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GENERAL NOTICE

NOTICE 23 OF 2006



Independent Communications Authority of South Africa

**REGULATIONS RELATING TO PARTY ELECTION
BROADCASTS AND POLITICAL ADVERTISEMENTS,
AND GUIDELINES RELATING TO THE EQUITABLE
TREATMENT OF POLITICAL PARTIES BY
BROADCASTING LICENSEES AND RELATED
MATTERS IN RESPECT OF THE 2006 MUNICIPAL
ELECTIONS**

The Independent Communications Authority of South Africa (“the Authority”) has, under Section 78(1) of the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993), made the regulations in the schedule.

SCHEDULE

1. Definitions

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

- 1.1 “Authority” means the Independent Communications Authority established by Section 3 of the Independent Communications Authority of South Africa Act, No.13 of 2000;
- 1.2 “BMCC” means the Broadcasting Monitoring & Complaints Committee referred to in section 21(1)(b) of the IBA Act;
- 1.3 “broadcaster” means a person who provides a broadcasting service under and in accordance with a broadcasting licence issued to it by the Authority under Chapter VI of the IBA Act, provided that:
- 1.3.1 in respect of advertisements and election broadcasts, the word “broadcaster” shall not include any person who so provides a television broadcasting service; and
- 1.3.2 in the case of any broadcaster who is licensed to provide more than one broadcasting service, the word “broadcaster” shall refer to each such broadcasting service;
- 1.4 “Broadcasting Act” means the Broadcasting Act, No. 4 of 1999 as amended;

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- 1.5 "Commission" means the Independent Electoral Commission established by section 3 of the Electoral Commission Act;
- 1.6 "Constitution" means the Constitution of the Republic of South Africa, Act No. 108 of 1996;
- 1.7 "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;
- 1.8 "election broadcast" means a party election broadcast as defined in the IBA Act;
- 1.9 "election broadcast period" means the period within which party election broadcasts may be transmitted; such period may not begin prior to the closing of the submission of the lists of candidates, as referred to in section 27 of the Electoral Act, and may not extend to more than 48 hours before polling commences;
- 1.10 "election period" means the period as defined in Section 1 of the IBA Act;
- 1.11 "Electoral Act" means the Electoral Act, No. 73 of 1998;
- 1.12 "Electoral Code" means the Electoral Code of Conduct set out in Schedule 2 of the Electoral Act;
- 1.13 "Electoral Commission Act" means the Electoral Commission Act, No 51 of 1996;
- 1.14 "IBA Act" means the Independent Broadcasting Authority Act, No. 153 of 1993;

- 1.15 "ICASA Act" means the Independent Communications Authority of South Africa Act, No. 13 of 2000;
- 1.16 "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
- 1.17 "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;
- 1.18 "polling day" means the day proclaimed by the Minister of Provincial and Local Government in terms of Municipal Structures Act, number 117 of 1998, as read with section 17 of the Electoral Act, as being the day on which voting for the Local Governments will take place;
- 1.19 "political advertisement" means a political advertisement as defined in the IBA Act;
- 1.20 "prime time" means the periods set out in Annexure "A";
- 1.21 "SABC" means the South African Broadcasting Corporation, a statutory body incorporated in terms of the Broadcasting Act 4 of 1999, as amended;

2. Interpretation

Every person interpreting or applying these Regulations shall do so in a manner that is consistent with, gives effect to and takes into account the provisions of the Constitution, the IBA Act, the Broadcasting Act and the Electoral Code.

3. General provisions in respect of political advertisements and party election broadcasts

- 3.1** Any party that wishes to have a political advertisement or a party election broadcast transmitted by a broadcaster shall submit that political advertisement or party election broadcast to the broadcaster concerned, pre-recorded and:
- 3.1.1** in a form and manner that complies with that broadcaster's technical standards acceptable to that broadcaster;
 - 3.1.2** in completed form, ready for broadcast; and
 - 3.1.3** at least 96 hours before the time when that political advertisement or party election broadcast is to be transmitted.
- 3.2** Every broadcaster, other than the SABC, must indicate to the Authority whether or not it will transmit party election broadcasts by not later than 20 January 2006.
- 3.3** Every broadcaster that is required, or intends, to transmit political advertisements or party election broadcasts shall, by no later than 20 January 2006 notify the Authority in writing of its technical standards as contemplated in Regulation 3.1.1. If the Authority is of the view that a broadcaster's technical standards are unreasonable, the Authority shall notify that broadcaster accordingly in writing and shall direct that broadcaster to amend its technical standards.

- 3.4 Every political advertisement or party election broadcast submitted by a party to a broadcaster for transmission shall be prepared by, or at the instance and request of, that party.
- 3.5 No broadcaster to whom a political advertisement or party election broadcast has been submitted by a party shall in any way edit or alter that political advertisement or party election broadcast, whether before or after transmission.
- 3.6 Every broadcaster to whom a political advertisement or party election broadcast has been submitted by a party for transmission shall be entitled to reject and refuse to transmit that political advertisement or party election broadcast if it does not comply with the broadcaster's reasonable technical standards, with the Constitution, these Regulations, the IBA Act, the Broadcasting Act or with the Electoral Code.
- 3.7 Any broadcaster who rejects any political advertisement or party election broadcast submitted to it by a party for transmission shall, within 24 hours of such submission:
- 3.7.1 furnish the party that submitted the political advertisement or party election broadcast concerned to that broadcaster with written reasons for such rejection, and that party shall be entitled to alter or edit the political advertisement or party election broadcast and again submit it to the broadcaster concerned at least 24 hours before the time when it is to be transmitted;
- 3.7.2 in the event of the broadcaster rejecting an altered or edited political advertisement or party election broadcast in terms of Regulation 3.7.1, notify the Authority of such rejection by furnishing the Authority with a copy of the written reasons given for that rejection;

- 3.7.3 any party whose party election broadcast has been rejected by a broadcaster under this regulation may refer the matter to the Authority in terms of Regulation 6.
- 3.8 A party that submits a political advertisement or party election broadcast to a broadcaster for transmission shall ensure that the political advertisement or party election broadcast does not:
- 3.8.1 contravene the provisions of item 9 of the Electoral Code, the Constitution, the IBA Act and the Broadcasting Act; or
- 3.8.2 contain any material that is calculated, or that in the ordinary course of things 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.
- 3.9 Neither any party that submits a political advertisement or a party election broadcast to a broadcaster for transmission, nor any member or official of any such party, shall have any claim against that broadcaster arising from the transmission by it of that political advertisement or party election broadcast.
- 3.10 Every party that submits a political advertisement or a party election broadcast to a broadcaster for transmission shall be deemed to have indemnified that broadcaster against any cost, damage or loss incurred or sustained by that broadcaster as a result of any claim which a third party may bring against it arising from the transmission of that political advertisement or party election broadcast by that broadcaster.
- 3.11 Neither any party, nor any member or official of any party, shall have any claim against a broadcaster arising from the transmission by that broadcaster of any political advertisement or party election broadcast.

3.12 No political advertisements or party election broadcasts may be transmitted after the end of the election broadcast period.

4. Specific provisions in respect of party election broadcasts

4.1 Party election broadcasts may only be transmitted during the election broadcast period.

4.2 Every broadcaster who transmits party election broadcasts shall:

4.2.1 make available, on every day throughout the election broadcast period four time-slots of two minutes each for the transmission of election broadcasts, provided that the Authority shall be entitled to prescribe by regulation an increased number of daily time-slots for the transmission of election broadcasts;

4.2.2 do so in accordance with the sequence and timing prescribed by the Authority in terms of Regulation 5;

4.2.3 ensure that all party election broadcasts transmitted by it are clearly identified as party election broadcasts;

4.2.4 ensure that all party election broadcasts transmitted by it are identified or announced in a similar manner both at their introduction and at their conclusion.

4.3 No single party election broadcast transmitted by a broadcaster shall exceed two minutes in duration.

4.4 No broadcaster may transmit a party election broadcast immediately before or after another party election broadcast or immediately before or after a political advertisement.

- 4.5 No party shall be obliged to use the air-time allocated to it in terms of Regulation 5 for the transmission of party election broadcasts, provided that:
- 4.5.1 any air-time allocated to but not used by a party shall be forfeited;
- 4.5.2 if any party does not wish to use any air-time allocated to it, such air-time shall not be allocated to another party but shall be used by the broadcaster concerned for the purpose of transmitting conventional programming or material;
- 4.5.3 if any party does not wish to use any air-time allocated to it, the broadcaster concerned shall not, during the relevant time-slot, in any way vary the sequence or scheduling of party election broadcast transmissions determined in accordance with these Regulations.
- 4.6 Neither any broadcaster nor any party shall permit or engage in any interference with, or trading in, the sequence or scheduling of party election broadcast transmissions determined in accordance with these Regulations.

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

- 5.1 Air-time in respect of party election broadcasts shall be allocated by the Authority to the various parties contesting the municipal elections countrywide on the basis of the respective formulae set out in Annexure B.
- 5.2 The Authority shall, as soon as may be reasonably practicable, after the date referred to in section 27(1) of the Electoral Act, publish a notice setting out the air-time allocation in respect of party election broadcasts.

- 5.3 Once the submissions of lists of candidates has been closed under section 27 of the Electoral Act the Authority shall;
- 5.3.1 determine the sequence in which party election broadcasts are to be transmitted for the entire election broadcast period;
- 5.3.2 notify the broadcasters concerned in writing of such sequence.
- 5.4 The determination which is to be made by the Authority in terms of Regulation 5.3 shall be made:
- 5.4.1 by the drawing of lots;
- 5.4.2 in the presence of an official of the Commission designated by the Commission for that purpose.
- 5.5 The Authority shall notify the representatives referred to in Regulation 7.1 of the time when and place where the determination referred to in Regulation 5.3 will be made, and such representatives shall be entitled to be present when such determination is made.

6. Mediation

- 6.1 In the event of a broadcaster rejecting or refusing to transmit any political advertisement or party election broadcast submitted to it by a party for transmission, the party may:
- 6.1.1 refer the matter to the Authority in writing within 24 hours of being notified by the broadcaster of such rejection and the Authority shall attempt to resolve the matter in any manner it may consider appropriate;
- 6.1.2 in the event of the Authority being unable to resolve a matter in terms of Regulation 6.1.1 it shall refer the matter to the BMCC and

the **BMCC** shall deal with the matter in accordance with any procedure which the **BMCC** may consider appropriate.

6.2 In the event of any dispute arising between any party and any broadcaster, in respect of any matter governed by these Regulations, or in the event of any person being aggrieved by any act performed by any person in terms of these Regulations, or in the event of any dispute arising regarding the interpretation or application of these Regulations, any person who has a material interest in the matter shall be entitled to refer the matter to the Authority within 24 hours of the dispute or grievance arising.

6.2.1 the Authority shall attempt to resolve the dispute or grievance in any manner it may consider appropriate;

6.2.2 in the event of the Authority being unable to resolve a matter in terms of Regulation 6.2.1 it shall refer the matter to the **BMCC** and the **BMCC** shall deal with the matter in accordance with any procedure which the **BMCC** may consider appropriate.

6.3 No person may seek relief in a court of law in respect of any rejection, dispute or grievance arising from the interpretation or application of these regulations unless the applicable procedures set out in these Regulations have been exhausted.

7. General

7.1 Every broadcaster and every party shall:

7.1.1 nominate a person who shall be the representative of that broadcaster or party in respect of all matters regulated by, or arising from, these Regulations;

7.1.2 by no later than 20 January 2006 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 that person.

7.2 Every broadcaster shall take reasonable steps to ensure compliance by that broadcaster with these Regulations to the extent that they may be applicable to that broadcaster.

8. Short title

These regulations are called Party Elections Broadcasts and Political Advertisements Regulations, 2006.

ANNEXURE A**LIST OF REGIONAL AND NATIONAL STATIONS AS WELL AS THEIR PRIME LISTERNERSHIP TIMES****1. REGIONAL BREAKDOWN OF SABC RADIO STATIONS****1.1 GAUTENG**

- 1.1.1 RSG
- 1.1.2 SA FM
- 1.1.3 Ukhozi FM
- 1.1.4 Ikwewezi FM
- 1.1.5 Umhlobo Wenene FM
- 1.1.6 Ligwalagwala FM
- 1.1.7 Thobela FM
- 1.1.8 Motsweding FM
- 1.1.9 Phalaphala FM
- 1.1.10 Lesedi FM
- 1.1.11 Metro FM
- 1.1.12 5 FM
- 1.1.13 Lotus FM
- 1.1.14 Munghana Lonene FM

1.2 LIMPOPO

- 1.2.1 RSG
- 1.2.2 SA FM
- 1.2.3 5 FM
- 1.2.4 Ikwewezi FM
- 1.2.5 Metro FM
- 1.2.6 Thobela FM
- 1.2.7 Radio 2000
- 1.2.8 Motsweding FM

1.2.9 Munghana Lonene FM

1.2.10 Phalaphala FM

1.2.11 Ligwalagwala FM

1.3 EASTERN CAPE

1.3.1 RSG

1.3.2 SA FM

1.3.3 Radio 2000

1.3.4 Umhlobo Wenene FM

1.3.5 5 FM

1.3.6 Lesedi FM

1.3.7 Metro FM

1.3.8 CKI FM

1.3.9 Ukhozi FM

1.4 NORTHERN CAPE

1.4.1 RSG

1.4.2 SA FM

1.4.3 Radio 2000

1.4.4 Umhlobo Wenene FM

1.4.5 Motsweding FM

1.4.6 5 FM

1.4.7 XK-FM

1.5 KWAZULU-NATAL

1.5.1 RSG

1.5.2 SA FM

1.5.3 Radio 2000

1.5.4 Umhlobo Wenene FM

1.5.5 5 FM

1.5.6 Lesedi FM

- 1.5.7 Metro FM
- 1.5.8 Lotus FM
- 1.5.9 Ukhozi FM

1.6 NORTH WEST

- 1.6.1 RSG
- 1.6.2 SA FM
- 1.6.3 Radio 2000
- 1.6.4 Umhlobo Wenene FM
- 1.6.5 Motsweding FM
- 1.6.6 Lesedi FM

1.7 MPUMALANGA

- 1.7.1 RSG
- 1.7.2 SA FM
- 1.7.3 Radio 2000
- 1.7.4 Ukhozi FM
- 1.7.5 Ikwekwezi FM
- 1.7.6 Ligwalagwala FM
- 1.7.7 5 FM
- 1.7.8 Metro FM
- 1.7.9 Thobela FM
- 1.7.10 Lesedi FM
- 1.7.11 Munghana Lonene FM

1.8 WESTERN CAPE

- 1.8.1 Good Hope FM
- 1.8.2 RSG
- 1.8.3 SA FM
- 1.8.4 Radio 2000
- 1.8.5 Umhlobo Wenene FM

- 1.8.6 5 FM
- 1.8.7 Metro FM
- 1.8.8 Lotus FM

1.9 FREE STATE

- 1.9.1 RSG
- 1.9.2 SA FM
- 1.9.3 Lesedi FM
- 1.9.4 5 FM
- 1.9.5 Metro FM
- 1.9.6 Radio 2000
- 1.9.7 Ukhozi FM
- 1.9.8 Umhlobo Wenene FM
- 1.9.9 Motswedding FM

2. SABC RADIO STATIONS' PRIME LISTENERSHIP TIMES

Election broadcasts will be divided into the following day parts:

6h00 to 9h00

9h00 to 12h00

12h00 to 15h00

15h00 to 18h00

3. NATIONAL RADIO STATIONS

Due to their availability in all nine provinces the following SABC radio stations are regarded as national broadcasters:

- RSG
- SA FM
- 5 FM
- Radio 2000

4. OTHER BROADCASTERS

Community and commercial broadcasting licensees can elect whether to broadcast political adverts and party election broadcasts. A list of these stations will be made available to all contesting parties.

ANNEXURE B

NATIONAL AND REGIONAL STATIONS FORMULAE TO CALCULATE THE ALLOCATION OF PARTY ELECTION BROADCASTS

INTRODUCTION

The Independent Communications Authority of South Africa (“the Authority”) has exclusive responsibility for allocating to contesting political parties party election broadcasts on public broadcast radio stations and on any other stations choosing to broadcast party election broadcasts.

The IBA Act directs the Authority to ensure contesting parties are treated equitably. Equitable treatment is defined in South African law and international precedent as fair.

Three factors have been taken into account when developing the formula by which parties will be allocated Party Election Broadcast slots:

- The need for all parties to be heard by voters who could vote for them.

This factor serves as a numerical filter, to ensure that the electorate is afforded an opportunity to hear all parties potentially exercising influence in policy decisions affecting their lives.

This factor serves to limit the time differential between parties occupying and contesting a large number of seats and those contesting fewer seats.

- Historical record – current seats in municipalities countrywide.
- The number of seats parties are contesting in municipalities countrywide.

In developing the formula for allocating Party Election Broadcasts, the Authority has taken account of the fact that South African radio stations cover different municipalities.

All national stations, covering all nine provincial legislative areas, will thus be required to carry Party Election Broadcasts from parties contesting seats in all municipalities countrywide.

Party Election Broadcasts are allocated on a points system, with points accruing to each party on the basis of a minimum and equal allocation to all parties contesting the election, its historical record, and the number of seats it is contesting.

National Statlons' Formula

Basic Allocation	
All parties contesting the municipal elections.	30 points
Number of Seats Currently Held	
Based on current seats in municipalities countrywide pro rata	70 points

Regional Stations' Formula

Basic Allocation	
All parties contesting the municipal elections.	30 points
Number of seats currently held	
Based on current seats in municipalities countrywide pro rata	70 points

ANNEXURE C

GUIDELINES

1. INTRODUCTION

These guidelines are intended to outline a general approach that should be adopted by broadcasting licensees in their coverage of the 2006 general elections. General elections are an important public event and they clearly fall within the area of news and current affairs. Broadcasting 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. Broadcasters' 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 61 of the IBA 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 extends to the field of elections, political parties and issues relevant thereto, the broadcasting licensee concerned shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably.
- (2) In the event of any criticism against a political party being leveled in a particular programme of any broadcasting service 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 licensee concerned shall 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 licensee intends broadcasting a programme in which a particular political party is criticized, the licensee shall 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

Three principles of equitability:

3.1. Equitable treatment does not mean equal treatment

The Authority will not expect broadcasting services to distort their news values and processes by giving the same weight to small or one-person parties as they do to serious contenders for a place in national or provincial government.

3.2 Equitable treatment means fair treatment

Each broadcasting service 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 should be consistent in its treatment of contesting parties and of conflicting views.

3.3 Broadcasters must seek out information.

Broadcasters should recognise their obligation to the electorate to provide a full and accurate record of events and developments. Broadcasters 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 broadcasters 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 broadcaster should afford all political parties reasonable opportunity to respond to criticism broadcast by that broadcaster. However, affording parties reasonable time to respond should not amount to forcing broadcasters 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, broadcasters must have the flexibility to incorporate responses into their formal news patterns. With regard to damaging criticisms, broadcasters 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, broadcasters must recognise that government officials are in a position to use their incumbency to advance their electoral prospects. During the election period, broadcasters should regard with particular caution any statement or action by an official of an incumbent party. In particular, broadcasters 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 were 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

Broadcasters, particularly the public broadcaster, 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 broadcasters covering the elections within which the system of Party Election Broadcasts and political advertising will operate.
