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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 161 OF 2021



**MUNICIPAL ELECTIONS BROADCASTS AND POLITICAL ADVERTISEMENTS
AMENDMENT REGULATIONS, 2021**

I, Keabetswe Modimoeng, chairperson of the Independent Communications Authority of South Africa (“**ICASA**” or “**the Authority**”) hereby publish the amendment of the Municipal Elections Broadcasts and Political Advertisements Regulations 2011, as amended, to the extent reflected in the Schedule.

A handwritten signature in black ink, appearing to read 'Keabetswe Modimoeng', written over a horizontal line.

Dr. Keabetswe Modimoeng**Chairperson****Date: 30 / 03 / 2021**

SCHEDULE

1. Definitions

In these regulations "the Regulations" means the Municipal Elections Party Elections Broadcasts and Political Advertisements Regulations, 2011 as published under Government Notice No. R202 in Government Gazette 34086 of 8 March 2011 and amended by Government Gazette 39738 of 2016.

2. Amendment of regulation 1 of the Regulations

Regulation 1 of the Regulations is hereby amended –

- 2.1. by the substitution for the definition of "current affairs programme" of the following definition:

"Current affairs programme" means programming that is not a news bulletin, which focuses on and includes comment on and interpretation and analysis of issues of immediate social, political or economic relevance and matters of international, national, regional and local significance;"

- 2.2. by the insertion, after the definition of "ICASA Act", of the following definition:

"Independent candidate" means a natural person registered with IEC to contest an election independently from a political party before the commencement of the relevant election period;"

- 2.3. by the substitution for the definition of "PEB" of the following definition:

"PEB" means a party election broadcast made by a political party or an independent candidate;"

3. Substitution of regulation 4 of the Regulations

The following regulation is hereby substituted for regulation 4 of the Regulations:

4. Party election broadcasts

- (1) PEB(s) must only be broadcast during the election broadcast period.
- (2) A political party or an independent candidate that intends 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 public BSL must permit a PEB during an election broadcast period.
- (4) A commercial or community BSL that intends to broadcast PEB(s) must inform the Authority, in writing, of its intention to do so within twenty-one (21) days of the publication of these regulations.
- (5) A BSL that is obliged, or intends to broadcast PEB(s) must ensure that the PEB conforms to the Authority's technical quality as listed in Schedule 2 of Annexure A.
- (6) A BSL to whom a PEB has been submitted by a political party or an independent candidate for broadcast must not in any way edit or alter the content of the PEB.
- (7) A BSL that rejects a PEB submitted by a political party or independent candidate for broadcast must, within twenty-four (24) hours of such submission by the political party or independent candidate, furnish the political party or independent candidate concerned with written reasons for the rejection and the political party or independent candidate concerned may alter or edit the PEB and re-submit it to the BSL

concerned at least forty-eight (48) hours prior to its scheduled broadcast.

- (8) Where the BSL has rejected a PEB and the political party or independent candidate concerned has confirmed in writing to the BSL that it will not be re-submitting the PEB, then the BSL must within twenty-four (24) hours notify the Authority of such rejection and must also furnish to the Authority written reasons for the rejection.
- (9) A political party or an independent candidate who's PEB has been rejected and which has no intention of altering or editing the PEB, may refer the matter to the Authority and inform the concerned BSL of the referral to the Authority, within forty-eight (48) hours of being informed in writing of the rejection.
- (10) Any complaint lodged with the Authority in terms of sub-regulation (9) will be addressed by the Authority in accordance with regulation 6 of the CCC Regulations.
- (11) Subject to sub-regulation (10), the Authority will, within twenty-four (24) hours of making a determination, communicate to the parties the outcome, which is final and binding on the parties.
- (12) A political party or independent candidate that submits a PEB to a BSL for broadcast must ensure that the PEB does not:
 - (a) contravene the provisions of the Municipal Electoral Act, 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 political party or independent candidate that submits a PEB for broadcast to a BSL is deemed to have indemnified the BSL against

incurred costs, damages, losses, and third-party claims arising from the broadcast thereof.

(14) A BSL that broadcasts PEB must:

- (a) make available, every day and throughout the election broadcast period, ten (10) time-slots of fifty (50) seconds each for the broadcast of PEB, excluding the introductory and concluding message (top and tail) disclaimer;
- (b) do so in accordance with the sequence and timing that will be prescribed by the Authority upon allocation of airtime slots after the publication of these Regulations;
- (c) ensure that all PEB(s) broadcast are 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 fifty (50) seconds in duration.

(16) Content broadcast as a PEB cannot be broadcast as a PA.

(17) A BSL 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 political party or independent candidate, shall be forfeited by the political party or independent candidate concerned.

(19) If a political party or an independent candidate fails to deliver the PEB to the BSL before the expiry of five (5) days prior to the broadcasting thereof, then the political party or independent candidate is deemed to have forfeited its allocated airtime.

(20) In the event that a political party or an independent candidate elects to forfeit its allocated PEB air-time, then such air-time must not be allocated to another political party or independent candidate but must

be used by the broadcaster concerned for the purpose of broadcasting its normal programming.

- (21) In the event that a political party or an independent candidate does not wish to use its allocated PEB air-time, the BSL concerned must not, during the relevant time-slot, in any way vary the sequence or scheduling of PEB(s).
- (22) A BSL or political party or an independent candidate 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 political party or independent candidate has complied with the requirements of regulation 4, and a BSL concerned is unable to broadcast such political party 's or independent candidate's PEB due to a breakdown in transmission, such PEB shall be broadcast within forty-eight (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 broadcast language(s) as contained in the issued broadcasting service license of the relevant BSL."

4. Substitution of Regulation 5 of the Regulations

The following regulation is hereby substituted for regulation 5 of the Regulations:

"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 or registered independent candidates contesting the municipal elections on the basis of the respective principles set out in Schedule 1 of **Annexure A** of these regulations."

5. Amendment of Regulation 6 of the Regulations

5.1. Regulation 6 of the Regulations is hereby amended by the substitution for sub-regulations (2), (4), (5), (6), (7), (10), (11) and (13) of the following sub-regulations:

“(2) Each PA submitted must indicate clearly the name of the political party or independent candidate and the day, time of broadcast, and relevant broadcast service/s for the PA.

(4) A BSL to whom a PA has been submitted by a political party or an independent candidate for broadcast must not in any way edit or alter the advertisement.

(5) A BSL who rejects a PA submitted by a political party or an independent candidate for broadcast must, within twenty-four (24) hours of such submission, furnish the political party or independent candidate concerned with written reasons for the rejection and the political party or independent candidate concerned may alter or edit the PA and re-submit the PA to the BSL concerned at least forty-eight (48) hours prior to its scheduled broadcast.

(6) Where the BSL has rejected a PA and the political party or independent candidate concerned has confirmed in writing to the BSL that it will not be re-submitting the advertisement, then the BSL 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.

(7) A political party or an independent candidate whose PA has been rejected and which has no intention of altering or editing the advertisement, may refer the matter to the Authority within forty-eight (48) hours of being informed of the rejection.

(10) A political party or an independent candidate that submits a PA to a BSL for broadcast must ensure that the advertisement does not:

- (a) contravene the provisions of the Municipal Electoral Act, 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.

(11) A political party or an independent candidate that submits a PA for broadcast to a BSL is deemed to have indemnified the BSL against incurred damages, losses, and third-party claims arising from the broadcast thereof.

(13) A BSL must not transmit a PA immediately before or after another PA or PEB.”

5.2. Regulation 6 of the Regulations is hereby amended by the addition of the following sub-regulation:

“(14) A broadcasting service licensee that broadcasts PA must ensure that all PA broadcasts are clearly identified through a standard pre-recorded introductory and concluding message (top and tail) disclaimer.”

6. Substitution of Regulation 8 of the Regulations

The following regulation is hereby substituted for regulation 8 of the Regulations:

“8. General

(1) Every BSL and political party or and the independent candidate must:

- (a) nominate persons who must be the representatives of that BSL or political party or independent candidate in respect of all matters regulated by, or arising from, these Regulations; and
 - (b) within twenty-one (21) 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 BSL must recognise the nominated political party or independent candidate representatives as the sole representatives of the political party or independent candidate and must only communicate with the nominated representatives.
- (3) A political party or an independent candidate must direct all communications in respect of PEB's only to the nominated representatives of the BSL and may not engage in discussion on PEB's with any other service or staff member of the BSL."

7. Short title and commencement

These Regulations are called Municipal Elections Party Elections Broadcasts and Political Advertisements Amendment Regulations, 2021 and shall commence on publication in the *Government Gazette*.

8. Substitution of Annexure A of the Regulations

The following annexure is hereby substituted for Annexure A of the Regulations:

"ANNEXURE A**SCHEDULE 1****PRINCIPLES OF PEB AIRTIME ALLOCATION**

Basic Allocation Percentage of slots to be allocated to all political parties and independent candidates contesting seats in the Municipal Elections.	60%
District Municipalities List Percentage of slots to be allocated according to the number of candidates fielded by parties on the District Municipalities list.	15%
Local Municipalities List Percentage of slots to be allocated according to the number of candidates fielded by parties on the Local Municipalities list.	15%
Proportional representation The number of seats currently held at District and Local level.	10%

TECHNICAL STANDARDS AND QUALITY**For Radio:****The material must be submitted in the following technical format:**

Format - Raw Mpeg 2

Channels - 2 (stereo)

Bit Rate - 384 Kbps

Sampling Rate - 48KHz

Mastering - -12db

For Television:**High Definition (HD) 16 X 9; Disc and File Format Delivery**

Summary of Program Delivery Standards

All programs will comply with the 1920 x 1080i HD Standard in a 16:9 aspect ratio at 25 frames per second, 90 seconds 75% Line-up color bars And 1 KHz tone.

Digital Audio Reference level is defined as 18dB below the maximum coding value (-18dBFS) as per EBU recommended practice R128.

Time code of program start is at 10:00:00:00.

Circular countdown clock of 30 seconds with details exactly as per Section 4.5.2. on delivery document must be present with Stereo audio on tracks 1&2.

Fade to silence at program end. End slate held in vision for further 10 seconds after end of program.

All files delivered should be transcoded to:

AVC INTRA 100 AS-11, OP1A MXF WRAPPER

SCHEDULE 2

GUIDELINES

1. INTRODUCTION

- 1.1. These guidelines are intended to outline a general approach that should be adopted by BSLs in their coverage of the municipal elections. Elections are an important public event and as such fall within the ambit of news and current affairs. BSLs are encouraged, in the public interest, to provide a full, impartial, and independent coverage of the elections.
- 1.2. The Authority does not intervene in the news and programming operations of the broadcasters. BSLs' 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 or independent candidates without abdicating news value judgments.

2. EDITORIAL MATTERS

- 2.1. Section 59 of the ECA prescribes specific requirements for the treatment of political parties or independent candidates during the election period by broadcasters in their editorial programming. The requirements are:
 - (a) If during an election period, the coverage of any broadcasting service licensee extends to the field of elections, political parties or independent candidates and issues relevant thereto, the broadcasting licensee concerned must afford reasonable opportunities for the discussion of conflicting views and must treat all political parties and all independent candidates equitably.
 - (b) In the event of any criticism against a political party or an independent candidate 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 the party having been reflected therein, the broadcasting service licensee concerned will be obliged to afford the party a reasonable opportunity to respond to criticism.

- (c) 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 or an independent candidate is criticized, the broadcasting service licensee must ensure that the political party or independent candidate is given a reasonable opportunity to respond thereto in the same programme, or to do so as soon as reasonably practicable thereafter”.

- 2.2. 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’ or independent candidates’ 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 BSL 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 BSL should be consistent in its treatment of contesting parties and of conflicting views.

3.2. **Broadcasting service licensee must seek out information.**

BSLs should recognise their obligation to the electorate to provide a full and accurate record of events and developments. BSLs should not rely on political parties or independent candidates 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 BSLs in fulfilling the requirements of the Act the following principles will apply:

4.1. Fairness

- (a) All news coverage should be fair to all interests concerned.
- (b) Care should be taken to balance the exposure given to the non-political activities of candidates (such as attendance at functions, sporting events, etc).
- (c) 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.
- (d) 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

- (a) Each BSL should afford all political parties and independent candidates reasonable opportunity to respond to criticism broadcast by that BSL. However, affording parties reasonable time to respond should not amount to forcing BSLs 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 or an independent candidate.
- (b) With regard to rhetorical criticisms, BSLs must have the flexibility to incorporate responses into their formal news patterns. With regard to damaging criticisms, BSLs 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 or independent candidates to use their right to reply to criticism to manipulate or distort the general principle of equity.

4.3. Coverage of government

During the election period, BSLs must recognise that government officials are in a position to use their incumbency to advance their electoral prospects. During the election period, BSLs should regard with particular caution any statement or action by an official of an incumbent party. In particular, BSLs need to ensure that, during the election period, they do not afford the policies of incumbent parties' or independent candidate's 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 a reasonable opportunity for the discussion of conflicting views, non-participating political parties, independent candidates, 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 equity between registered, contesting parties.

4.5. Coverage of election results

BSLs, particularly the public BSL, have an obligation to inform the electorate of the election results, as they become available. Coverage of election results may also include a comment, analysis, and interpretation. Special care should be taken to ensure the accuracy of all results broadcast.

5. CONCLUSION

The guidelines provide a framework to BSLs covering the elections in which the system of Party Election Broadcasts and Political Advertising will operate.”

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

**REASONS DOCUMENT:
AMMENDMENTS TO THE MUNICIPAL ELECTIONS BROADCASTS AND
POLITICAL ADVERTISEMENTS REGULATIONS, 2011**

1. INTRODUCTION

- 1.1. The Independent Communications Authority of South Africa (“the Authority”) initiated a process to review the Municipal Elections Broadcasts and Political Advertisements Regulations, 2011 as amended (“the regulations”).¹ South Africa is gearing up for the municipal elections of 2021 to elect councils for all district, metropolitan and local municipalities in each of the country's nine provinces and it is in light of this that the review was initiated.
- 1.2. This review process was aimed at improving the regulations to ensure their relevance during each election period. The review process also presented the Authority with an opportunity to provide clarity to stakeholders on different responsibilities and expectations for Broadcasting Service Licensees (“BSLs”), political parties and independent candidates during the elections broadcasting period. The broadcasting of elections is an important public event which falls within the area of news and current affairs.
- 1.3. In this regard, the Authority is guided by the Constitution of the Republic of South Africa, 1996 (“the Constitution”), the Broadcasting Act, 1999 (Act No. 4 of 1999) (“Broadcasting Act”), the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of

¹ Government Gazette No. 39738 of 26 February 2016

2000) ("ICASA Act"), Electronic Communications Act, 2005 (Act No. 36 of 2005) ("ECA"), in reviewing the regulations.

2. BACKGROUND

- 2.1. The Authority published the draft Municipal Elections Broadcasts and Political Advertisements Regulations amendments ("the draft Regulations") under Government Gazette 43984 of 10 December 2020, for public comments.
- 2.2. Thereafter, the Authority conducted virtual workshops on 18-22 January 2021. The aim of the workshops was to solicit input on the draft Regulations and to create awareness to the stakeholders on their respective responsibilities.
- 2.3. The Authority received two (2) submissions from the South African Broadcasting Corporation ("SABC") and the Consumer Advisory Panel ("CAP") on the draft Regulations.

3. ANALYSIS OF THE SUBMISSIONS

3.1. INDEPENDENT CANDIDATE

- 3.1.1. The CAP submits that it fully supports and welcomes the review of the framework and guidelines to regulate political election broadcasts ("PEBs") and Political Advertisements ("PAs") for the upcoming municipal elections. CAP supports the introduction of the draft Regulations which enables the Authority to ensure that there is fair and equal treatment of participants during the election period. According to the CAP, one area that has lagged behind is the access to accessible and inclusive information on the manifestos of political parties and independent candidates standing during elections.

- 3.1.2. The SABC notes that the Authority is empowered to allocate PEB slots for political parties and independent candidates on the broadcasting platforms.

Reason for decision:

- 3.1.3. **The Authority as part of this process, considered the inclusion of the independent candidates on the allocation of PEB slots. The Authority as a creature of statute is under obligation to abide by the law, in this case, the Authority took into account the recent Constitutional Court judgement² on independent candidate and what it would mean for the review process.**
- 3.1.4. **The Constitutional Court declared that the Electoral Act 73 of 1998 is unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and Provincial Legislatures only through their membership of political parties.**
- 3.1.5. **Municipal elections allow for individuals to stand as independent candidates in wards, however the ECA only makes mention of political parties. To that end, the past Regulations, including the National and Provincial Elections Regulations, have only been making provisions for the political parties and not independent candidates.**
- 3.1.6. **In terms of section 3(3) of the ICASA Act, ICASA is "subject only to the Constitution and the law." Section 4(3)(j) of the ICASA Act provides that ICASA may make regulations "on any matter consistent with the objects of this Act and the underlying statutes or that are incidental or necessary for the performance of" its functions.**

² New Nation Movement NPC and Others v President of the Republic of South Africa and Others [2020] ZACC 11

- 3.1.7. **In the context of municipal elections, which are also contested by independent candidates, fairness requires that all the contesting parties be treated equally and in the same manner. In this regard, if provision is made for election contestants to have free broadcasts of their messages which are “intended or calculated to advance the interest” of such contestants, it necessarily follows that fairness requires that such free broadcasts be afforded to all the contestants.**
- 3.1.8. **The Authority is under a constitutional obligation to align its regulations with the provisions of section 9(3)(b) of the Constitution as interpreted by the Constitutional Court. This would include the Municipal Elections Draft Regulations which only speaks of political parties.**
- 3.1.9. **The Authority is a creature of statute and can only act subject to its governing legislation being the ECA, however, of pre-eminence to the ECA and even the Electoral Act is the Constitution and where such legislation is contrary to the Constitution, the Constitution takes precedence and overrides same. As such, the finding of the Constitutional Court stands as to the interpretation and understanding of section 19 of the Constitution and as such, independent candidates may stand for office irrespective of what the Electoral Act and/or what the ECA states. Independent candidates must similarly be allocated slots as political parties would be allocated the slots by the Authority.**
- 3.1.10. **To that end, independent candidates will be allocated slots in the basic allocation criteria of the allocation principles. The ECA requires that the parties be allocated the slots in an equitable manner and as such the allocation on basic allocation-only for independent candidates is on an equitable basis.**

3.2. **PEB exclusion on Commercial SABC**

- 3.2.1. In its submissions, the SABC urges the Authority to consider the exclusion of PEBs on Commercial Services of the SABC, namely: SABC 3 and SABC Commercial Radio Stations (5FM, Metro FM and Good Hope FM). It further requests that the Authority should exclude the requirement to broadcast PEBs on television. The SABC says that section 11(a) of the Broadcasting Act states that "commercial services of the Corporation must be subject to the same policy and regulatory structures as outlined in the Act for commercial broadcasting services". In addition, the SABC draws the Authority to section 57(2) of the ECA which states that when the Authority prescribes the duration and scheduling of PEBs, it must take into account the financial and programming implications for the broadcasting services in question.

Reason for decision:

In terms of sec 11(a) of the Broadcasting Act, read with sec 57(8) of the ECA, commercial services of the SABC cannot be compelled by regulation to broadcast PEB. The SABC commercial services must volunteer to broadcast PEB. The Authority is of the view that during the Covid-19 pandemic, the political parties may have less access to voters and exclusion of PEBs from commercial wing of the SABC might compromise the reach. The SABC and all commercial broadcasters are thus encouraged to make their commercial services available.

3.3. **PEB SLOTS: LENGTH**

- 3.3.1. In its submission, the SABC expressed its concern that the Authority has increased PEB time slots by a few seconds and that it discounts the financial challenges faced by the SABC. Given the SABC's current financial difficulties, the SABC submits that PEBs on radio and

television be reduced to 45 seconds, including introductory and concluding message (top and tail) disclaimers.

Reason for decision:

3.3.2. **The Authority does not increase the time slots but decreases the duration of the PEB by 10 seconds. The 2016 Regulations provides that the BSL must make available eight (8) timeslots of one minute (60 seconds) for PEB slots. The only increase in this case is the availability of time slots from 8 to 10.**

3.3.3. **The Authority wants to ensure that more political parties and independent candidates have an opportunity to present their message to potential voters. To decrease the PEB time further to 45 seconds to include introductory and concluding message (top and tail) disclaimer reduces the time for the political message.**

3.4. PEB SLOTS: CURRENT AFFAIRS SCHEDULING

3.4.1. The SABC submits that neither PEBs nor PAs be scheduled directly before, during or directly after TV and Radio current affairs shows and news bulletins, (including Morning Live) so as to preserve the editorial integrity of these programmes as far as possible and to avoid any association of party messages with editorial content by the public.

3.4.2. In addition, the SABC submits that should the Authority allocate political adverts (PAs and PEBs) during news and current affairs, these PEB's or PA's should broadcast before the bulletin or current affairs programme starts or after the respective programmes have ended. The SABC emphasised that it is not advisable to have them played during the news and current affairs programmes.

Reason for decision:

- 3.4.3. **The Authority does not allocate slots for political adverts.**
- 3.4.4. **The individual broadcasters have different times for its current affairs programs, not only will the scheduling thereof pose a challenge, but it may cause the Authority to interfere with the editorial independence of the respective broadcasters. The PEB timeslots will be allocated during the performance period.**

3.5. PEB SLOTS: PRIME TIME SCHEDULING

- 3.5.1. In the interest of protecting the financial viability of the SABC, the SABC submits that PEBs be excluded in prime time but be spread throughout the performance period as this will enable the SABC to generate revenue for the greater public service mandate.

Reason for decision:

- 3.5.2. **The PEB are scheduled during the performance period to afford the broadcasters flexibility and not restrict PEB broadcasting to a specific time. The SABC and other broadcasters opting to broadcast PEBs therefore have freedom to decide which hour to place the PEB.**

3.6. RESCHEDULING OF PEB

- 3.6.1. The SABC submits that the regulation 4(23) of the draft Regulations is not specific about whose responsibility is it to reschedule a PEB that was not broadcast according to the schedule. The SABC submits that the Authority must prescribe a procedure through which a PEB can be rescheduled.

Reason for decision:

- 3.6.2. **The responsibility to reschedule the PEB due to a technical occurrence on the side of the broadcaster, lies with the broadcaster in consultation with the Authority. The broadcaster must ensure that within 48 hours, the broadcast submitted to it by political parties is broadcast.**

3.7. BROADCAST LANGUAGE OF THE RADIO STATION

- 3.7.1. The SABC submits that it is supportive of the notion of using the broadcast language of each radio station as it will ensure that the PAs and PEBs reach the target language groups of each station. The SABC further submits that it will also ensure that all official languages are adequately promoted, and universal access will be realised for audiences whose only source of news and information is radio services.

Reason for decision:

- 3.7.2. **The Authority notes this submission.**

3.8. WORKING DAYS vs CALENDAR DAYS

- 3.8.1. The SABC submits that the draft Regulations do not state if the mentioned five (5) days are calendar days or working days. As such, it submits that the regulations should be amended to clarify that reference is made to five working days.

Reason for decision:

- 3.8.2. **Regulation 1 of the Regulations provides that, "In these regulations, any word or expression to which a meaning has been assigned in the Act [the ECA] will bear such meaning,**

unless the context indicates otherwise.” The ECA defines days as “working days”, unless otherwise specified.

3.9. TECHNICAL: FORMATS

3.9.1. The CAP submits that the Authority should consider including provisions for PEBs and PAs that will accommodate persons with disabilities (hearing and/or visual impairments) to be able to record these for television broadcasts and meet the set technical requirements in the draft Regulations (Schedule 2); and the technical standards (Schedule 2) given to political parties and independent candidates should include specifications that subtitles and/or closed-captioning files must accompany PEBs and PAs made for television broadcasts.

3.9.2. The SABC submits the following technical formats in which PEBs and PAs materials should be submitted for broadcast during the election broadcast period and the election period, respectively:

For Radio:

The SABC requires that material be submitted in the following technical format:

Format - Raw Mpeg 2
Channels - 2 (stereo)
Bit Rate - 384 Kbps
Sampling Rate - 48Khz
Mastering - -12db

For Television:

SABC High Definition (HD) 16 X 9; Disc and File Format Delivery

Summary of Program Delivery Standards

All programs will comply with the 1920 x 1080i HD Standard in a 16:9 aspect ratio at 25 frames per second, 90 seconds 75% Line-up color bars and 1 KHz tone.

Digital Audio Reference level is defined as 18dB below the maximum coding value (-18dBFS) as per EBU recommended practice R128.

Time code of program start is at 10:00:00:00.

Circular countdown clock of 30 seconds with details exactly as per Section 4.5.2. on delivery document must be present with Stereo audio on tracks 1&2.

Fade to silence at program end. End slate held in vision for further 10 seconds after end of program.

All files delivered should be transcoded to:

AVC INTRA 100 AS-11, OP1A MXF WRAPPER

Reason for decision:

- 3.9.3. **There is a Code for Persons with Disabilities published in terms of sec 70 of the ECA to which broadcasters must comply with.**
- 3.9.4. **Regulation 3.1 (a) of the Code states that "Broadcasting Service must ensure that their services are made available and accessible to people with disabilities."**
- 3.9.5. **Regulation 3.1 (b) of the Code states that "Options for making broadcasting services more accessible may include the following: Improve and/or increase subtitles and sign language".**
- 3.9.6. **The Authority has adopted the technical formats submitted by the SABC.**

3.10. TECHNICAL: SUBMISSIONS

3.10.1. In light of COVID-19, the SABC submits that the regulations should prescribe that political parties and independent candidates submit their PAs and PEBs materials electronically only instead of manually. It adds that there are various platforms that offer such services; for example, they could be submitted through Aspera or other file transfer platforms. However, the SABC prefers Aspera for these electronic submissions.

Reason for decision:

3.10.2. **The Authority is of the view that material for PEBs and PAs can be submitted either physically and electronically and the Authority encourages adherence to standard Covid-19 protocols when submitting such material.**

3.11. OTT/ONLINE ADVERTISING

3.11.1. The SABC submits that it acknowledges that ICASA does not regulate online platforms; however, it submits that it will consider accepting online political advertisements submitted by political parties and independent candidates contesting the municipal elections.

1.1.1. Additionally, the SABC noted that the Draft White Paper on Audio and Audiovisual Content Services Policy Framework: A New Vision For South Africa 2020 has proposed that online political advertising should be regulated in order to deter unfairness and discrimination. The SABC, therefore, advises the Authority to make a recommendation in the final regulations to guide BSL/broadcasters on the usage of online platforms since the area is currently unregulated.

Reason for decision:

- 1.1.2. **The Authority does not have a mandate to regulate social media or any other online platforms and is not empowered to make a recommendation in the regulations. The Authority is guided by the ECA in developing the regulations.**

4. CONCLUSION

The review process managed to improve the regulations to ensure their relevance for the next Municipal Elections. The review process also presented the Authority with an opportunity to provide clarity to stakeholders on different responsibilities and expectations for BSLs, political parties and independent candidates during the elections broadcasting period.

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