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GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

No. R. 1093 **19 November 2010**



Pinmill Farm, 164 Katherine Street, Sandton
Private Bag X10002, Sandton, 2146

DRAFT REGULATIONS ON PARTY ELECTION BROADCASTS, POLITICAL ADVERTISEMENTS, THE EQUITABLE TREATMENT OF POLITICAL PARTIES BY BROADCASTING LICENSEES AND RELATED MATTERS DURING MUNICIPAL ELECTIONS

1. The Independent Communications Authority of South Africa ("the Authority") hereby gives notice of its intention to commence public consultations on the review of the regulations in the schedule made in terms of section 4(1) of the Electronic Communications Act, 2005 (Act No.36 of 2005) (ECA) read with section 4(3) (j) of the Independent Communications Authority of South Africa Act, 2000 (Act No.13 of 2000) and sections 56 to 59 of the ECA.

2. The Authority invites written submissions from interested stakeholders on the draft regulations. All submissions should reach the Authority by no later than **16h00 on the 10th of January 2011. Submissions could be delivered through any of these methods:** post, or hand delivery, or facsimile transmission or electronically (Microsoft Word or Adobe PDF file) for the attention of and should be directed to:

Contact Person	**Ms Mamedupe Kgatshe**
Physical Address	ICASA HEAD OFFICE Pinmill Farm Block D 164 Katherine Street Sandton 2146
Postal Address	ICASA Private Bag X10002

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	Sandton 2146
Facsimile	011 556 3260/3248
Telephone	011 566 3259/3801

E-mailed copies should be directed to mkgatshe@icasa.org.za or hmashapha@icasa.org.za

3. Any written representative(s) submitted to ICASA pursuant to this notice will be made available for inspection by other interested persons at the ICASA Library, and copies of such representative(s) will be obtainable upon payment of the prescribed fee.

4. The Authority may publish all or any part of the written submissions on its website; www.icasa.org.za. The Authority will consider stakeholders to have consented to the publishing by making a submission, unless it is clearly specified otherwise in a submission.

5. Stakeholders are kindly advised to indicate any objection to the release of information contained in a submission, which is considered as confidential. Motivations in this regard shall include reason(s) for such information not to be made public. The Authority will take into account all such objections when responding to requests for copies and information on submissions to this document.

6. The Authority will be conducting consultative workshops throughout the country on the draft regulations.

DR STEPHEN MNCUBE
CHAIRPERSON

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SCHEDULE

1. Definitions

In these regulations, any word or expression to which a meaning has been assigned in the Act will bear such meaning, unless the context indicates otherwise:

"the Act" means the Electronic Communications Act 2005, (Act No.36 of 2005);

"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;

"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);

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"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;

"Party election broadcaster" means a broadcasting service licensee who broadcasts the party election broadcasts;

"PEB" means a party election broadcast;

"SABC" means the South African Broadcasting Corporation, a statutory body established in terms of the Broadcasting Act, 1999 (Act No 4 of 1999)

2. Object of the regulations

The object of these regulations is 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 municipal elections.

3. Scope of the Regulations

These regulations are applicable:

(a) during the election period;

(b) to broadcasting service licensee; and

(c) to a party contesting the municipal elections.

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4. Party election broadcasts

(1) PEB(s) must only be broadcast during the election broadcast period;

(2) A party that seeks 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 commercial or community broadcasting service licensee that seeks to broadcast PEB must inform the Authority, in writing, of its intention to do so thirty (30) days prior to the election broadcast period;

(4) A broadcasting service licensee that is obliged, or intends to broadcast PEB must ensure that the PEB conforms to a technical quality acceptable to the Authority;

(5) 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;

(6) A broadcasting service licensee that rejects a PEB submitted to it by a party for broadcast must, within twenty four (24) hours of such submission;

(a) furnish the party concerned with written reasons for the rejection; and

(i) the party concerned may alter or edit the PEB and re-submit it to the broadcasting service licensee concerned at least three (3) working days prior to it being broadcast;

(7) 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 twenty four (24) hours of the said confirmation notify the Authority of such rejection. The broadcasting service licensee must submit written reasons for the rejection to the Authority;

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(8) A party whose PEB has been rejected and has no intention of altering or editing the PEB, may refer the matter to the Authority within twenty four (24) hours of being informed in writing of the rejection;

(9) 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 Act, the Electoral Code, 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;

(10) A party that submits a PEB to a broadcasting service licensee for broadcast, shall have no claim against the broadcasting service licensee arising from the broadcast or none broadcast of the PEB;

(11) 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;

(12) A broadcasting service licensee that broadcasts PEB must:

(a) Make available, every day, throughout the election period, four time-slots not exceeding two minutes each;
(i) Do so in accordance with the sequence and timing prescribed by the Authority in terms of these regulations;

(b) Ensure that all PEB(s) broadcast by it are clearly identified as such;

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(c) Ensure that all PEB(s) broadcast by it are identified or announced in a similar manner.

(13) A PEB must not exceed two minutes in duration.

(14) Content broadcast as PA cannot be broadcast as PEB.

(15) A broadcasting service licensee must not transmit a PEB immediately before or after another PEB or PA.

(16) PEB air-time allocated to but not used by a party shall be forfeited by the party concerned.

(17) If a party fails to deliver the PEB to the broadcasting service licensee before the expiry of five (5) working days prior to the broadcasting thereof, then the party is deemed to have forfeited its allocated airtime.

(18) 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 or material.

(19) 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).

(20) A broadcasting service licensee or party must not permit or engage in any interference with, or trade-offs in the sequence or scheduling of PEB(s).

(21) Due to financial challenges confronting it, the public broadcasting services licensee is exempted from broadcasting PEB(s) on television.

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5. Allocation of air-time in respect of party election broadcasts

Air-time in respect of party election broadcasts shall be allocated by the Authority to the various parties contesting the municipal elections on the basis of the respective formulae set out in annexure A.

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, to whom a PA has been submitted by a party for broadcast, must not in any way edit or alter the advertisement.

(3) A broadcasting service licensee who rejects a PA submitted to it by a party for broadcast must, within twenty four (24) hours of such rejection furnish the party concerned with written reasons for the rejection; and

(a) The party concerned may alter or edit the PA and re-submit the PA to the broadcasting service licensee concerned at least three (3) working days prior to it being broadcast.

(4) 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 twenty four (24) hours notify the Authority in writing of such rejection and must also furnish to the Authority written reasons for the rejection.

(5) 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 twenty four (24) hours of being informed of the rejection.

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(6) 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 Act, the Electoral Code, 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.

(7) A party that submits a PA to a broadcasting service licensee for broadcast shall have no claim against the broadcasting service licensee arising from the broadcast of the advertisement.

(8) 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.

7. Complaints

In the event of any person being aggrieved by any PA or PEB such person may lodge a complaint with the Authority within forty eight (48) hours after such broadcast has occurred.

8. General

(1) Every broadcasting service licensee and party must:

(a) Nominate a person who must be the representative of that broadcasting service licensee or party in respect of all matters regulated by, or arising from, these Regulations;

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(b) Within thirty (30) days of the publication of these regulations 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.

9. Short title and Commencement

These draft regulations are called Municipal Elections Party Elections Broadcasts and Political Advertisements Regulations, 2011 and shall commence on publication in the Government Gazette.

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ANNEXURE A

FORMULA TO CALCULATE THE ALLOCATION OF PARTY ELECTION BROADCASTS

Party Election Broadcast allocation will be calculated only when registration of political parties and candidates has been closed.

Regional point allocation formula

Basic Allocation All parties contesting in the municipal elections. **40 points**
Number of seats currently held Based on the current seats in the municipalities countrywide, with 400 securing 60 points and those with fewer or more seats securing points on a pro rata basis. **60 points**

Due to the proposal contained in Regulation 4 (21) the public broadcaster will be required to double airtime on radio broadcasts. In effect this will result in the broadcasting of two (2) slots broadcast in the morning and 2 slots broadcast in the afternoon.

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