submission made, with supplementation where necessary.

46. In this regard, it was taken that:

46.1. The allegations of non-compliance can be considered as admitted, within the context set out above,

46.2. That the jurisdiction of the CCC was engaged given that the complaint is by a licensee in respect of alleged non-compliance with the Act and applicable regulations, engaging the CCC's jurisdiction,

46.3. The contraventions remained admitted on the papers, save as qualified above;

46.4. The proposed remedial broadcasts were aimed at remedying the complaint; and

46.5. The representatives were duly authorised to enter into settlement agreements on behalf of the parties they purported to represent.

47. The train derailed when it came to the specific remedy proposed; ICASA's earlier consideration remained poignant in the face of what appeared to be a reasonable and practical solution. The proposed settlement does not, on its present terms, identify a sufficiently established legal basis for authorising the additional PEB broadcasts contemplated, nor does it conclusively demonstrate compliance with every applicable requirement of regulation 4A.

48. . ICASA's position is dispositive, and we cannot disagree with it.

49. Regulation 4(21) applies only to failure to broadcast PEBs as a result of a breakdown in transmission. The evidence does not presently establish that the majority of the alleged omissions meet that requirement. It is common cause that, save for two of the complaints which we also have not been able to ventilate fully, the overwhelming cause of those complaints is not a breakdown in transmission but some or other reason.

50. In the absence of a demonstrated legal basis and the necessary regulatory authorisation, the CCC cannot approve the proposed arrangement as though the parties' consent itself permits a change to the prescribed schedule. It is unnecessary for present purposes to pronounce definitively on every possible

power the Authority may have under section 57 of the Electronic Communications Act.

51. Unless the regulation has been amended to enable the implementation of the remedy sought, any such approval remains *ultra vires* the existing regulatory framework. It could very well be that this is an oversight, or that the restriction around the provision of rescheduled broadcasts serves some other greater regulatory purpose. That is not for the CCC to decide.

52. The CCC can only apply the law at its disposal, not alter or create its own remedies.

53. Unfortunately, the CCC cannot accept the proposed settlement for these reasons.

54. It remains for ICASA to revisit the regulation and consider incorporating the proposed remedy into the regulations, or for the DA and similarly placed entities or persons to approach the Court to challenge the regulation. Despite the remedy's attractiveness, the CCC lacks the power to read it into the existing regulatory framework.

55. Unfortunately, the proposed settlement agreement remains unacceptable.

56. The question then remains: what happens to the remainder of the complaint? In my view, the urgency arose from the specific remedy the DA sought to implement. Given that the remedy is unavailable, the balance of issues on non-compliance can be adjudicated in the ordinary course, or within such truncated timeframes as may be necessary. To this end, a separate directive shall follow in due course.

CONCLUSION

57. The proposed settlement agreement to resolve the complaint lodged by the DA is not acceptable under Regulation 4A(4) of the CCC Regulations.

58. It is recommended that.

58.1. The application by the DA to deal with the matter on an extreme urgency basis is dismissed.

58.2. The Chairperson will issue a directive within 5 days on the consideration of the alleged non-compliance, including directions for the

58.2.1. submission of responses to the Complaint by all affected BSLs, including supplementing existing responses where necessary

58.2.2. The submission of a supplementary reply by the Complainant; and

58.2.3. If necessary, the convening of hearings into the allegations of non-compliance in accordance with the relevant regulations.

59. In the exercise of its powers in terms of section 17B(b)(i), the CCC recommends that the authority consider the possibility of incorporating the provision of remedial broadcasts, as a practical remedy for the benefit of a Political Party or Independent Candidate whose PEB was not broadcast during the broadcast period for a reason other than a breakdown in transmission, to ensure that such Party or Candidate is not deprived of an opportunity to reach voters. It is recommended that, should such a framework be considered, it must necessarily be coupled with the requisite safeguards to ensure:

59.1. The participation of ICASA in the implementation of such a remedy;

59.2. The applicable timeframes for the provisions of ICASA's and the Candidates' input into the proposed remediation by the BSL; and

59.3. Consequences for failure to adhere to those timeframes.

60. This remediation framework would need to be informed by or influenced by the allocation of PEB Broadcast slots in terms of the schedule developed under the regulations.

TMMasipa

Judge Thokozile Masipa

Chairperson of the CCC

Date: 28/10/2026

The CCC Members agreed with the finding and the order advised to the Council of ICASA.