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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA  
NOTICE 716 OF 2020**

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**DRAFT MUNICIPAL ELECTIONS BROADCASTS AND POLITICAL  
ADVERTISEMENTS AMENDMENT REGULATIONS, 2020**

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- (1) The Independent Communications Authority of South Africa (“**ICASA**” or “**the Authority**”) hereby declares its intention to amend the Municipal Elections Broadcasts and Political Advertisements Regulations 2011, as amended, in accordance with the provisions of section 4 (3)(j) of the Independent Communications Authority of South Africa Act No. 13 of 2000 (“**ICASA Act**”), as amended read together with sections 56-59 of the Electronic Communications Act No. 36 of 2005 (“**the ECA**”), as amended.
- (2) The Authority hereby invites interested parties to make written representations on the draft Municipal Elections Broadcasts and Political Advertisements Regulations, 2020 set out herein (“**Draft Regulations**”).
- (3) A copy of the Draft Regulations will be made available on the Authority’s website at <http://www.icasa.org.za> or can be sent via email upon request by any individual or can be collected from ICASA Library No. 350 Witch-Hazel Avenue, Eco Point Office Park, Centurion between 09h00 and 16h00, Monday to Friday.
- (4) Written representations must be submitted to the Authority by no later than 16h00, forty-five (45) days after the publication of the Draft Regulations, hand

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Dr. K Modimoeng (Chairperson), P Kadi, Y Kedama, Dr. C Lewis, ZK Matthews, Adv. L Mkumatela, Adv. D Qocha, T Semane, PJ Zimri, (Councillors), WA Ngwepe (CEO)

delivery, or electronically and marked specifically for the attention of **Ms. Honey Makola (Project Manager)**.

- (5) Delivery address: Block B, 350 Witch-Hazel Avenue, Eco Point Office Park, Centurion; or by email at [hmakola@icasa.org.za](mailto:hmakola@icasa.org.za) and [pcokie@icasa.org.za](mailto:pcokie@icasa.org.za); or by facsimile at 012 568 3667. Telephonic inquiries should be directed to 012 568 3666 between 10h00 and 16h00, from Monday to Friday.
- (6) Written representations received by the Authority according to this notice, will be made available for inspection by interested persons at the Authority's library.
- (7) When a person submits information to the Authority, such a person may request that specific information be treated as confidential information in terms of section 4D of the ICASA Act. The request for confidentiality must be accompanied by a written statement explaining why the specific information should be treated as confidential, in accordance with ICASA Guidelines for Confidentiality Request published in Government Gazette No. 41839 of 17 August 2018.
- (8) The Authority may determine that such specific information or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality is refused, the person who made the request will be granted an opportunity to withdraw such representations or portion(s) thereof.

Persons submitting written representations and interested parties are further invited to Provincial Workshops that the Authority will be conducting. The schedule of the workshops will be published on the Authority's website by no later than 30 December 2020.



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**Dr. Keabetswe Modimoeng**  
Chairperson

## SCHEDULE

### DRAFT MUNICIPAL ELECTIONS PARTY ELECTIONS BROADCASTS AND POLITICAL ADVERTISEMENTS REGULATIONS, 2011

#### 1. Definitions

In these regulations "the Regulations" means the Municipal Elections Party Elections Broadcasts and Political Advertisements Regulations, 2011 as published under Government Notice No. R203 in Government Gazette 34086 of 8 March 2011 and amended by Government Gazette 39738 of 2016.

#### 2. Amendment of regulation 1 of the Regulations

Regulation 1 of the Regulations is hereby amended -

2.1. by the substitution for the definition of "current affairs programme" of the following definition:

"**current affairs programme**" means programming that is not a news bulletin, 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;"

2.2. by the insertion after the definition of "ICASA Act" of the following definition:

"**independent candidate**" means a natural person registered with IEC to contest an election independently from a political party before the commencement of the relevant election period;"

2.3. by the substitution for the definition of "PEB" of the following definition:

"**PEB**" means a party election broadcast made by a political party or an independent candidate;"

#### 3. Amendment of regulation 3 of the Regulations

Regulation 3 of the Regulations is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) to a political party and an independent candidate contesting the municipal elections.”

#### **4. Amendment of regulation 4 of the Regulations**

Regulation 4 of the Regulations is hereby amended by the substitution for regulation 4 of the following regulation:

##### **“4. Party election broadcasts**

- (1) PEB(s) must only be broadcast during the election broadcast period.
- (2) A political party or an independent candidate that intends to broadcast a PEB must submit the same to the broadcasting service licensee at least five (5) working days prior to the broadcast thereof.
- (3) A public BSL must permit a PEB during an election broadcast period.
- (4) A commercial or community BSL that intends to broadcast PEB(s) must inform the Authority, in writing, of its intention to do so within twenty-one (21) days of the publication of these regulations.
- (5) A BSL that is obliged, or intends to broadcast PEB(s) must ensure that the PEB conforms to the Authority’s technical quality as listed in Schedule 2 of Annexure A.
- (6) A BSL to whom a PEB has been submitted by a political party or an independent candidate for broadcast must not in any way edit or alter the content of the PEB.
- (7) A BSL that rejects a PEB submitted by a political party or independent candidate for broadcast must, within twenty-four (24) hours of such submission by the political party or independent candidate, furnish the political party or independent candidate concerned with written reasons for the rejection and the political party or independent candidate concerned may alter or edit the PEB and re-submit it to the BSL concerned at least forty-eight (48) hours prior to its scheduled broadcast.
- (8) Where the BSL has rejected a PEB and the political party or independent candidate concerned has confirmed in writing to the BSL that it will not be

re-submitting the PEB, then the BSL must within twenty-four (24) hours notify the Authority of such rejection and must also furnish to the Authority written reasons for the rejection.

- (9) A political party or an independent candidate 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 political party or independent candidate that submits a PEB to a BSL for broadcast must ensure that the PEB does not:
- (a) contravene the provisions of the Municipal Electoral Act, the Electoral Code, the Electoral Act, the Constitution, the Act, and the Broadcasting Act; and/or
  - (b) contain any material that is calculated, or that in the ordinary course is likely to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as condoning or lending support to any such act.
- (13) A political party or independent candidate 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, 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 prescribed by the Authority upon allocation of airtime slots after the publication of these Regulations;
  - (c) ensure that all PEB(s) broadcast are 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 fifty (50) seconds 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 political party or independent candidate, shall be forfeited by the political party or independent candidate concerned.
- (19) If a political party or an independent candidate fails to deliver the PEB to the BSL before the expiry of five (5) days prior to the broadcasting thereof, then the political party or independent candidate is deemed to have forfeited its allocated airtime.
- (20) In the event that a political party or an independent candidate elects to forfeit its allocated PEB air-time, then such air-time must not be allocated to another political party or independent candidate but must be used by the broadcaster concerned for the purpose of broadcasting its normal programming.
- (21) In the event that a political party or an independent candidate 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 political party or an independent candidate 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 political party or independent candidate has complied with the requirements of regulation 4, and a BSL concerned is unable to broadcast such political party's or independent candidate'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 broadcast language(s) as contained in the issued broadcasting service license of the relevant BSL."

## **5. Amendment of Regulation 5 of the Regulations**

Regulation 5 of the Regulations is hereby amended by the substitution for regulation 5 of the following regulation:

### **"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 or registered independent candidates contesting the municipal elections on the basis of the respective principles set out in Schedule 1 of **Annexure A** of these regulations."

## **6. Amendment of Regulation 6 of the Regulations**

6.1. Regulation 6 of the Regulations is hereby amended by the substitution for sub-regulations (2), (4), (5), (6), (7), (10), (11) and (13) of the following sub-regulations:

"(2) Each PA submitted must indicate clearly the name of the political party or independent candidate and the day, time of broadcast, and relevant broadcast service/s for the PA.

(4) A BSL to whom a PA has been submitted by a political party or an independent candidate for broadcast must not in any way edit or alter the advertisement.

(5) A BSL who rejects a PA submitted by a political party or an independent candidate for broadcast must, within twenty-four (24) hours of such submission, furnish the political party or independent candidate concerned with written reasons for the rejection and the political party or independent candidate concerned may alter or edit the PA and re-submit the PA to the BSL concerned at least forty-eight (48) hours prior to its scheduled broadcast.

(6) Where the BSL has rejected a PA and the political party or independent candidate concerned has confirmed in writing to the BSL that it will not be re-submitting the advertisement, then the BSL must within twenty-four (24) hours notify the Authority in writing of such rejection and must also furnish to the Authority written reasons for the rejection.

(7) A political party or an independent candidate 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.

(10) A political party or an independent candidate that submits a PA to a BSL for broadcast must ensure that the advertisement does not:

(a) contravene the provisions of the Municipal Electoral Act, the Electoral Code, the Electoral Act, the Constitution, the Act, and the Broadcasting Act; or

(b) contain any material that is calculated, or that in the ordinary course is likely to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as condoning or lending support to any such act.

(11) A political party or an independent candidate that submits a PA for broadcast to a BSL is deemed to have indemnified the BSL against incurred damages, losses, and third-party claims arising from the broadcast thereof.

(13) A BSL must not transmit a PA immediately before or after another PA or PEB.”

6.2. Regulation 6 of the Regulations is hereby amended by the addition of the following sub-regulation:

“(14) A broadcasting service licensee that broadcasts PA must ensure that all PA broadcasts are clearly identified through a standard pre-recorded top and tail disclaimer.”

## **7. Amendment of Regulation 8 of the Regulations**

Regulation 8 of the Regulations is hereby amended by the substitution for regulation 8 of the following regulation:

### **“8. General**

- (1) Every BSL and political party or and the independent candidate must:
  - (a) nominate persons who must be the representatives of that BSL or political party or independent candidate in respect of all matters regulated by, or arising from, these Regulations; and
  - (b) within twenty one (21) 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 recognize the nominated political party or independent candidate representatives as the sole representatives of the political party or independent candidate and must only communicate with the nominated representatives.
- (3) A political party or an independent candidate 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 Draft Municipal Elections Party Elections Broadcasts and Political Advertisements Amendment Regulations, 2020 and shall commence on publication in the *Government Gazette*.

## 9. Amendment of Annexure A of the Regulations

Annexure A of the Regulations is hereby amended by the substitution for Annexure A of the following:

### ANNEXURE A

#### SCHEDULE 1

#### PRINCIPLES OF PEB AIRTIME ALLOCATION

<b>Basic Allocation</b> Percentage of slots to be allocated to all parties contesting seats in the Municipal Elections. 60%
<b>District Municipalities List</b> Percentage of slots to be allocated according to the number of candidates fielded by parties on the District Municipalities list. 15%
<b>Local Municipalities List</b> Percentage of slots to be allocated according to the number of candidates fielded by parties on the Local Municipalities list. 15%
<b>Proportional representation</b> The number of seats currently held at District and Local level. 10%

## SCHEDULE 2

### TECHNICAL STANDARDS AND QUALITY

(1) Radio:

The material must be submitted in the following technical format:

Format - Raw Mpeg 2

Channels - 2 (stereo)

Bit Rate - 384 kbps

Sampling Rate - 48Khz

Mastering - -12db

(2) Television:

The material must be submitted in the following technical format:

High Definition (HD) 16 X 9

Disc and File Format Delivery

(3) Summary of Program Delivery Standards

All programs will comply with the 1920 x 1080i HD Standard in a 16:9 aspect ratio at 25 frames per second, 90 seconds 75% Line-up color bars, and 1 kHz tone.

(4) Digital Audio Reference level is defined as 18dB below the maximum coding value (-18dBFS) as per EBU recommended practice R128.

(5) Time code of program start is at 10:00:00:00.

(6) Circular countdown clock of 30 seconds with details exactly as per Section 4.5.2. on delivery document must be present with Stereo audio on tracks 1&2.

(7) Fade to silence at the program end. End slate held in vision for further 10 seconds after the end of the program.

(8) All files delivered should be transcoded to:

AVC INTRA 100 AS-11, OP1A MXF WRAPPER

## **SCHEDULE 3**

### **GUIDELINES**

#### **1. INTRODUCTION**

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

#### **2. EDITORIAL MATTERS**

- 2.1. Section 59 of the ECA prescribes specific requirements for the treatment of political parties or independent candidates during the election period by broadcasters in their editorial programming. The requirements are:
  - (a) If during an election period, the coverage of any broadcasting service licensee extends to the field of elections, political parties or independent candidates and issues relevant thereto, the broadcasting licensee concerned must afford reasonable opportunities for the discussion of conflicting views and must treat all political parties and all independent candidates equitably.
  - (b) In the event of any criticism against a political party or an independent candidate being leveled 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 the party having been reflected therein, the broadcasting service licensee concerned will be obliged to afford the party a reasonable opportunity to respond to criticism.

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

- 2.2. The Authority advises broadcasters to take special care during the final 48 hours prior to Election Day. There will be limited time for broadcasters to ensure that political parties’ or independent candidates’ 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 or independent candidates to bring information to them but should actively seek out information. Failure to do so will give parties with greater resources inequitable amounts of news coverage.

#### **4. PRINCIPLES TO BE ADHERED TO**

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

##### **4.1. Fairness**

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

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

- (a) Each BSL should afford all political parties and independent candidates 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 or an independent candidate.
- (b) With regard to rhetorical criticisms, BSLs must have the flexibility to incorporate responses into their formal news patterns. With regard to damaging criticisms, BSLs should give the offended party an opportunity to respond. The party should be afforded the earliest and most appropriate opportunity to do so. Broadcasters should, however, not allow political parties



or independent candidates 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' or independent candidate's 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 a reasonable opportunity for the discussion of conflicting views, non-participating political parties, independent candidates, 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 a 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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## EXPLANATORY MEMORANDUM ON THE REVIEW OF THE MUNICIPAL ELECTIONS BROADCASTS AND POLITICAL ADVERTISEMENTS REGULATIONS, 2011

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### 1. INTRODUCTION

- 1.1. The Independent Communications Authority of South Africa (“the Authority”) is reviewing the Municipal Elections Broadcasts and Political Advertisements Regulations, 2011 as amended.<sup>1</sup> South Africa is gearing up for the municipal elections of 2021 to elect councils for all district, metropolitan and local municipalities in each of the country's nine provinces.
- 1.2. Municipal elections are held every five (5) years and the Authority is required to review the elections broadcasting regulations to assess its relevance during every election year.
- 1.3. The purpose of the regulations is to determine and prescribe the framework and guidelines under which Party Election Broadcasts (“PEBs”) and Political Advertisements (“PAs”) will be conducted and carried by various licensees during the municipal elections period.
- 1.4. This review process is aimed at improving the regulations to ensure its relevance during each election period. The review process also presents the Authority with an opportunity to provide clarity to stakeholders on different responsibilities and expectations for Broadcasting Service Licensees (“BSLs”), political parties and independent candidates during the

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<sup>1</sup> Government Gazette No. 39738 of 26 February 2016

elections broadcasting period. The broadcasting of elections is an important public event which falls within the area of news and current affairs.

- 1.5. In this regard, the Authority is guided by the Constitution of the Republic of South Africa, 1996 (“the Constitution”), the Broadcasting Act, 1999 (Act No. 4 of 1999) (“Broadcasting Act”), the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (“ICASA Act”), Electronic Communications Act, 2005 (Act No. 36 of 2005) (“ECA”), in reviewing the regulations.
- 1.6. Section 57(3) of the ECA directs the Authority to consult with the relevant BSLs, and all political parties before making any determination in making time available for political parties, including the scheduling and duration of PEBs.
- 1.7. Section 57(4) of the ECA provides that *“In making determination in terms of subsection (2), the Authority may impose such conditions on a public broadcasting service licensee with respect to party election broadcasts as it considers necessary, having due regard to the fundamental principle that all political parties are to be treated equitably.”*
- 1.8. Section 57(2) of the ECA enjoins the Authority to *“determine the time to be made available to political parties for the purposes of subsection (1) including the durations and scheduling of party elections broadcasts, taking into account the financial and programming implications for the broadcasting services in question”*.

## **2. SUMMARY OF THE PROPOSED AMENDMENTS**

This section provides explanatory notes to the reasoning behind the proposed amendments. The amendments follow an analysis of, among others; the need to align these regulations with the National Election Broadcast regulations, as

amended<sup>2</sup>, the alignment of definitions to the Authority's broadcast regulations, the concerns previously raised by various stakeholders during the consultation process and while implementing the regulations, and the Authority's 2016 Municipal Election Coverage: Compliance report.

## 2.1. Ad regulation 1:

- 2.1.1. "Current affairs programme" is amended to align it with the definition as contained in other broadcasting regulations published by the Authority, such as the ICASA Local Television Content Regulations 3.
- 2.1.2. After the definition of ICASA, "Independent candidate" definition is inserted. During the Municipal elections, individual candidates have been allowed to stand as candidates in the wards, however, the ECA only makes mention of political parties. To that end, the 2011 Municipal Elections Regulations and the National and Provincial Elections Regulations, have only been making provisions for the political parties and not individual candidates in terms of allocation of the PEB slots.
- 2.1.3. During the Authority's previous consultation workshops on the Regulations, stakeholders have raised concerns that the Regulations do not make provision to allocate the PEB slots to individual candidates, even though they were legally allowed to contest for the Municipal Elections. The Authority has responded that the enabling legislation, the ECA, only mentions political parties.
- 2.1.4. In a judgement handed down on 11 June 2020<sup>4</sup>, the Constitutional Court ruled that Parliament was to change the Electoral Act to include provisions that allow independent candidates to compete in national elections.

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<sup>2</sup> Government Gazette 42249 of 25 February 2019

<sup>3</sup> Government Gazette 39844 of 23 March 2016

<sup>4</sup> New Nation Movement NPC and Others v President of the Republic of South Africa and Others [2020] ZACC 11

- 2.1.5. Not only has the law been allowing the individual candidates to contest Municipal Elections for the past years, but the Constitutional court judgement has upheld the right of an individual to contest at the national and provincial level.
- 2.1.6. The Constitutional Court declared that the Electoral Act 73 of 1998 is unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and Provincial Legislatures only through their membership of political parties.
- 2.1.7. The Authority's preliminary view is that it is under a constitutional obligation to align its regulations with the provisions of section 9(3)(b) of the Constitution as interpreted by the Constitutional Court. This would include the Municipal Elections Draft Regulations which only speaks of political parties.
- 2.1.8. The Authority is a creature of statute and can only act subject to its governing legislation being the ECA, however, of pre-eminence to the ECA and even the Electoral Act is the Constitution and where such legislation is contrary to the Constitution, the Constitution takes precedence and overrides same. As such, the finding of the Constitutional Court stands as to the interpretation and understanding of section 19 of the Constitution and as such, independent candidates may stand for office irrespective of what the Electoral Act and/or what the ECA states. It is the preliminary view of the Authority that they also must similarly be allocated slots as political parties would be allocated the slots by the Authority.
- 2.1.9. The words "or independent candidate" are inserted after political party throughout the draft regulations to give effect to the Constitutional Court judgement discussed above.

## 2.2. **Ad regulation 3(c):**

2.2.1. The word “political” is inserted before the party to clarify that the regulations apply to political parties contesting the municipal elections and not just any party. During the consultations by the Authority, stakeholders have questioned why the Authority does not allocate airtime for other organisations, such as the Independent Electoral Commission. The Authority added the word political to clarify the intention of the regulations as per the enabling legislative provisions, which is that the airtime must be allocated only to political parties contesting the elections.

## 2.3. **Ad regulation 4:**

2.3.1. There is an insertion of new sub-regulation (9) to provide for the process that will apply in the event of a rejection of a PEB by the broadcasting service licensee. The previous regulations only provided for processes to be followed if a broadcaster rejects a PA submitted by a political party and there was no provision in case of a PEB rejection, to that end, the process has been clarified.

## 2.4. **Ad regulation 4(14)(a):**

2.4.1. The Authority has increased the number of PEB slots from eight (8) to ten (10) and reduced the time of the slots from one (1) minute to fifty (50) seconds. The reduction in the length of the slots will enable the Authority to allocate more slots for political parties and independent candidates contesting the elections. This will provide new parties and independent candidates an opportunity to be heard by voters on a possibly larger scale than before.

**2.5. Ad regulation 4 (12) (c):**

2.5.1. The words “by it” were removed to correct a grammatical error.

**2.6. Ad regulation 4(13) (a):**

2.6.1. The PEB slots were decreased to fifty (50) seconds from one (1) minute to enable the Authority to allocate more slots for political parties and individual candidates contesting the elections. This will provide new parties and individual candidates an opportunity to be heard by voters on a possibly larger scale than before. The Authority allocates the slots on an equitable basis and the number of seats previously held are taken into consideration. As much as the slots are equitable and fair, the proposed amendments will ensure a greater opportunity of exposure for political parties and independent candidates concerned.

**2.7. Ad regulation 6(13):**

2.7.1. The insertion of PEBs to clarify that a BSL must not transmit a PA immediately before or after another PA or PEB. During the consultation workshops by the Authority, some stakeholders have cautioned that it may appear as though a certain broadcaster is biased towards a certain political party if a PA or PEB is broadcast immediately after the other.

**2.8. Ad regulation 6(14):**

2.8.1. The insertion of the new regulation 6(14) to ensure that PAs are identified through a standard pre-recorded top and tail disclaimer. The provision is to ensure that any member of the public can identify the PA and not associate it with the partiality of a broadcaster toward any political party.

**2.9. Ad regulation 8(1) b:**

- 2.9.1. The Authority decreased the days from thirty (30) to twenty-one (21) days within which the BSL, Political parties, and independent candidates must notify the Authority in writing of two names that will represent each party or BSL. The days are aligned to the notification period for the broadcast period given by the Authority to political parties to ensure that all information is submitted at the same time and avoid returning to the Authority with the names nine (9) days later.

**2.10. Ad regulation 8(2):**

- 2.10.1. The insertion of the words “must only communicate with the nominated representatives” was added to emphasise that, for the sake of consistency and to ensure accountability, the Authority can only communicate with the nominated people and no other representative.

**2.11. Ad Annexure A Schedule 1:**

- 2.11.1. The principles of the PEB airtime allocation is amended to increase the exposure of new political parties or individual candidates who may not be represented in other relevant lists on the allocation principle. The method of allocation is intended to be fair and equitable to all political parties or independent candidates.

**2.12. Ad Annexure A Schedule 2:**

- 2.12.1. The technical standards and quality have been updated to align it with the latest technology.



### **3. CONCLUSION**

The attached draft regulations are the proposed amendments which will be consulted upon with various stakeholders. The Authority will analyse and consider inputs by all the submitters before making a final determination through the publication of the final regulations in the government gazette.





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