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Submitted via email to:

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Dear Ms Kgatshe

**SOS Coalition submission on Draft Amendment to the Municipal Party Elections
Broadcasts (PEBs) and Political Advertisements (PAs) Regulation, 2011**

1. BACKGROUND AND INTRODUCTION

ABOUT THE SUBMITTING ORGANISATION: SOS SUPPORT PUBLIC
BROADCASTING COALITION (SOS)

SOS Support Public Broadcasting Coalition (SOS) is a civil society coalition that is
committed to, and campaigns for, broadcasting services that advance the public

interest. While the South African Broadcasting Corporation (SABC) is its primary focus – as the key site of and the institution established to drive public interest broadcasting – SOS also engages in the advancement of community broadcast media in South Africa. SOS is a coalition made up of a broad range of civil society organisations, non-governmental organisations (NGOs), community-based organisations (CBOs), community media, independent film and TV production sector organisations, and individuals (including academics, freedom of expression activists, policy and legal consultants, film makers, producers, etc. SOS campaigns tirelessly for an independent and effective public broadcaster.

We engage with policymakers, regulators, and lawmakers to secure changes that will promote citizen- friendly policy, legislative and regulatory changes to broadcasting and its associated sectors.

2. SUBMISSION

This is the submission of the SOS Support Public Broadcasting Coalition (SOS) with respect to the Municipal Elections Party Elections Broadcasts and Political Advertisements Regulations published as notice 6785 in Government Gazette no 56308 of 31 October 2025 (“the Draft Regulations”).

SOS is of the view that the regulation of party election broadcasts and political advertising is a vital part of the overall regulatory architecture in South Africa today. Broadcasting, and in particular public service broadcasting plays a critical role in defending and promoting democracy, and elections coverage (local, provincial and national) allows citizens the opportunity to exercise their democratic rights. This includes both the right to receive and the right to impart ideas, and to participate fully in the election process.

The Electronic Communications Act, 36 of 2005, and a raft of separate regulations have been developed to prescribe a framework and guidelines under which political elections broadcasts (PEB)’s and political advertisements (PA)’s shall be conducted and carried by broadcasting services licensee (BSL) during municipal as well as provincial and national elections. The focus of this submission is the regulations relating to municipal elections and specifically the proposed amendments to the

Municipal Elections Party Elections Broadcasts and Political Advertisements Regulations, 2011 as originally published in Government Gazette 34086 of 8 March 2011, amended by Government Gazette 39738 of 2016 and Government Gazette 44370 of 2021.

SOS will not be responding to each amendment contained in the draft regulations but will focus on those aspects of the regulations that fall within the scope of SOS mandate and our continued concern with the protection and viability of public broadcasting services, public interest content and the growth and development of the community broadcasting sector. As such this submission is structured according to the draft regulations, with a series of general comments followed by specific sections on the draft regulations.

3. GENERAL COMMENTS

SOS notes that the regulations for both municipal and provincial and national elections were developed in a framework that recognises the constitutional rights of all citizens (specifically section 16 of the Constitution), the editorial independence of broadcasters, and the role of the independent regulator. SOS is in support of this framework and the approach of the Authority to provide advice to broadcasters in the form of guidelines¹ that do not infringe on their rights to freedom of expression but seeks assurance for audiences that rely on broadcasters to provide them with information to allow them to exercise their democratic rights and to participate effectively in elections.

The draft regulations do not diverge in substance much from the 2011 and subsequent amended regulations. They carry the policy and regulatory imperatives through from the 2011 and the position paper supporting them. In particular, they place an additional responsibility on the SABC as the national public service broadcaster. Furthermore, community broadcasters are placed under additional pressure should they decide to carry PEBs and PAs. An assumption that has been carried through is that there may be areas in the country where the SABC is not available, and citizens would look to community broadcasters to fill that gap.

¹ Such as those included for example in the 2014 Regulations on political party election broadcasts in Government Gazette 37350 of 17 February 2014.

SOS is of the view that this assumption is misplaced for two reasons, first the SABC has the widest reach and national coverage (even in those parts of the country where TV is not available, at least one of the SABC's language radio stations is available). Secondly, there is no guarantee that there is a community broadcaster present in every part of the country. The explanatory memorandum with the 2011 regulations states that:

“Prior, during and after the Election Broadcast Period the Authority employs a special monitoring team to focus specifically on the municipal elections broadcasting. The SABC is obliged to comply with regulation 10 of the Code of Conduct for Broadcasters.”

ICASA must ensure that the 2026 regulations are based not on assumptions, but on verified facts regarding the actual coverage area of existing licensees, to ensure that the SABC is able to meet its obligations. This may require specific funding allocations in consultation with the Department of Communications and Digital Technologies.

Apart from this matter, SOS is of the view that the amendments to Regulations 1 through 3 and Regulation 7 provide regulatory certainty by defining some key terms that did not previously exist as well as by clarifying the processes and procedures to be followed for complaints. This is an important aspect to make sure that citizens, political parties and independent candidates contesting these elections as well as broadcasters are absolutely clear on the duration of the election period, what constitutes a PEB or a PA, minimum technical standards, as well as the procedure to be followed subsequent to a PEB being rejected, turnaround times. This also requires BSLs to inform the Authority of their intention to broadcast PEBs.

Regulation 4 provides additional clarity on what constitutes a PEB as opposed to a PA. The amendment to the regulation provides the necessary clarity regarding the terms applicable for the creation and broadcast of PEBs. This includes the procedure parties must follow for the acceptance or rejection by broadcasters of PEBs. The regulation also covers the new turnaround times for ICASA, political parties, independent candidates and broadcasters who must plan for and comply with the time allocated for adjudication and resolution of election related complaints.

SOS has no specific comments regarding the time allocation and timeslots provided for by the authority, noting that the regulations have now been amended following the Constitutional Court' ruling in *New Nation Movement NPC and others v President of the Republic of South Africa and Others*, regarding the participation of independent candidates in local government elections. In this case, the Constitutional Court held that the Electoral Act was unconstitutional to the extent that it excluded independent candidates from standing for election to the National Assembly and provincial legislatures. The Court found that this limitation unjustifiably infringed the rights to freedom of association and political participation and directed Parliament to amend the electoral framework to allow independent candidates to contest elections.

SOS is satisfied that Regulation 4 provides all the necessary detail and guidelines for both broadcasters and political parties to distinguish clearly between PEBs and PAs. In addition, there is clarity on what rules will apply to all community and commercial broadcasters that elect to carry PEBs and PA's and their grave responsibility to ensure free and fair election coverage to all participating parties and independent candidates and their responsibility to all citizens.

The amendments to Regulations 6 and 7 provide the necessary clarity regarding the terms applicable for the creation and broadcast of PAs. As with Regulation 4 regarding PEBs, this regulation requires BSLs to notify the authority of their intention to broadcast PAs. It includes the technical standards; the procedure parties must follow for the acceptance or rejection by broadcasters of PEBs.

4. SPECIFIC SECTIONS

4.1 Amendment of Regulation 4 of the Regulations

SOS proposes inclusion of the following to sub regulations 5.2:

c) Given that a BSL is deemed indemnified against incurred costs, damages, losses and third-party claims arising from the broadcast of a PEB, it therefore has no right to reject a PEB on the basis of its content even if it deems the content to "contravene the provisions of the Municipal Electoral Act, the Electoral Code, the Electoral Act, the

Constitution, the Act, and the Broadcasting Act; and/or “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.”

d) A BSL may only reject a PEB for failure to conform to technical standards and quality outlined in Schedule 2 of Annexure A.

e) The Authority may, in its own right, summon a political party or independent candidate for sanctions if convinced the PEB contravened fundamental legislation or contains inappropriate material, in line with 5.4(a)(b).

f) Alternatively, the Authority may deal with this matter when a complaint is lodged against a specific PEB by an aggrieved person.

4.2 Amendment of Regulation 7 of the Regulations

Most important for SOS regarding the public interest is the provision in Regulation 7.1 for members of the public to lodge complaints “in the event of any person being aggrieved by any PA or PEB”. A swift and efficient dispute resolution mechanism and complaints procedure is critical especially during an election period, where time is of the essence. SOS supports this Regulation and encourages ICASA as well as broadcasters to make every effort to publicise the complaints procedure as widely as possible and across all platforms so that come election time citizens are aware of their rights and how to exercise their right to complain and receive redress and resolution of complaints within reasonable time frames.

SOS further suggest that to simplify the complaints process for the members of the public, the Regulations stipulate that the complaint must be laid with the Complaints and Compliance Committee (CCC) and provide a dedicated email address for complaints.

4.3 Annexure A Schedule 2: Technical Standards and Quality

SOS propose the following additions:

This schedule is applicable to both PEBs and PAs. Audio and video recordings must be clearly labelled to indicate the name of the political party or independent candidate and nominated representative, including a clear indication of whether it is a PEB or PA.

4.4 Schedule 3: Guidelines

Equitable treatment means fair treatment (3.1)

To make this provision clear, a sentence should be added to expressly state that equitable treatment does not imply equal treatment or an equal allocation of time. In determining what constitutes equitable treatment, due consideration should be given to news value as well as the political party's standing and level of public support.

Broadcasting service licensee must seek out information (3.2)

SOS proposes the following additional paragraph:

It is imperative that journalistic ethics and standards are upheld during this time. Journalists and broadcasters more broadly, therefore have a responsibility to actively challenge false narratives and misleading or inaccurate information disseminated by political parties or independent candidates, and to ensure that the BSL is not used as a platform to promote or perpetuate misinformation and disinformation.

The right of reply to broadcast criticism (4.2)

SOS proposes the following additional paragraph:

c) In an event that the criticism is severe enough to cause potential damage to a political party or an independent candidate and the BSL has not provided the affected candidate with an opportunity to exercise their right of reply, the BSL must be able to provide evidence of reasonable and unsuccessful attempts to contact the candidate for such a reply, should the Authority request these records.

Coverage of non-participating organisations (4.4)

SOS proposes the following changes to the heading and an additional paragraph:

Coverage of non-participating organisations and members of the public

In addition, members of the public must be afforded opportunities to express their views on contesting candidates and political information, in line with the constitutional right to freedom of expression. Consideration must be given to amplifying the voices of marginalised communities, particularly by the public and community BSL.

CONCLUSION

SOS reiterates its support for the Draft Amendments to the Municipal Party Elections Broadcasts and Political Advertisements Regulations, 2011, and welcomes the Authority's efforts to strengthen regulatory certainty, fairness and transparency in the broadcasting of election-related content ahead of the 2026 local government elections. The proposed amendments, particularly those relating to definitions, technical standards, complaints procedures and turnaround times, provide important safeguards for the rights of citizens, political parties and independent candidates, and contribute to the integrity of the electoral process.

SOS further emphasises the central role of the SABC as the national public service broadcaster and the importance of ensuring that the regulatory framework is grounded in accurate and verifiable information regarding coverage and access. We also underscore the need for effective, accessible and well-publicised complaints mechanisms, as well as the upholding of high journalistic and ethical standards to combat misinformation and to promote informed democratic participation. SOS trusts that the Authority will give due consideration to the comments and proposals contained in this submission.

We once again thank the Authority for the opportunity to make this submission and indicate our willingness to participate in the scheduled oral presentations.

Yours sincerely

A handwritten signature in black ink, appearing to be 'US' with a stylized flourish.

Uyanda Siyotula

National Coordinator

SOS Support Public Broadcasting Coalition