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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**GENERAL NOTICE 588 OF 2021****INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA
(ICASA)**

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

The Independent Communications Authority of South Africa ("the Authority") hereby, in terms of section 4 (7)(b) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended, amends the Municipal Elections Party Elections Broadcasts and Political Advertisements Regulations, 2011 published on 8 March 2011 in Government Gazette No. 34086 to the extent reflected in the Schedule.

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

DR. KEABETSWE MODIMOENG**CHAIRPERSON****DATE: 05/10/2021**

ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005) REGULATIONS

The Authority has, under 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) as amended, made the Regulations in the Schedule.

SCHEDULE

1. Definitions

“The Regulations” means the regulations published by the Authority under Government Notice No. 203 (Gazette No. 34086) of 8 March 2011 as amended by Government Notices No. 3 (Gazette No. 39738) of 26 February 2016 and No. 161 (Gazette No. 44370) of 31 March 2021.

2. Substitution of Annexure A of the Regulations

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

“ANNEXURE A”

SCHEDULE 1

PROVINCIAL PRINCIPLES OF PEB AIRTIME ALLOCATION

Basic Allocation
Percentage of slots to be allocated to all parties and independent candidates contesting seats in the Municipal Elections.
*District and Metropolitan Municipalities
Percentage of slots to be allocated according to the number of District and

Metropolitan Municipalities that the political parties are contesting within the province
*Proportional Representation District and/or Metropolitan
The number of seats currently held at District and/or Metropolitan

*The allocation of slots for the second and third principles will be based on the availability of the balance of the slots after basic allocation.

NATIONAL PRINCIPLES OF PEB AIRTIME ALLOCATION

Basic Allocation
Percentage of slots to be allocated to all political parties contesting seats in the Municipal Elections. 50%
Contested District and Metropolitan Municipalities
Percentage of slots to be allocated according to the number of District and Metropolitan Municipalities that the political parties are contesting within the province – 25%
Proportional representation District and/or Metropolitan
The number of seats currently held at District and/or Metropolitan – 25%

3. Short Title and Commencement

These Regulations are called the Municipal Elections Party Elections Broadcasts and Political Advertisements Third Amendment Regulations, 2021 and will come into operation upon the date of publication in the Government Gazette.

AMENDMENT OF THE MUNICIPAL ELECTIONS BROADCASTS AND POLITICAL ADVERTISEMENTS REGULATIONS, 2021

REASONS FOR DECISION

OCTOBER 2021

1. INTRODUCTION

- 1.1. The Independent Communications Authority of South Africa (“the Authority”) has published the third amendment to the Municipal Elections Party Elections Broadcast and Political Advertisements Amendment Regulations, 2011 (“the Regulations”).
- 1.2. The purpose of this Reasons Document is to outline the Authority’s reasons in relation to its decision to amend the Regulations.

2. LEGISLATIVE FRAMEWORK

In reviewing and amending Annexure A of the Regulations, the Authority was guided by the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (“the ICASA Act”) and the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“the ECA”).

2.1. THE ICASA

Section 4(3)(j) of the ICASA Act empowers the Authority to 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 the functions of the Authority.

2.2. THE ECA

- 2.2.1. Section 4(1) of the ECA empowers the Authority to make regulations regarding any matter which in terms of this Act or

related legislation must or may be prescribed, governed, or determined by regulation. In this regard and without derogating from the generality of this subsection, the Authority may make regulations with regard to-

(b) any matter of procedure or form which may be necessary or expedient to prescribe for the purposes of this Act or the related legislation.

2.2.2. In addition to the above, section 4(7)(b) of the ECA empowers the Authority to make any regulation that the public interest requires should be made without delay.

2.2.3. Sections 56, 57, 58, and 59 empower the Authority to regulate and monitor Party Elections Broadcasts ("PEB's"), Political Advertisements ("PA's"), and treatment of political parties by broadcasting Licensees during the election period.

3. THE PROCESS

3.1. The Authority is enjoined to regulate, amongst others, broadcasting, and electronic communications in the public interest.

3.2. In relation to the process adopted for amending Annexure A of the Regulations, the Authority considered section 4(7)(b) of the ECA that empowers the Authority to make any regulation that the public interest requires without delay.

3.3. Following the Constitutional Court judgment handed down on 11 June 2020¹, the Constitutional Court ruled that Parliament was to change the

¹ *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* [2020] ZACC 11.

Electoral Act to include provisions that allow independent candidates to compete in national elections.

- 3.4. Not only has the law been permitting the independent candidates to contest Municipal Elections for the past years, but the Constitutional court judgment has upheld the right of independent candidates to contest at the national and provincial level.
- 3.5. To that end, the Authority amended the Regulations to make provision for the allocation of slots to both political parties and independent candidates. This was unprecedented and meant that not only was the Authority cognisant of its Constitutional mandate, but it also meant the Authority also contributes to ensuring free and fair elections.
- 3.6. In 2020, the Authority consulted on the draft Municipal Elections Party Elections Broadcasts and Political Advertisements Amendment Regulations, which was intended to amend the Elections Party Elections Broadcasts and Political Advertisements Amendment Regulations, 2011.
- 3.7. On 31 March 2021, the Authority published the final Municipal Elections Party Elections Broadcasts and Political Advertisements Amendment Regulations, 2021² ("Final Amended Regulations"). The Final Amended Regulations contained the principles of allocation of the PEB slots to both political parties and independent candidates as follows:

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%

² A second amendment to the 2011 Regulations.

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%

3.8. As stated above, the inclusion of the independent candidates for the allocation of PEB broadcast slots was unprecedented and thus presented challenges.

3.9. The Authority received the list of independent candidates and political parties from the Independent Electoral Commission on 4 October 2021 and the number far exceeded the number of the PEB slots that are available based on the previous principles of allocation. The Municipal Elections will take place on 1 November 2021 and PEBs must be broadcast during the election broadcast period, despite the challenge.

3.10. Previously, the PEBs for municipal elections broadcast did not include the independent candidates and in the upcoming municipal elections, the number of political parties has increased. Consequently, this means that the number of the available PEB slots for the registered participants will not be sufficient to allocate to all participants. Therefore, the current principle of allocation that the Authority usually applies is not adequate to address the challenge stated above.

3.11. Thus, to ensure that those contesting the elections have an opportunity to be allocated slots, the Authority deemed it fit to amend the principles as follows:

PROVINCIAL PRINCIPLES OF PEB AIRTIME ALLOCATION

<p>Basic Allocation</p> <p>Percentage of slots to be allocated to all parties and independent candidates contesting seats in the Municipal Elections.</p>
<p>*District and Metropolitan Municipalities</p> <p>Percentage of slots to be allocated according to the number of District and Metropolitan Municipalities that the parties are contesting within the province</p>
<p>*Proportional Representation District and/or Metropolitan</p> <p>The number of seats currently held at District and/or Metropolitan</p>

*The allocation of slots for the second and third principles will be based on the availability of the balance of the slots after basic allocation.

NATIONAL PRINCIPLES OF PEB AIRTIME ALLOCATION

<p>Basic Allocation</p> <p>Percentage of slots to be allocated to all parties contesting seats in the Municipal Elections. 50%</p>
<p>Contested District and Metropolitan Municipalities</p> <p>Percentage of slots to be allocated according to the number of District and Metropolitan Municipalities that the parties are contesting within the province - 25%</p>
<p>Proportional representation District and/or Metropolitan</p> <p>The number of seats currently held at District and/or Metropolitan - 25%</p>

3.12. The amended principles will ensure that there is an efficient use of broadcast airtime with targeted audiences and to obtain maximum impact electoral messaging disseminated by political parties and

independent candidates. Further, this amendment seeks to ensure that there is equitable access to PEB messaging.

3.13. Considering that the election date is 1 November 2021, and that the Authority only received the list for independent candidates and political parties from the IEC on 4 October 2021, it thus became paramount for the Authority to act swiftly and reconsider the principles to ensure that independent candidates and political parties are treated equitably and have access to a PEB slot.

3.14. In addition, the amendments will ensure that the public has an opportunity to be provided with information regarding the elections contestants in their local/district municipality to enable them to make an informed decision on who to vote for and also to ensure that their rights in terms of section 19 (i.e. Political Rights) of the Constitution are fully realised and protected.

3.15. The amended Regulation will allow for equitable allocation of slots to consider the significant number of political parties and independent candidates. In considering section 4(7)(b) of the ECA against the consultation process, the Authority took into account that consultation will lead to late allocation of slots and significantly lower the number of slots available for political parties and independent candidates to communicate their messaging. This, in the Authority's view, will negatively impact voter awareness and education. Accordingly, it is the Authority's view that the public interest centres around the number of PEBs dedicated to voter education and awareness.

3.16. It is on the above premise that the Authority decided to invoke the provisions of section 4 (7)(b) of the ECA and not consult on the amended annexure A due to the fact that the public interest require that the Regulations be amended without delay.

4. CONCLUSION

The amended principles in Annexure A of the Regulations will ensure equitable allocation of PEBs thereby providing all registered and contesting political parties and individual candidates PEBs broadcast on applicable broadcast media.

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