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GENERAL NOTICES

NOTICE 101 OF 2014



Independent Communications Authority of South Africa
Pinmill Farm, 164 Katherine Street, Sandton
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REGULATIONS ON PARTY ELECTION BROADCASTS, POLITICAL ADVERTISEMENTS, THE EQUITABLE TREATMENT OF POLITICAL PARTIES BY BROADCASTING LICENSEES AND RELATED MATTERS

I, Dr Stephen Mncube, Chairperson of the Independent Communications Authority of South Africa ("the Authority") acting on behalf of the Council of the Authority hereby approve and publish the Elections Broadcasting Regulations set out in the Schedule and made by the Authority in terms of section 4(3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) read with sections 4(1), 56, 57, 58 and 59 of the Electronic Communications Act, 2005 (Act No. 36 of 2005).

A handwritten signature in black ink, appearing to be 'S Mncube', written in a cursive style.

DR STEPHEN MNCUBE

CHAIRPERSON

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);

“CCC 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, eight (8) time-slots of one (1) minute each for the broadcast of PEB, excluding the top and tail disclaimer;
 - (b) do so in accordance with the sequence and timing prescribed by the Authority in terms of these regulations;
 - (c) ensure that all PEB(s) broadcast by it are clearly identified as such; and
 - (d) ensure that all PEB(s) broadcast by it are identified or announced in a similar manner;

- (15) A PEB must not exceed one (1) minute in duration;
- (16) Content broadcast as 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 formulae set out in Annexure A of these regulations.

6. Political Advertising

- (1) PA must only be broadcast during the election period and no later than forty eight (48) hours before polling commences;
- (2) 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.

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**FORMULA**

Basic Allocation	Percentage of slots to be allocated to all parties contesting seats in the National Assembly.	25%
National Number of Seats Currently Held	Percentage of slots to be allocated to all parties based on current seats in the National Assembly pro rata.	15%
Provincial Number of Seats Currently Held	Percentage of slots to be allocated to all parties based on current seats in the Provincial Legislature pro rata.	15%
National Allocation List	Percentage of slots to be allocated according to the number of candidates fielded by parties on the national assembly list.	15%
National Assembly Regional List Allocation	Percentage of slots to be allocated according to the number of candidates fielded by parties on the national assembly list.	15%
Provincial List Allocation	Percentage of slots to be allocated according to the number of provincial legislature candidates fielded by parties throughout the country.	15%

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**

Technical standards and quality:

BSL that is obliged or intends to broadcast PEB/PA must ensure that the PEB/PA confirms to the technical quality acceptable to the Authority namely:

- a. Audio and video recordings shall be of the highest professional quality;
- b. Audio and video recordings are to be supplied on compact disc (CD); and
- c. Audio and video recordings will be clearly labeled, outlining the name of the political party and appointed nominee

The technical standards are as follows:

Radio: Electronically MP3 format or on CD format in broadcast quality standard; and

Television: broadcast quality Betacam format for the public broadcaster and an option of DVD/Betacam format for other broadcasting service licensees.

NOTICE 102 OF 2014

Independent Communications Authority of South Africa
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**INDEPENDENT COMMUNICATIONS AUTHORITY
OF SOUTH AFRICA**

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

A. Introduction

1. Aim of the Findings document

The primary purpose of this Document is to highlight key issues raised by stakeholders during the consultation process of elections broadcasting regulations on Party Elections Broadcasts (PEBs), Political Advertisements (PAs), the equitable treatment of political parties by broadcasting licensees and related matters for the 2014 national and provincial elections. The secondary purpose is to highlight the Authority's reasons informing its decisions as contained in the final regulations.

The regulations on PEBs, PAs, and the equitable treatment of political parties by broadcasting licensees during national and provincial elections were published in **GNR.247 in *Government Gazette* No 31980 of 3 March 2009** and they are all applicable to broadcasting service licensees and political parties contesting the elections during an election period. Their main purpose was to prescribe the framework and guidelines under which PEBs and PAs shall be conducted and carried by the broadcasting service licensees during the elections.

2. Legislative Background

The constitution of the Republic of South Africa (SA) places a duty on Parliament to establish an independent regulatory institution which is required to provide for the regulation of broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society¹.

The Independent Communications Authority of South Africa (“the Authority”) is responsible for publishing guidelines for public broadcasts during an election period (attached as annexure B), and is also responsible for arbitrating and resolving disputes that occur regarding infringements of regulations governing the public media and electoral matters.

ICASA is empowered in terms of sections 56, 57, 58 and 59 of the Electronic Communications Act (ECA) of 2005 to regulate and monitor PEBs, PAs and the equitable treatment of political parties by broadcasting licensees during an election period. These sections further outline how election broadcasts should be handled by broadcasters, political parties and the Authority.

In order to comprehensively review the Elections Broadcasting Regulations, and fulfil the provisions of the above-mentioned sections of the ECA, the Authority published an Explanatory Memorandum on the Review of the Draft Regulations on Party Election Broadcasts, Political Advertisements, the Equitable Treatment of Political Parties by Broadcasting Licensees and related matters Document on 15 November 2013 inviting inputs from interested stakeholders and the general public. The document specifically mentioned the Allocation Criteria, Time Slots and PEBs on television as the cornerstone of the review, although stakeholders were invited to raise any other related matters.

The closing date for the receipt of representations was 7 January 2014. The Authority received Six (6) submissions from the following stakeholders:

- Democratic Alliance (DA)
- Economic Freedom Fighters (EFF)
- National Association of Broadcaster (NAB)
- South African Broadcasting Corporation (SABC)
- Support Public Broadcasting (SOS) and Media Monitoring Africa (MMA)
- T.O. Mbetsu

¹ Section 192 of the Constitution, 1996

3. Analysis of submissions on Draft Elections Regulations

The Explanatory Memorandum on the Review of the Draft Regulations on Party Election Broadcasts, Political Advertisements, the Equitable Treatment of Political Parties by Broadcasting Licensees and related matters raised the following significant concerns:-

- the Allocation Criteria;
- whether to exclude PEB's on TV; and
- the increase of the number of time slots, and reduction of the minutes for those slots.

For the purposes of consistency, the submissions are analysed in terms of the outline of the draft regulations that were published on the 15 November 2013. Below is the analysis of the submissions.

3.1 Definitions

The NAB submitted that the Authority has defined pieces of legislations mentioned in the draft regulations; however the definition of "Broadcasting Act" was omitted. They proposed that it be included.

3.2 Time Allocation

The EFF commended the Authority for increasing the number of time slots from four (4) to eight (8) slots a day. However they share the same view with the DA and both the SOS and MMA that there is no specific clause of the regulations that relates to the timing of allocation of time slots or the determination as to which party is allocated which slots. The DA further elaborated that there is always pressure on political parties that makes it difficult to meet the initial broadcasting dates, hence their concern about who actually gets what time. The SABC submitted that the PEB's should be scheduled according to the allocation as determined and confirmed in writing by the Authority to the SABC and political parties concerned.

The EFF, SOS and MMA submitted that the regulations are not clear about which time of day will be allocated, particularly taken into consideration that there is "prime time" when it comes to broadcasting. They are of the view that as far as Party Elections Broadcast is

concerned, it is critical to ensure that during elections, prime time is equitably allocated using the criterion as proposed by EFF in their submission.

The SOS and MMA urge the Authority to be fair in the timing of slots and not to be influenced by majority parties when allocating the time slots. They further submitted that the principle of equitability is also applied in determining which slots are allocated as they are of the view that some time slots will have greater audiences and therefore have greater reach and influence than others.

The DA submitted that the requirement to wait for the finalization of submission of candidate lists from the IEC, for purposes of allocating slots, will cause delay. Therefore they require the Authority to apply its mind and come up with a solution that would address this issue.

3.3 Election Period versus Election Broadcast Period

The EFF, SOS and MMA submitted that Elections Broadcast should be declared much earlier to allow for the quality of coverage and education of the public. They are concerned that the Authority only released the draft regulations a month before the elections year. They are of the view that Election Broadcast Period is completely separate from the Election Period, and therefore propose that the Authority need not wait for an elections period to be declared to inform the public about what parties are intending to do. The EFF further submitted that the Authority should in future announce the Elections Broadcast Period at least three months before the year of voting to enable all parties enough time to prepare.

3.4 Content

The DA does not support the requirement in regulations 6(11), which stipulate that "*Content broadcast as PA cannot be broadcast as PEB*". Their contention is that the cost of production of advertisements is extremely high, and is in fact inhibitive for smaller political parties.

3.5 Equitable treatment

The SOS and MMA submitted that equitability cannot be measured solely by the number of seats that a particular party holds in parliament. It is their believe that given the current electoral system, this definition goes against the general principle of free and fair elections

as parties merely due to their size are automatically given preferential treatment, which inevitably denies voters the ability to be fully informed.

They further submitted that the Authority should revise the manner in which it defines equitable treatment. They share a similar view with EFF which requires that the criterion be reviewed. The EFF is of the view that the best criterion to be adopted should be to only use the rest of the criterion, excluding *history*, since the use of history is unfair and it gives old parties an advantage when they come to elections.

The SOS and MMA are of the view that, in addition to the general principle of equitability, Broadcasters should be encouraged to offer prime time slots as well as potentially slightly greater airtime to the smaller parties – at the same time clearly not favouring one or other small political parties.

3.6 Quality of Broadcasts

The EFF together with SOS and MMA submitted that the Authority mentions only in passing how news and current affairs should be reported. They are of the view that the Authority is not using its influence on this particular issue to ensure that there will be fair and just reporting by journalists. It is their view that, this is in light of allegations of political interference by the ruling party in the SABC news with an attempt to have political developments that are detrimental to them not reported. They further stated that if the Authority is truly concerned with quality and fair reporting, it must investigate these allegations with the view to set up extra regulatory measures in particular on SABC to ensure fair reporting of elections.

The SOS and MMA are of the view that there is no guidance as to how quality is to be determined or defined. They submit that the regulations offer guidance in this regard: Quality – PEBs to satisfy technical requirement of a broadcaster i.e. in a format that is in line with the requirements of the broadcaster; and Quality- as linked to ethical guidelines and principles.

The NAB propose that the term “quality” in both clause 4(5) and Annexure B be deleted, and be substituted with the term “format”. They are of the view that the more appropriate term is “format”, as format stipulates technical specification, while quality is a subjective term that refers to the perceived quality of the content or output.

The SOS and MMA are of the view that the Authority should ensure that regulations are clearly in line with the general ethical principles of the Broadcasting Complaints Commission of South Africa (BCCSA) and the Advertising Standard Authority Code. They believe that this will help ensure that where there is a complaint or concern or need for clarity the codes can be used for guidance.

3.7 Natural disaster or Human Error

The EFF, SOS and MMA submitted that there is nowhere in the document where ICASA mentions the possibilities of sabotage, human error or natural disaster. If it were to happen that a political party's PEB could not be broadcast or was interrupted during a broadcast due to unforeseen circumstances, it is solely left up to a broadcaster to either rebroadcast or not. They propose that the Authority must clearly state as to what happens in such a situation. They further propose that the broadcaster must rebroadcast at a suitable time of the same status as originally allocated. However, should these happen that it is not possible to rebroadcast, a fine must be considered.

The SOS and MMA propose that the section on sabotage be significantly strengthened to ensure that in addition to actions of such a nature being criminal or prosecutable, the regulations help to ensure that no party or interest group can benefit from such actions. They believe that if there was an interruption during the broadcast of Party 'A's PEB the broadcaster can decide to rebroadcast or not. This creates a case of preferential treatment whereby certain parties will get rebroadcast whilst others will not.

3.8 Monitoring and Compliance

The SOS and MMA propose that the Authority must ensure that extensive monitoring takes place throughout the election period and further that the monitoring report be made public as soon as possible after the Election Period. They urge the Authority to ensure that there is suitable capacity in place for quality monitoring to take place.

4. Conclusion

The Authority has finalised and adopted the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014 in terms of sections 56, 57, 58 and 59 of the Electronic Communications Act (ECA) of 2005. These Regulations seek to prescribe the framework and guidelines under which PEB(s) and PA(s) shall be conducted and carried by the Broadcasting Service Licensees, during the national and provincial

elections. They represent the policy position adopted by the Authority in response to the findings generated by the Draft Regulations' consultative process. As mentioned in the beginning of this document, the Authority engaged on a public consultation process with the intention to consider submissions from stakeholders before publishing the final regulations. It is within that understanding that the Authority wishes to highlight its reasons informing the decisions as contained in the final regulations.

The Authority has incorporated the proposal by the NAB to include the definition of "Broadcasting Act" as it is fair and correct.

With regard to the time allocation, the Authority concurs with the SABC that PEB's will be scheduled according to the allocation as determined and confirmed in writing by the Authority to the SABC and/or interested broadcaster and political parties concerned.

The Authority is of the view that the allocation of PEB slots and the sequence thereof will be done at the Authority's Head Office, through the drawing of slots, in the presence of an official of the Independent Electoral Commission ("the IEC"), representatives of political parties contesting the elections, the broadcasters that have submitted their intention to broadcast PEBs (including the SABC) and the media. Therefore the issue of allocating "prime time slots" equitably will be addressed by the above-mentioned process. It is significant to note that the Authority has improved the chances for political parties to be on prime time by increasing the number of slots, i.e. four (4) slots during prime time. All PEB's will be a maximum of one minute in duration, excluding the top and tail disclaimer, which will be inserted by the broadcasters.

The Authority has considered the submission by the SABC where they found that audiences complain about lengthy two-minute slots and of which some political parties have realised tend to drive audiences away rather than getting the message across to them. Some parties have even submitted PEB's of 30 or 45 seconds after being advised about this by their agencies, effectively opting not to use their allocated two minutes. They believe that it would be beneficial to both audiences and political parties to reduce the slots to one minute for the following reasons:

1. Parties will be motivated to develop crisp, clear, attention-getting PEB's which will better hold audience attention; and
2. The amount of available PEB's slots can effectively be doubled and by so doing address the challenge that the Authority always has in accommodating more parties on an equitable basis.

The following schedule will apply for each qualifying broadcast day in the election broadcast period for PEB's. This will effectively cover all major audience segments throughout the day. All PEB's will be scheduled a minimum of one (1) hour apart from each other.

TV		RADIO	
TIME SLOT	NUMBER OF PEB's	TIME SLOT	NUMBER OF PEB's
06:00 – 10:00	2	06:00 – 09:00	2
10:00 – 14:00	2	09:00 – 12:00	2
14:00 – 18:00	2	12:00 – 15:00	1
18:00 – 22:00	2	15:00 – 18:00	2
		18:00 – 21:00	1

It is important to highlight that all PEB's must be in the language/s of the relevant broadcasting service licensee concerned. In the case of parties contesting provincial elections in a particular province only, PEB's will be allocated slots on radio services based in that province only.

The Authority has noted the request to consider the requirement not to wait for the finalization of the IEC list and the proposal that the Authority should announce the elections broadcast period before the President's proclamation, which parties are of the view that it will cause delay; However, section 56 of the ECA stipulates that:-

"A party election broadcast and a political advertisement must not be broadcast on any broadcasting service except during an election period and then only if, and to the extent authorized by the provisions of sections 57 and 58". Therefore the Authority will not be able to disregard the IEC process and the President's proclamation, as the implementation of the elections regulations will depend on such processes.

On the issue of the difference between the contents of PAs and PEBs in terms of regulations 6(11), the Authority is of the view that the clause disallowing PA's to be used in exactly the same form as PEB's must be retained to avoid public perception of a broadcaster favouring any particular party that may resort to this. There must be a difference between a PA and a PEB. The Authority has a code of conduct for broadcasters and this Code can be used for guidance to ensure general ethical principles.

With regard to the equitable treatment issue, the Authority has done research and has understood equitable treatment as relating to two matters, one on the allocation of broadcasting time slots and another on fair representation of political parties in terms of

news and current affairs. The Authority's position in 2011² provides that the concepts equitable and equal are not synonymous. Equal generally refers to giving similar treatment or equal subjection. Equitable on the other hand generally means just/fair/impartial. Sections 57 (4) and 59 of the ECA directs the Authority to ensure that contesting parties are treated equitably.

The Authority is guided by Section 57(6) of the ECA to ensure that the PEB adhere to technical quality acceptable to the Authority. Section 57(6) provides that "*A party election broadcast must conform to a technical quality acceptable to the Authority*". In ensuring that the technical quality is acceptable to the Authority it is recognised that the PEBs will be broadcast on the platforms of the broadcasting service licensee and hence should be in line with the technical quality of the broadcasting service licensees as stipulated in Annexure C.

The issue of possible non-broadcast of slots due to a breakdown in transmission, though very unlikely, will be handled by broadcasting them in the same slot 48 hours later, due to the time required for technical arrangements that have to be put in place for rescheduling. Should such a breakdown occur in the last two days of the PEB Broadcast Period, the broadcaster concerned will have to come up with a solution, possibly using other slots on the same day. The most important aspect for these regulations during elections is finding the right balance between the respect for editorial independence and the need for rules to guarantee that media coverage is balanced. Therefore the Authority has attached the guidelines to provide a framework to broadcasting service licensees covering the elections.

Upon publication of these regulations political parties and broadcasters should notify the Authority in writing of the name, physical and postal address, telephone number and, where available, cellular phone number and e-mail address of the nominated person. All correspondence should be marked specifically **Attention: Ms Fikile Hlongwane. Delivery address: Block D, Pinmill Farm, 164 Katherine Street, Sandton. Further enquiries in that regard may be directed to her via e-mail at: FHlongwane@icasa.org.za or by facsimile: 011 566-3198 or by telephone: 011 566-3197; between 10h00 and 16h00, Monday to Friday only.**



DR STEPHEN MNCUBE
CHAIRPERSON

² GG 34086, Municipal Elections Broadcasting Regulations

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