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GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

No. R. 247

3 March 2009



Pinmill Farm, 164 Katherine Street, Sandton
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**REGULATIONS ON PARTY ELECTION BROADCASTS, POLITICAL
ADVERTISEMENTS, THE EQUITABLE TREATMENT OF POLITICAL PARTIES
BY BROADCASTING LICENSEES AND RELATED MATTERS**

I, Paris Mashile, Chairperson of the Independent Communications Authority of South Africa ("The Authority") acting on behalf of the Council of The Authority confirm the approval of the amended regulations in the schedule made by the Authority in terms of section 4(1) of the Electronic Communications Act, 2005 (Act No.36 of 2005) read with section 4(3) (j) of the Independent Communications Authority of South Africa Act, 2000 (Act No.13 of 2000).

The Authority also confirms the provisions of section 58(2) of the Act, whereby a political advertisement may only be broadcast during an election period by a broadcasting service licensee.



PARIS MASHILE
CHAIRPERSON

Schedule

1. Definitions

In these regulations, any 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);

“BSL” means broadcasting service licensee;

“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 ICASA 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);

“**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;

“**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 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 period.

- (2) A party that intends to broadcast a PEB must submit same to the broadcasting service licensee at least ninety six (96) hours prior to the broadcast thereof;
- (3) A commercial or community broadcasting service licensee that intends to broadcast PEB must inform the Authority, in writing, of its intention to do so ninety (90) days prior the election period;
- (4) A broadcasting service licensee that is obliged, or intends to broadcast PEB must ensure that the PEB received 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 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 72 hours 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 24 hours notify the Authority of such rejection and must also furnish to the Authority written reasons for the rejection;
- (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 24 hours of being informed in writing of the rejection;

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- (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 non 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 of not exceeding two minutes each;
 - (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;
 - (d) 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) A broadcasting service licensee must not transmit a PEB immediately before or after another PEB or PA.

- (15) PEB air-time allocated to but not used by a party shall be forfeited by the party concerned.
- (16) If a party fails to deliver the PEB to the broadcasting service licensee before the expiry of 72 hours prior to the broadcasting thereof, then the party is deemed to have forfeited its allocated airtime.
- (17) 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.
- (18) 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).
- (19) 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).

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 national and provincial 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
- (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 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 72 hours 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 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 24 hours of being informed of the rejection.
- (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 that person may lodge a complaint with the Authority within 48 hours after such broadcast has occurred.

8. General

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;
- (b) Within 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 regulations are called Party Elections Broadcasts and Political Advertisements Regulations, 2009 and will come into force upon publication in the Government Gazette.

SCHEDULE 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.

Formula

Basic Allocation	25 points
All parties contesting seats in the National Assembly.	
National Allocation List	25 points
Based on the number of candidates fielded by a party on the national assembly list, with 200 securing 25 points and those fielding fewer candidates securing points on a pro rata basis.	
National Assembly Regional List Allocation	25 points
Based on the number of candidates fielded by a party on the national assembly's regional list, with 200 securing 25 points and those fielding fewer candidates securing points on a pro rata basis.	
Provincial List Allocation	25 points
Based on the number of provincial legislature candidates fielded by each party throughout the country, with a party fielding the maximum securing 25 points and parties fielding fewer candidates securing points on a pro rata basis.	