

By email

23 January 2026

By email

Independent Communications Authority of South Africa
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Centurion

Att: Ms Mamedupe Kgatshe

By email: municipalelectionsub@icasa.org.za; mkgatshe@icasa.org.za

Dear Madam

Proposed Amendments to the Municipal Elections Party Elections Broadcasts and Political Advertisements Regulations, 2011

Introduction

- 1 We refer to the draft amendments to the Municipal Elections Party Elections Broadcasts and Political Advertisements Regulations, 2011 (the "Regulations") gazetted by the Independent Communications Authority of South Africa on 31 October 2025¹ (the "draft Regulations") and the Authority's notice extending the due date for submissions until 23 January 2026.²
- 2 MultiChoice Proprietary Limited ("MultiChoice") is grateful for the opportunity to submit written representations on the draft Regulations and appreciates the important role which the Regulations play in supporting democratic elections. We have accordingly considered the draft Regulations and we set out our comments below, which we hope the Authority will find useful.³

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- ¹ Draft Amendment to the Municipal Party Elections Broadcasts and Political Advertisements Regulations, 2011, published under Notice Number 6785, Government Gazette Number 53608, 31 October 2025
 - ² Notice to Extend the Due Date for the Submission of Written Comments on the Draft Amendment to the Municipal Party Elections Broadcasts and Political Advertisements Regulations, 2011, published under Notice Number 6948, Government Gazette Number 53856, 15 December 2025
 - ³ For ease of reference, in this submission we refer only to a "political party". The same comments apply to independent candidates and independent representatives, where applicable.

- 3 The object of the Regulations is to prescribe the framework and guidelines under which Party Election Broadcast ("PEBs") and Political Advertisement ("PAs") shall be conducted and carried by broadcasting service licensees during the municipal elections. This is an important function to ensure free and fair elections in a democracy.
- 4 We are concerned that there are instances where the Regulations are unclear, lack details and some important terms and phrases are not defined.
- 5 We elaborate on these comments below.

Key definitions

"News" and "current affairs"

- 6 The draft Regulations do not propose amending the definitions of "news"⁴ and "current affairs programme"⁵.
- 7 These terms are also contained in the Advertising, Infomercials and Programme Sponsorship Regulations published by the Authority on 29 June 2023 ("the Advertising Regulations").⁶
- 8 The Authority amended these definitions in the Advertising Regulations in 2023. These terms are now defined in the Advertising Regulations (we submit appropriately) as follows:
 - 8.1 "News" means "programming broadcast by a BSL, in which it reports on news events of immediate social, political or economic relevance and on matters of international, national and local significance, but which is not a current affairs programme."
 - 8.2 "Current affairs programme" means "programming that is not a news bulletin, which focuses on and includes comment on and interpretation and analysis of current socio-political issues".
- 9 In the interests of consistency, we recommend that the Authority amend the definitions of "news" and current affairs programme" in the Regulations to align with

⁴ "News" is defined in the Regulations as meaning *"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"*

⁵ "Current affairs programme" is defined in the Regulations as meaning *"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"*

⁶ Advertising, Infomercials and Programme Sponsorship Regulations 2023, published by ICASA under Notice Number 1879, Government Gazette Number 48863, 29 June 2023

the updated definitions in the Advertising Regulations.

"Municipal elections"

- 10 The term "municipal elections" is not defined in the Regulations.

Requirement to notify ICASA of intention to broadcast PEBs or PAs

- 11 A broadcaster that intends to broadcast PEBs or PAs must inform ICASA, in writing, of its intention to do so, within 21 days of publication of the Regulations.⁷
- 12 The following issues are not clear:
- 12.1 What is the consequence of failure to notify ICASA (i) late or (ii) at all? Will the broadcaster still be permitted to broadcast PEBs or PAs?
 - 12.2 ICASA is proposing amendments to the Regulations (but not to Regs. 4(4) or 6(15)). When does the 21 day period commence for the forthcoming municipal elections?

Nominated representatives and contact details

- 13 Reg. 8(1) requires every broadcasting licensee and political party to nominate representatives and provide their contact details to ICASA. In this regard:
- 13.1 Reg. 8(1) requires "*Every BSL*" to provide this information, regardless of whether they will be broadcasting PEBs or PAs.
 - 13.2 The Regulations do not indicate what ICASA must do with this information or which of this information will be made available to broadcasting licensees or political parties, or the timing and manner in which it will be made available. This is despite the provision that a broadcasting licensee must recognise the nominated representative as the sole representative of the party concerned and must only communicate with the nominated representatives.⁸
 - 13.3 The Regulations are also silent on what a broadcasting licensee must do if it receives a PEB or a PA from someone other than the nominated representative, and whether there is any obligation on the broadcaster to communicate proactively with the nominated representative of the party concerned in this event. Nor is it clear what consequence will follow if a broadcaster (i) broadcasts or (ii) refuses to broadcast a PEB or PA received from someone other than a nominated representative.

⁷ Regs. 4(4) and 6(15). There is presumably a typographical error in Reg. 6(15), which omitted the word "one" so it says "twenty (21)"

⁸ Reg. 8(2)

- 13.4 Reg. 8(4) provides an email address to which broadcasting licensees must inform ICASA that they intend to broadcast PEBs and/or PAs. The Regulations do not provide an email address to which broadcasting licensees and political parties must inform ICASA of their nominated representatives' details. This gap should be filled.

Submission of recordings of PEBs and PAs to broadcasting licensees

- 14 Schedule 2 provides that *"audio and video recordings must be submitted electronically or physically"* to the broadcasting licensee. We commend the proposal to permit electronic submissions of recordings to a broadcaster.
- 15 In addition, we submit that a broadcaster which elects to broadcast PEBs and/or PAs should have the discretion to accept only electronic submissions. Broadcasters should be entitled to refuse to accept physical submissions of recordings if they so choose, for example to streamline their logistical processes and reduce operational costs. We respectfully submit that physical submissions are unwieldy and impractical in the modern day world. A broadcaster which elects to receive only electronic submissions of recordings should be required to indicate this on its website.
- 16 Additionally, the Regulations lack detail. For example, they do not indicate to whom, or by whom, the recording must be submitted, or to which contact details. We propose that this be dealt with in, or at least cross-refer to, Reg. 8(1), which requires every broadcasting licensee and political party to nominate representatives for purposes of the Regulations, and provide their contact details to ICASA.
- 17 Each PA submitted (presumably to a broadcaster) *"must indicate clearly the name of the political party ... and the day, time of broadcast, and relevant broadcast service/s for the PA"*.⁹ It is not clear from the Regulations where, when and to whom this must be indicated. E.g. to the broadcasting licensee or in the PA itself when broadcast.

Prohibition on editing or altering PEB or PA

- 18 A broadcaster may not in any way edit or alter (i) the content of a PEB or (ii) the PA.¹⁰
- 19 It is not clear why the word "content" qualifies the PEB, but not the PA.

⁹ Reg. 6(2)

¹⁰ Regs.4(6) and 6(4)

Requirement to ensure that PEBs and PAs conform to prescribed technical standards and quality

- 20 A broadcasting licensee that is obliged or intends to broadcast PEBs or PAs "*must ensure that the [PEB / PA] conforms to technical standards and quality as listed in Schedule 2 of Annexure A*".¹¹
- 21 While the broadcaster should be permitted (but not required) to check whether a PEB / PA conforms to the prescribed technical standards and quality, and permitted (but not required) to reject PEBs / PAs on this basis, it seems to us to be unreasonable, onerous and unfair to impose the responsibility to ensure compliance with the technical standards and quality on the broadcaster.
- 22 We recommend that the Regulations should place the burden of compliance on the political party which submits the recording, to ensure that the recording complies with the required technical standards and quality.

Rejection of a PA

- 23 A broadcaster may reject a PA submitted to it, in which case the provisions of Reg. 6(5) to (7) apply
- 24 In 2024 the Complaints and Compliance Committee of ICASA ("the CCC") considered the provisions of the Regulations and made clear that there are only two circumstances in which a broadcasting licensee can lawfully reject an advertisement, stating that there:

*" are only two legally recognised circumstances in which a BSL can lawfully reject a political advertisement namely:- if the advertisement contravenes Regulation 6(9) or if it does not satisfy the acceptable technical quality."*¹²
- 25 As the CCC explained, regulation 6(9), which prescribes what a PA may not contain, is circumscribed: It only precludes certain content in limited circumstances, its rationale being to ensure that PAs are not aired if they are illegal or encourage people to engage in illegal conduct.¹³
- 26 For the avoidance of any doubt, we recommend that the Regulations explicitly state that a BSL may reject a PA only if the PA (i) contravenes Reg. 6(9) or (ii) the prescribed technical standard and quality as listed in Schedule 2 of Annexure A.

¹¹ Reg. 4(5) and 6(3)

¹² *DA v SABC*, CCC Case No 472/2024, 22 May 2024, paras 38 and 45. Also see paras 57 and 73

¹³ *DA v SABC*, paras 36 and 37

Indemnification of broadcaster

- 27 A political party that submits a PEB for broadcast is deemed to have indemnified the broadcasting licensee against incurred costs, damages, losses and third party claims arising from the broadcast thereof.¹⁴
- 28 Reg. 6(9) contains the equivalent provision in respect of PAs, but does not include costs. Costs should be included for both PEBs and PAs.
- 29 Moreover, the broadcasting licensee should not be liable or responsible if it broadcasts a PA which does not comply with Reg. 6(9) or the prescribed technical requirements.
- 30 We further propose that the Regulations should further provide that a broadcasting licensee will not be liable or responsible in respect of a PEB or PA broadcast on another licensed broadcasting audio or television channel which is re-broadcast by another broadcasting licensee without any alteration, whether simultaneously or not. For instance, if the SABC or eMedia broadcasts a PEB or PA, and MultiChoice re-broadcasts the SABC/eMedia programme/channel, then the SABC/eMedia should be solely responsible and liable in respect of such broadcast. We further propose that a primary broadcaster (e.g. SABC) will be deemed to have indemnified the re-broadcaster (e.g. MultiChoice) against any costs, damages, losses and third party claims arising from the broadcast of a PEB/PA, or other election coverage on the primary channel.

Complaints

- 31 A person "*aggrieved by any PA or PEB*" may lodge a complaint with ICASA within 5 working days after the broadcast.¹⁵ Such a complaint "*will be addressed by the Authority in accordance with regulation 6¹⁶ of the CCC Regulations*".¹⁷ The Authority must, within 24 hours of making a determination, communicate to the parties the outcome, which is final and binding on the parties.¹⁸
- 32 The provisions that the Authority will (i) address a complaint in accordance with Reg. 6 of the CCC Regulations and (ii) will communicate the (final and binding) outcome to the parties, are repeated three times, namely in respect of Reg. 7(1) (which permits any person aggrieved by any PA or PEB to lodge a complaint); and in respect of each of Regs. 4(9) and 6(7) (which provide that a political party whose PEB / PA has been rejected and which has no intention of altering or editing the PEB may refer the matter to the Authority), separately for PEBs and PAs.

¹⁴ Reg. 4(11)

¹⁵ Reg. 7(1)

¹⁶ Reg. 6 of the CCC Regulations deals with urgent complaints or disputes.

¹⁷ Reg. 7(2)

¹⁸ Reg. 7(3)

- 33 We recommend that the Regulations should clearly state in Reg. 7 -
- 33.1 who may lodge a complaint in which circumstances; and
- 33.2 indicate once for all such complaints, how ICASA must deal with them.
- 34 As regards a complaint by any person being aggrieved by any PA or PEB, the Regulations do not indicate on what basis the person need be aggrieved. The Regulations should clearly indicate (and limit) the basis on which persons may complain to ICASA. These grounds should be limited to matters related to the Regulations and s56 to 58 of the ECA. It should also exclude matters which fall outside of (i) the control of the broadcasting licensee and (ii) ICASA's jurisdiction.
- 35 In addition, the Regulations merely state that a complaint may be lodged with "the Authority".¹⁹ It does not indicate whether the complaint will be lodged with the Authority or with the CCC of the Authority. This is exacerbated by the guideline for pre-recorded "promos" for complaints, which provides that the complaint must be emailed to both ICASA's broadcasting compliance division and CCC complaints. We propose that the regulations clarify this.

Broadcast coverage of elections, political parties and related issues

- 36 s59 of the ECA deals with broadcast coverage of elections, political parties and related issues.
- 37 Schedule 3²⁰ of the Regulations contains guidelines to outline a general approach that broadcasting licensees should adopt in their coverage of the municipal elections.
- 38 Paragraph 7 of the Guidelines says that the guidelines provide a framework to broadcasting licensees covering the elections "*in which the system of Political Election Broadcasts and Political Advertising will operate*". While paragraph 7 refers to PEBs and PAs, the Guidelines do not deal with PEBs or PAs - they deal with broadcast coverage as contemplate in s59 of the ECA.
- 39 We make the following comments on the proposed amendments to this Schedule:
- 39.1 The draft Regulations insert references to "political party" or "independent candidate" in various places.²¹ For completeness, the Schedule should also refer to "independent representative", as this term is also used in s59 of the ECA.

¹⁹ Reg. 4(9), 6(7) and 7

²⁰ Currently Schedule 2

²¹ See for example, paragraphs 2.1(a), (b) and (c), 3.1, 3.2, 4.1(c) and (d), 4.2(a) and (b), 4.3 and 4.4. ICASA has generally made the Regulations applicable to independent candidates as a result of a 2020 Constitutional Court judgment which upheld the right of independent candidates to contest elections at national and provincial levels. (See para 1.3 of the Explanatory Memorandum).

- 39.2 The draft Regulations insert suggested wording for the "promo" to be broadcast in terms of Reg. 7(1).²² While this refers to a "promo", Reg. 7(1) does not refer to a "promo" or require broadcasting licensees to inform audiences of their right to lodge a complaint with ICASA. Reg. 7(1) merely provides that a person who is aggrieved by a PEB or PA may lodge a complaint with ICASA within 5 days after the broadcast.
- 39.3 The draft Regulations insert details on how broadcasting licensees can inform ICASA of their intention to broadcast PEBs and PAs.²³ The Guidelines provide that a broadcasting licensee that intends to broadcast PEBs and/or PAs must inform ICASA in writing by email to a specified email address and may call Ms Busisiwe Mashigo for inquiries, on the specified telephone numbers.²⁴ This requirement should be set out in Reg. 8(4) of the Regulations, rather than the Guidelines Schedule, because (i) it is a requirement (it says "must"), (ii) it deals with PEBs and PAs, and (iii) the substantive requirement is already dealt with in Reg. 8(4). It is not necessary to repeat it in the Schedule. Nor is it advisable to include individual names and numbers in a gazetted regulation or guidelines.
- 40 In addition, the Schedule should make clear that it is not binding. The Schedule contains "Guidelines" which "*are intended to outline a general approach that **should** be adopted by BSLs in their coverage of the municipal elections*".²⁵ However, at times the "Guidelines" use words such as "must".²⁶ Paragraph 1 of the Guidelines should explicitly state that the Guidelines are not binding and that broadcasting licensees are encouraged to be guided by them. Moreover, the Guidelines should not use mandatory language such as "must". They should use language which makes clear that they are non-binding guidelines.

Conclusion

- 41 MultiChoice thanks the Authority for the opportunity to comment on the draft Regulations.
- 42 We trust that our submission will contribute constructively to this process.

²² Para 5 of Schedule 3 provides an "example" of wording for a promo to be broadcast by the licensee informing audiences that they may lodge a complaint with ICASA within 5 days from broadcast, at the contact details specified in para 5.

²³ Para 6 of Schedule 3

²⁴ The Guidelines say: For inquiries, broadcasters may call "*Ms Busisiwe Mashigo at 012 568 3233/0725939294*"

²⁵ Para 1.1 of Schedule 2 of the Regulations

²⁶ For example, para 3.2 of Schedule 3 says "Broadcasting service licensee must seek out information"

Yours sincerely



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