
GENERAL NOTICES

NOTICE 101 OF 2014



Independent Communications Authority of South Africa
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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'.

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.