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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 4432 **26 February 2024**

AMENDMENT TO THE NATIONAL AND PROVINCIAL PARTY ELECTIONS BROADCASTS AND POLITICAL ADVERTISEMENTS REGULATIONS, 2014

I, Yolisa Kedama, Acting Chairperson of the Independent Communications Authority of South Africa ("**ICASA**" or "**the Authority**") hereby publish an amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014 ("**the Regulations**") 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), to the extent reflected in the Schedule.

YOLISA KEDAMA
ACTING CHAIRPERSON
DATE: 22/02/**2024**

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

AMENDMENT TO THE NATIONAL AND PROVINCIAL PARTY ELECTIONS BROADCASTS AND POLITICAL ADVERTISEMENTS REGULATIONS, 2014

The Independent Communications Authority of South Africa 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), made the regulations in the Schedule.

SCHEDULE

1. DEFINITIONS

In these regulations "the Regulations" means the Regulations published by Government Notice No. 101 (Government Gazette No. 37350) of 17 February 2014, as amended by Government Notice No. 245 (Government Gazette No. 42249) of 25 February 2019 and Government Notice No. 534 (Government Gazette No. 42374) of 2 April 2019.

2. Amendment of regulation 1 of the Regulations

Regulation 1 of the Regulations is hereby amended –

2.1 by the deletion of the definition of "Commission" after the definition of "CCC Regulations";

2.2 by the substitution of the definition of "election broadcast period", after the definition of "Current Affairs Programme", for the following definition:

""**election broadcast period**" means the period within which political election broadcasts may be transmitted, such period commencing after the publication of the PEB slots by the Authority and ending 48 hours before polling commences";

2.3 by the deletion of the definition of "Electoral Commission Act" after the definition of "Electoral Code";

2.4 by the insertion after the definition of "ICASA Act" of the following definition:

""**Independent candidate**" means a South African citizen contesting an election and who is not nominated on a list of a party contesting an election";

2.5 by the substitution of the definition of "PA", after the definition of "News", of the following definition:

""**PA**" or "**political advertisement**" means an advertisement broadcast on a broadcasting service which is intended or calculated to advance the interests of any particular political party or independent candidate, for which advertisement the relevant broadcasting service licensee has received or is to receive, directly or indirectly, any money or other consideration";

2.6 by the substitution of the definition of "PEB", after the definition of "Party" of the following definition:

""**PEB**" or "**political election broadcast**" means a direct address or message broadcast free of charge on a broadcasting service during an election period and which is intended or calculated to advance the interests of any particular political party or an independent candidate";

2.7 by the deletion of the definition of "party", after the definition of "PA";

2.8 by the deletion of the definition of "polling day" after the definition of "PEB"; and

2.9 by the deletion of the definition of "SABC" after the definition of "polling day".

3. Substitution of regulation 3 of the Regulations

The following regulation is hereby substituted for regulation 3 of the Regulations:

"3. Scope of these Regulations

These regulations are applicable during the election period to:

(a) broadcasting service licensees;
(b) political parties contesting the national and provincial elections; and
(c) independent candidates contesting the national and provincial elections.

4. Amendment of regulation 4 of the Regulations

Regulation 4 of the Regulations is hereby amended-

4.1 by the substitution for sub-regulation (2) of the following sub-regulation:

"(2)"; A political party or independent candidate that wishes to have its PEB broadcast must submit same to BSL within five (5) calendar days after the publication of the list of BSLs that will be carrying PEBs in the Gazette.

4.2 by the substitution in sub-regulation (4) for the words "thirty (30) days" of the words "twenty (20) calendar days";

4.3 by the substitution in sub-regulation (6) for the word "party" of the words "political party or an independent candidate";

4.4 by the substitution for sub-regulation (7) of the following sub-regulation:

(7) A BSL that rejects a PEB submitted by a political party or an independent candidate for broadcast, must within five (5) days of receipt of such PEB:

(a) furnish the political party or independent candidate concerned with written reasons for the rejection; and

(b) afford the political party or independent candidate concerned an opportunity, within two (2) days after receiving the rejected PEB, to alter or edit the PEB and re-submit it to the BSL concerned or confirm in writing that it will not be re-submitting the PEB";

4.5 by the substitution for sub-regulation (8) of the following sub-regulation:

"(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, the BSL must within two (2) days notify the Authority of such rejection and must also furnish to the Authority written reasons for the rejection.";

4.6 by the substitution in sub-regulation (9) for the word "party" of the words "political party or an independent candidate";

4.7 by the substitution for sub-regulation (10) of the following sub-regulation:

"(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.";

4.8 by the substitution for sub-regulation (11) of the following sub-regulation:

"(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.";

4.9 by the substitution in sub-regulation (12) of the word "party" for the words "political party or an independent candidate";

4.10 by the substitution in sub-regulation (13) for the word "party" of the words "political party or an independent candidate";

4.11 by the substitution for paragraphs (a), (c) and (d) in sub-regulation (14) of the following paragraphs:

"(a) make available, every day, throughout the election broadcast period, twelve (12) time slots of forty (40) seconds each for the broadcast of PEB, excluding the tail disclaimer;

(c) ensure that all PEB disclaimers are announced in a similar manner;

(d) ensure that all PEBs broadcasts are clearly identified through a standard pre-recorded concluding message (tail) disclaimer";

4.12 by the substitution in sub-regulation (15) of the word "fifty (50)" for the words "forty (40)";

4.13 by the substitution in sub-regulation (17) for the word "transmit" of the word "broadcast";

4.14 by the substitution in sub-regulation (18) for the word "party" of the words "political party or an independent candidate";

4.15 by the substitution for sub-regulation (19) of the following sub-regulation:

"(19) If a political party or an independent candidate fails to deliver the PEB to the BSL within 5 calendar days after publication of the list of commercial and community broadcasters that will be carrying PEBs, then the political party or independent candidate is deemed to have forfeited its allocated airtime.";

4.16 by the substitution in sub-regulation (20) for the word "party" of the words "political party or an independent candidate";

4.17 by the substitution in sub-regulation (21) for the word "party" of the words "political party or an independent candidate";

4.18 by the substitution in sub-regulation (22) for the word "party" of the words "political party or an independent candidate";

4.19 by the substitution for sub-regulation (23) of the following sub-regulation:

"(23) In the event that a political party or independent candidate has complied with the requirements of this 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, the BSL after consulting the Authority shall broadcast the PEB within forty-eight (48) hours from the date on which the PEB was scheduled.";

4.20 by the deletion of sub-regulation (24);

4.21 by the addition of the following sub-regulation:

"(26) A Low Power Broadcasting Service Licensee must not broadcast a PEB."

5. Amendment of regulation 5 of the Regulations

Regulation 5 of the Regulations is hereby amended by the insertion of the words "or independent candidates" after the words "political parties";

6. Substitution of regulation 6 in the Regulations

The following regulation is hereby substituted for regulation 6 of the Regulations:

"**6. Political Advertisements**

(1) PA must only be broadcast during the election period and no later than forty-eight (48) hours before polling commences.

(2) A BSL that intends to broadcast a PA must inform the Authority, in writing, of its intention to do so within twenty (20) calendar days of the publication of these Regulations.

(3) A BSL 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.

(4) Each PA submitted to the BSL 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.

(5) 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.

(6) A political party or an independent candidate whose PA has been rejected and disputes the rejection, and 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.

(7) Any complaint lodged with the Authority in terms of sub-regulation (6) will be addressed by the Authority in accordance with regulation 6 of the CCC Regulations.

(8) Subject to sub-regulation (7), 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.

(9) A political party or an independent candidate that submits a PA to a BSL for broadcast must ensure that the PA 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 political party or an independent candidate that submits a PA 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.

(11) A BSL must not broadcast a PA immediately before or after another PA or PEB.

(12) Content broadcast as a PA must not be broadcast as a PEB.

(13) A BSL that broadcasts a PA must ensure that all PA broadcasts are clearly identified through a standard pre-recorded concluding message (tail) disclaimer.

(14) A BSL that broadcasts a PA must ensure that all PA disclaimers are announced in a similar manner.

(15) A Low Power Broadcasting Service Licensee must not broadcast a PA.

7. Amendment of regulation 7 of the Regulations

Regulation 7 of the Regulations is hereby amended by –

7.1 the substitution in sub-regulation (1) for the words "48 hours" of the words "five (5) days";

7.2 the substitution in sub-regulation (3) for the words "within 48 hours of" of the words "after"; and

8. Amendment of regulation 8 of the Regulations

Regulation 8 of the Regulations is hereby amended –

8.1 by the substitution in sub-regulation (1) for the word "party" of the words "political party and independent candidate";

8.2 by the substitution in paragraph (a) of sub-regulation (1) for the word "party" of the words "political party and independent candidate";

8.3 by the substitution in paragraph (b) of sub-regulation (1) for the word "30 days" of the words "twenty (20) calendar days";

8.4 by the addition of the following sub-regulation:

(1)(c) The broadcasting service licensees that intends to broadcast PEBs and/or PA should inform the Authority by writing an email to **BroadcastingCompliance@icasa.org.za**.";

8.5 by the substitution for sub-regulation (2) of the following sub-regulation:

"(2) The Authority and a BSL will 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."; and

8.6 by the addition of the following sub regulation:

"(3) A political party or an independent candidate must direct all communications in respect of PEBs 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."

9. Short Title and Commencement

These regulations are called the National and Provincial Elections Broadcasts and Political Advertisements Amendment Regulations, 2024 and will come into force upon publication in the Government Gazette.

10. Substitution of Annexure A of the Regulations

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

"ANNEXURE A

PRINCIPLES FOR AIRTIME ALLOCATION IN RESPECT OF PEBS

The allocation principles in Table 1 below will apply if there are sufficient PEB slots to accommodate all the contesting political parties and independent candidates.

Table 1:

Basic Allocation Percentage of slots to be allocated to all political parties and independent candidates contesting seats in the National and Provincial Elections. 60%
Number of Candidates fielded Percentage of slots to be allocated according to the number of candidates fielded by political parties and independent candidates at National and Provincial level. 25%
Number of Seats Currently Held Percentage of slots to be allocated to political parties according to seats currently held at National and Provincial level. 15%

The allocation principles in Table 2 below will apply if there are insufficient PEB slots to accommodate all the contesting political parties and independent candidates.

Table 2:

Basic Allocation Number of slots to be allocated to all political parties and independent

candidates contesting seats in the National and Provincial Elections.
Number of Candidates Fielded Number of slots to be allocated according to the number of candidates fielded by political parties and independent candidates at National and Provincial level.
Number of Seats Currently Held Number of slots to be allocated to political parties according to seats currently held at National and Provincial level.

11. Amendment of Annexure B of the Regulations

The following Annexure is hereby substituted for Annexure B of the Regulations:

"**ANNEXURE B**

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 national and provincial 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 political parties and independent candidates 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 political parties and independent candidates 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 political parties and

independent candidates 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 interested political parties and independent candidates concerned.
(b) Care should be taken to balance the exposure given to the non-political activities of political parties and independent candidates (such as attendance at functions, sporting events, etc).
(c) All political parties and independent candidates should receive equitable treatment on current affairs programmes. If the programme intends to feature political party representatives or an independent candidate, other political parties and independent candidates 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 political parties and independent candidates 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 political parties or independent candidates 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 political party or independent candidate an opportunity to respond. The political party or independent candidate 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 political party or independent candidate. In particular, BSLs need to ensure that, during the election period, they do not afford the policies of incumbent parties or independent candidates greater legitimacy than they would afford those policies or actions if the political party or independent candidate 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 political party or independent candidate.

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. GUIDELINE FOR PRE-RECORDED PROMO FOR COMPLAINTS

The Authority hereby provides an example of the wording for the promo in line with section 7(4) of the Regulations as follows:

"*Any person aggrieved by any Political Advertisement or Political Election Broadcast that is broadcast by [insert name of station] may lodge a complaint within 5 days from broadcast with the Independent Communications Authority of South Africa (ICASA). To lodge your complaint, please contact ICASA's Compliance Department via telephone number on* ***012 568 3233*** *or email* ***BroadcastingCompliance@icasa.org.za*** *and* ***Complaintsccc@icasa.org.za***" (The contact_details of ICASA should be repeated twice).

6. HOW LICENSEES CAN INFORM THE AUTHORITY OF THEIR INTENTION TO BROADCAST PEBS AND PAS

A broadcasting service licensees that intends to broadcast PEBs and/or PA must inform the Authority by writing an email to **BroadcastingCompliance@icasa.org.za**. For inquiries, broadcasters may call Ms Busisiwe Mashigo at **012 568 3233/0725939294**.

7. CONCLUSION

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

12. Substitution of Annexure C of the Regulations

The following Annexure is hereby substituted for Annexure C of the Regulations:

"ANNEXURE C

TECHNICAL STANDARDS AND QUALITY

Audio and video recordings must be clearly labelled to indicate the name of the political party or independent candidate and nominated representative.

Audio and video recordings must be submitted electronically or physically to the BSL.

HD (High Definition)

- Commercials to comply with the 1920 x 1080i HD Standard in a 16:9 aspect ratio at 25 frames per second
- Digital Audio Reference level is defined as 18dB below the maximum coding value (-18dBFS) as per EBU recommended practice R128.
- Timecode of commercial start is at 10:00:00:00.
- Stereo audio on tracks 1&2, (Any additional audio tracks should not be MUTE but rather be duplicates of track 1&2)
- Fade to silence at commercials end.

File format:
MXF OP-1a (SMPTE 378M), XDCAM HD 422

Video:
Codec: MPEG-2 422P@HL LongGOP
Bit rate mode Constant
Bit rate: 50 Mb/s (CBR)
Resolution: 1920 x 1080
Interlacing: Upper Field First
Display aspect ratio 16:9

Frame rate: 25 fps (50i).

Audio:

Track 1 (AES1) Stereo Left / Lt

Track 2 (AES1) Stereo Right / Rt

Codec: Uncompressed (PCM)

Sample Rate: 48 kHz,

Sampling Size: 24 bit

Additional tracks: Duplicate tracks 1&2."

Independent Communications Authority of South Africa
350 Witch-Hazel Avenue, Eco Point Office Park
Eco Park, Centurion

REASONS DOCUMENT

AMENDMENT TO THE NATIONAL AND PROVINCIAL PARTY ELECTIONS BROADCASTS AND POLITICAL ADVERTISEMENTS REGULATIONS

February 2024

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1. ACKNOWLEDGEMENTS

1.1 The Independent Communications Authority of South Africa ("the Authority/ICASA") hereby acknowledges and thanks all stakeholders who participated in the process of reviewing the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014.

1.2 The following stakeholders submitted written representations to the Authority on the ICASA's Draft National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2023[1]:

1.2.1 Barberton Community Radio,
1.2.2 Consumer Advisory Panel (CAP),
1.2.3 Democratic Alliance (DA),
1.2.4 Kanyamazane Community Radio,
1.2.5 Mkhondo FM,
1.2.6 Mutsindo Community Media Trust (MCMT),
1.2.7 Rosestad 100.6fm,
1.2.8 South African Broadcasting Corporation ("SABC"); and
1.2.9 Voice of the Community.

[1] The Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2023, published in Government Gazette 49406, of 4 October 2023.

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2. INTRODUCTION

2.1 The Authority is empowered by sections 4(1), 56, 57, 58 and 59 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), ("ECA") to develop Regulations in respect of Party Election Broadcasts (PEBs) and Political Advertisements (PAs). Therefore, the Authority is reviewing the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014, in line with section 56 to 59 of the ECA. Furthermore, section 4(3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act") provides that the Authority 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 the functions of the Authority.

2.2 On 4 October 2023, the Authority published the Draft Amendment to National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2023 (Draft Regulations)[2].

2.3 Subsequent to the publication of the Draft Regulations, the Authority held provincial workshops from 24 October 2023 to 3 November 2023. In addition to physical workshops conducted in all provinces, a virtual workshop was held on 9 November 2023. The Authority invited written representations on the Draft Regulations with the closing date of 17 November 2023.

2.4 The Authority received nine (9) written submissions from the stakeholders listed in paragraph 1.2 above.

2.5 On 8 December 2023, the Authority held virtual public hearings where the SABC, CAP and DA made oral submissions.

[2] Published in Government Gazette 49406 of 04 October 2023

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2.6 The Authority considered the written and oral representations and developed the final regulations and Reasons Document. The purpose of the Reasons Document is to provide reasons for the Authority's decisions on the final Regulations.

2.7 The following sections contain the analysis of the written and oral submissions, and the Authority's reasons for decisions.

3. ANALYSIS

The submissions herein provide stakeholders' inputs on the Draft National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2023[3] and the Authority's decisions thereof.

3.1 DEFINITIONS

3.1.1 Mutsindo Community Media Trust ("**MCMT**") proposes that the definition of "party election broadcasts" be revised to read "political election broadcast" in order to cater for independent candidates.[4]

3.1.2 CAP suggests that the Authority reconsiders the use of Party Election Broadcasts (PEB), as it is of the view that the definition is limited to political parties and excludes independent candidates. CAP further suggests that it might be a good idea to reformulate the term to be inclusive of all types of candidates. As a result, CAP proposes that the Authority consider a generic term such as Candidate Election Broadcasts that would be more inclusive and

[3] The Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2023, published in Government Gazette 49406, of 4 October 2023.
[4] Mutsindo Community Media Trust submission on Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 16 November 2023, page 1.

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could always be amended in line with the type of elections either municipal or national, whenever applicable.[5]

The Authority's decision

3.1.3 The Authority supports the proposed amendment and is of the view that the proposed definition of "political election broadcasts" is inclusive, and in line with the purports of the Constitutional Court judgement.

3.2 PARTY ELECTION BROADCASTS

3.2.1 Regulation 4(2) and 4(7)

3.2.1.1 MCMT proposes that regulation 4(2) of the Regulations be amended to read:

"(2) A political party or an independent candidate who wishes to have its PEB broadcast must submit same to the BSL within five (5) working days after the date of the proclamation of the election date, ***whereafter BSL will be afforded a five (5) working day period within which to ensure that all PEBs submitted comply with the Regulations***".[6]

3.2.1.2 According to MCMT, for community BSL that wishes to participate in the broadcast of PEBs, the five working days of receiving all the PEBs and having to go through all the content and ensuring that they meet all the technical requirements, and write back to them for confirmation amongst other issues will be a logistical challenge. Therefore, MCMT proposes that BSL be afforded an additional five days after the date of submission to go through the content and then reply to all the submissions accordingly.[7]

[5] Consumer Advisory Panel submission on CAP Comments on the "Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014", 17 November 2023, page 05.
[6] Mutsindo Community Media Trust submission on Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 16 November 2023, page 2.
[7] Ibid.

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The Authority's decision

3.2.1.3 The Authority wishes to advise that its intention is to afford BSL's five (5) working days after receipt of PEBs to go through the content of the PEB and then reply to all the submissions accordingly within the 5 working days. This is reflected in regulation 4(7), which requires BSLs that reject a PEB to furnish the political party or independent candidate concerned with written reasons for the rejection within five (5) working days after receipt of the PEB.

3.2.2 **Risk of Unused Slots**

3.2.2.1 The SABC submits that the risk of unused slots should be minimised[8].

The Authority's decision

3.2.2.2. On 20 February 2024, the President announced the election date prior to the publication of the regulations. Therefore, the Authority resolves that political parties and independent candidates that wish to have their PEBs broadcast will be afforded 5 calendar days from the publication of the list of broadcasters that will be carrying PEBs to submit their PEBs to broadcasters.

3.2.2.2 The Authority agrees with the proposal that the risk of unused slots should be minimised given the financial implications on broadcasters. However, the Authority is of the view that the risk of unused slots has been significantly addressed by the Draft Regulations in so far as Draft Regulations provide that if a political party or an independent candidate fails to deliver the PEB to the BSL before the expiry of five (5) calendar days the political party or independent candidate is deemed to have forfeited its allocated airtime.

3.2.2.3 The Authority has further reduced the duration of PEBs to mitigate the risk of unused airtime. Given that the upcoming national and provincial election

[8] SABC Submission on the National Elections Draft Regulations, 17 November 2023, page 2.

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is the first time that independent candidates will be contesting, the Authority does not have sufficient statistics regarding the number of slots needed to accommodate all contesting political parties and independent candidates and therefore cannot minimise the risk of unused slots beyond what is currently contained in the Regulations.

3.2.3 **PEBs on commercial platforms**

3.2.3.1 The SABC submits that its commercial services (SABC 3, 5FM, Metro and Goodhope FM) should not be compelled to broadcast PEBs similar to other non-SABC commercial broadcasters. To this end, SABC states that the inclusion of its commercial services would go against the spirit of the Broadcasting Act and Broadcast Policy[9].

The Authority's decision

3.2.3.2 Section 57 (8) of the ECA applies to a commercial or community broadcasting service licensee, and in terms thereof a commercial broadcasting service licensee may elect to broadcast a PEB however it is not required to broadcast PEBs. Under the circumstances the SABC is not a commercial broadcasting service licensee nor is it a community broadcasting service licensee therefore section 57 (8) does not apply to the SABC.

3.2.3.3 According to section 57(1) of the ECA, a public broadcasting service licensee must permit PEBs during the election period. Nonetheless, section 57 (2) requires the Authority to determine the duration and scheduling of PEB slots taking into account the financial and programming implications for the broadcasting services in question. Therefore, when determining slots allocations to the SABC the Authority will consider the financial and programming implications for its commercial services.

[9] Ibid, page 3.

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3.2.4 **Regulation 4(14): Duration of PEBs**

3.2.4.1 The SABC states that it supports and appreciates the reduction in the duration of the PEBs. However, it seeks clarity regarding whether the proposed amended 40-second duration of the PEB slot is inclusive of the tail disclaimer[10].

The Authority's decision

3.2.4.2 The Authority emphasise that forty (40) seconds duration of the PEB slot excludes the tail disclaimer as per regulation 4(14)(a) of the Regulations.

3.2.5 **Allocation of PEB Airtime**

3.2.5.1 Kanyamazane Community Radio submits that it shall provide the participating political parties including independent candidates an equal number on PEBs for free. Furthermore, Kanyamazane Community Radio indicates that it will charge the political parties and independent candidates an equal rate for advertising they would like to buy to advertise their parties. It states that it will do a promo to invite political parties and independent candidates to avail themselves for PEBs and for advertising their political parties.[11]

The Authority's decision

3.2.5.2 The Authority would like to clarify that the allocation of PEB slots to political parties and independent candidates is the sole responsibility of ICASA and BSLs are not allowed to allocate PEBs. Broadcasters who intend to broadcast PEBs are expected to inform the Authority of their intention to broadcast such and avail airtime to the Authority to the allocate the PEBs. The Authority will,

[10] Ibid, page 4.
[11] Kanyamazane FM submission on the Draft Regulation, the National and Provincial Party Election Broadcast, page 1.

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after allocation of PEB slots, publish the schedule that will consist of the names of political parties and independent candidates and the time of PEB broadcast allocated to those political parties and independent candidates.

3.2.5.3 PAs are a contractual relationship between the broadcaster and the political party/independent candidate concerned. Therefore, the broadcaster decides on the allocation of such. In case, where a BSL avails PA airtime to political parties, it should also avail the same to independent candidates. Any BSL that wishes to broadcast PAs and PEBs will need to inform the Authority of their intention to do so within 20 calendar days after the publication of the final Regulations.

3.2.6 **Broadcast of PEBs/PAs and other elections programming**

3.2.6.1 The Voice of Community FM is of the view that political parties should be treated with fairness during heated debates. The Voice of Community FM submits that, after going through the Draft Regulations, it believes that it can broadcast PEBs and PAs fairly and equally.[12]

The Authority's decision

3.2.6.2 The Authority agrees that PEBs and PAs should be broadcast fairly and would like to remind stakeholders that the allocation of PEB slots is the sole responsibility of ICASA. In instances, where political parties are given an opportunity to partake in debates, independent candidates should also be given such opportunity and both political parties and independent candidates should be treated equitably. In such instances, broadcasters must invite political parties and independent candidates with reasonable notice, to participate either in the same programme or in a series of programmes.

[12] Voice of Community FM submission on the National and Provincial Party Elections Broadcasts and Political Advertisement Regulations 2014, 17 November 2023, page 1.

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Equitable treatment is unlikely to be achieved in a single programme but can be achieved in a series of programmes.

3.2.7 **Allocation of PEBs during the performance period**

3.2.7.1 The SABC submits that PEBs should not be allocated during prime time in the interest of protecting the financial viability of the SABC[13].

The Authority's decision

3.2.7.2 The Authority acknowledges its obligation to take into account the financial and programming implications for broadcasting services in question when determining the time to be made available, including the duration and scheduling of PEBs to political parties and independent candidates However, the Authority is of the view that this obligation must be executed having due regard to the right of political parties and independent candidates having their voice heard and being treated equitably. Prime time slots offer political parties and independent candidates the opportunity to be heard by the majority of South Africans.

3.2.7.3 Excluding prime time slots would further mean that the performance period is reduced to only fourteen (14) hours as prime time is defined to be from 18h00 until 22h00 (four (4) hours in total). This would have negative implications on the scheduling of PEBs and would advantage political parties and independent candidates who can afford to pay for Political Advertisements during these prime-time slots.

3.2.7.4 The Authority tries to be as accommodating as possible by prescribing time slots that enable a broadcaster to be flexible in slotting in the PEB in a manner that is best suited to its programming. For example, slot one may be from 06h00 to 07h00 and the broadcaster is free to slot in the PEB anywhere

[13] SABC submission on the National Elections Draft Regulations, 17 November 2023, page 5.

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within this sixty (60) minute period. There is a risk that if PEBs are excluded from primetime it would mean that PEBs will be too concentrated during certain periods and not be spread out evenly throughout the performance period. The Authority continues to review its slot allocations before every election to ensure that the process is still relevant and results in a fair and balanced outcome for both political parties and independent candidates as well as broadcasters who participate in the broadcast of PEBs.

3.2.8 **Allocation of PEBs outside news and current affairs**

3.2.8.1 The SABC submits that during the election period, it makes an effort to broadcast all newsworthy, important, relevant and interesting political party election-related news and content in its current affairs programmes. Furthermore, it does not broadcast PAs in its radio current affairs programmes, with the view to preserve the editorial integrity of these programmes. The SABC indicates 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.[14]

The Authority's decision

3.2.8.2 The Authority is of the view that broadcasting PEBs during current affairs or immediately before or after the airing of news will not damage or have an adverse effect on the SABC's editorial policy as the PEBs come with a disclaimer which clearly stipulates that the views expressed are those of the relevant political party and independent candidates and not the public broadcaster.

[14] Ibid, page 5.

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3.2.9 **Allocation of PEBs and clock hour advertising cap**

3.2.9.1 The SABC submits that it has noted that the Draft Regulations are silent about the position of the clock hour advertising cap of twelve (12) minutes per hour and that it is its view that PEBs should not be counted towards the existing clock hour advertising cap. Thus, it is submitting that the Final Regulations should state that PEBs will not count towards the existing clock hour advertising cap. This position will allow the SABC to still generate commercial revenue for the sustenance of the Corporation[15].

The Authority's decision

3.2.9.2 The Authority would like to confirm that the PEB airtime does not contribute towards the clock hour advertising cap contained in the license conditions. Advertisements are paid for whilst the PEBs are free of charge.

3.2.10 **Allocations of PEBs slots in provinces**

3.2.10.1 The SABC submits that it supports the notion of allocating targeted and relevant PEB slots to the constituencies of contesting political parties and independent candidates. Ideally, political parties and independent candidates contesting only in a few provinces should be allocated PEB slots in the radio services mainly broadcasting in the provinces in which they are contesting elections. This will make the PEBs to be effective as they will be broadcast to the relevant constituencies only[16].

The Authority's decision

3.2.10.2 The Authority concurs that political parties or independent candidates be allocated PEB slots for where they are contesting elections.

[15] Ibid, page 5.
[16] Ibid, page 6.

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3.2.11 **Regulation 4: Cutoff date for submission of PEBs**

3.2.11.1 The DA in their submission notes the amendments that ICASA intends to provide a singular cutoff date for political parties and independent candidates to submit PEB's to BSL's to streamline processes in the election broadcast period. However, the DA disagrees with ICASA's proposed cutoff date of five (5) working days after the proclamation of the election date. Consequently, the DA proposes that political parties and independent candidates submit PEBs to BSLs within ten (10) working days of the finalisation and publication of the slot allocation[17].

3.2.11.2 The SABC states that regulation 4(2) provides for a singular cut-off date for submission of PEBs by political parties and independent candidates. The SABC supports a singular cut-off date as it will ensure that PEBs are allocated to political parties and independents who will make use of the PEB slots. The SABC has a control measure in place to ensure that all received PEBs are properly processed and acknowledged accordingly.[18]

The Authority's decision

3.2.11.3 The Authority can only allocate slots to registered political parties and independent candidates after receipt of the final candidates' list from the IEC.

3.2.11.4 The submission of PEBs to BSL during the election broadcast period in its current format provides for five working days before the broadcast date of the PEB. Any further extension in the number of days after slot allocation will drastically reduce the election broadcast period and the number of PEBs to be allocated.

[17] DA submission on Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014, 17 November 2023, page 4.
[18] The SABC submission on the National Elections Draft Regulations, 17 November 2023, page 7.

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3.2.11.5 Furthermore, the current process of submission of PEBs five working days before the broadcast date has resulted in low usage of PEBs due to PEBs not being submitted on time, not being submitted in the correct format amongst other issues and placed an administrative burden on BSL in terms of processing PEBs during the entire election broadcast period. It should also be noted that the low usage of PEBs also resulted in BSL losing revenue generating opportunity because unused allocated airtime cannot be repurposed for any other purpose in such short notice.

3.2.11.6 The once off cut-off date ensures that after submission, the only administrative process that will be done by BSL is processing the content and/or ensuring compliance with the regulations of the PEBs submitted. Furthermore, the benefits of the cut-off dates included the extended number of days for the election period within which PEBs could be broadcast and thus additional PEBs available for allocation.

3.2.11.7 Therefore, the Authority will maintain a once-off cut-off date for submission of PEBs to ensure that BSLs are given sufficient time to process the PEBs, audit the number of PEBs that have met the requirements and schedule ahead prior to allotment.

3.2.12 **Physical and online submission of PEBs**

3.2.12.1 The SABC states that in the previous elections, it has had to reject PEBs that were delivered in-person by political parties and independent candidates, on the basis of their non-compliance with prescribed technical standards. In other cases, these political parties and independent candidates had travelled from other provinces to deliver the PEBs in Auckland Park, Gauteng. This exercise could be less costly for political parties and independent candidates, if electronic submissions were made.[19]

[19] The SABC submission on the National Elections Draft Regulations, 17 November 2023, page 6.

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3.2.12.2 The SABC states that in the interest of reducing travel/operational costs on both ends, it is submitted that the regulations should encourage political parties and independent candidates to submit their PAs and PEBs materials electronically only (through Aspera or other file transfer platforms). The SABC is of the view that whilst it understands that other parties may prefer manual/in-person submissions, electronic submissions should be encouraged, as it has financial gains.[20]

The Authority's decision

3.2.12.3 The Authority acknowledges the benefits of electronic submission for political parties, independent candidates and broadcasters alike. Therefore, electronic submission has been introduced in the Regulations. However, it is important to acknowledge that not everyone has access to platforms that would enable electronic submission and therefore the Authority has decided to, in addition to electronic submission, retain the option to submit manually. This allows the political party or independent candidate to choose an option that best suits them.

3.2.13 **Regulation 4(4)**

3.2.13.1 The DA submits that ICASA proposes lowering the period in which BSLs must inform ICASA of their intention to broadcast PEBs. ICASA proposes lowering the period from thirty (30) calendar days to twenty (20) calendar days *following the finalisation of the Regulations* and argues this will allow it to allocate PEB slots earlier.

3.2.13.2 The DA proposes that the BSLs should instead notify ICASA *within 10 working days of the proclamation of the election date*. The DA motivates its arguments based on the fact that it is unclear when the President will

[20] Ibid, page 6.

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proclaim the election date, which formally begins the campaign period. This way, processes are more streamlined. It is also unclear when after being notified, ICASA must finalise and publish its slot allocation. The DA proposes that ICASA finalise and publish its slot allocation within seven (7) working days of notification by BSLs[21].

The Authority's decision

3.2.13.3 The Authority's decision is that the amendment will streamline the process in the following manner: After the publication of the Elections Regulations, a workshop will be conducted within the twenty working days after the publication of the Election Regulations to ensure that BSL are able to communicate whether they will be participating in the broadcasting of PAs and/or PEBs or non-broadcast thereof.

3.2.13.4 Once the BSLs have indicated their intention to participate in the broadcast of PAs and/or PEBs, the Authority would then publish a list of commercial and community broadcasters that will be carrying PEBs together with the SABC stations for the different provinces. This is to ensure that political parties and independent candidates are aware of the additional BSLs in addition to the public broadcasters to submit their content for broadcast in provinces where they will be contesting.

3.2.13.5 The Authority's decision is that political parties and independent candidates submit their PAs and PEBs materials electronically (through Aspera or other file transfer platforms) and/or physically through other devices prescribed in the Regulations.

3.2.14 **Regulation 4(14)(d): Pre-recorded tail disclaimers**

[21] DA submission on Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014, 17 November 2023, page 4.

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3.2.14.1 The SABC points out that in as much as it acknowledges the rationale of tail disclaimers, in terms of being identifiers of political advertising from normal programming, the responsibility of the production of these disclaimers should reside with political parties and independent candidates. The SABC states that it is its considered view that shifting this responsibility will minimize potential contraventions on the part of the SABC. According to the SABC, this risk needs to be transferred from the SABC to the political parties and independent candidates. The SABC points out that the Authority is encouraged to prescribe the wording of the tail disclaimer to be used by political parties and independent candidates to ensure uniformity.[22]

3.2.14.2 CAP supports the Authority's amendment of the disclaimer that it be before and after the advertisement, to only have the disclaimer before the advertisement. Furthermore, CAP advises that the disclaimer should also include consumer protection information, such as information to warn of explicit material and violence which is not appropriate for children or sensitive listeners and viewers, or of flashing images which may pose a threat to persons with photosensitive epilepsy.[23]

The Authority's decision

3.2.14.3 The Authority has decided to amend paragraph (d) in sub-regulation 14 to require BSL that broadcasts a PEB to clearly identifies all PEBs through only a standard pre-recorded concluding message (tail) disclaimer. Therefore, the single disclaimer at the end of a PEB is sufficient to ensure that listeners or viewers are aware that the PEB is separate from the normal programming of the BSL and that views expressed in the PEB are not the views of the BSL. To ensure the viability of the broadcasters, the Authority is of the view that removing the obligation to have two disclaimers allows BSL to fill the airtime

[22] The SABC submission on the National Elections Draft Regulations, 17 November 2023, page 7.
[23] Consumer Advisory Panel submission on CAP Comments on the "Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014", 17 November 2023, page 5

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that would have been used for a disclaimer with its normal programming Further, the usage of a single disclaimer is standard industry practice.

3.2.14.4 The Authority has decided that it is the broadcaster's responsibility to record the disclaimer. This decision is aligned with industry practice and allows the broadcaster to have control over the disclaimers (including the length and wording).

3.2.14.5 The Authority notes that the disclaimer should also include consumer protection information. In this regard, the Code of Conduct for broadcasters[24] will be sufficient to protect consumers against explicit material, violence and other harmful content.

3.2.15 **Regulation 4(24)**

3.2.15.1 The SABC supports regulation 4(24) which gives political parties and the independent candidates that will have submitted the PEB material to BSL in accordance with regulation 4(2), the opportunity to surrender PEB slots that will not be utilized. The SABC further submits that should political parties and independent candidates not respond in accordance with regulation 4(24) they should forfeit the slots. The SABC further suggests that the Authority should provide for a deeming provision indicating that failure to respond to the Authority will automate the forfeiture of the PEB slot.[25]

3.2.15.2 The SABC further supports the provision of regulation 4(19) stating that if political parties and independent candidates do not adhere to the singular cut-off date for submission of PEB material, they will be deemed to have forfeited their allocated airtime. This position will allow the SABC to utilize unused airtime for commercial revenue and for mandate delivery.[26]

[24] Regulations regarding the Code of Conduct for Broadcasting service licensees issued in terms of section 54, published in Government Gazette 32381 of 6 July 2009
[25] The SABC submission on the National Elections Draft Regulations, 17 November 2023, page 9
[26] Ibid, page 9

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3.2.15.3 MCMT proposes deletion of regulation 4(24). According to MCMT regulation 4(24) will provide additional logistics for BSLs, political parties and independent candidates, and is of the view that parties should not "pick and choose which slot they prefer".[27]

The Authority's decision

3.2.15.4 The Authority notes the different views of the stakeholders regarding regulation 4(24). The Authority is of the view that regulation 4(19) is sufficient in reducing the risk of unused slots. Regulation 4(19) provides that if a political party or an independent candidate fails to deliver the PEB to the BSL within 5 calendar days after publication of the list of broadcasters that will be carrying PEBs, then the political party or independent candidate is deemed to have forfeited its allocated airtime.

3.2.16 **Principal broadcast language**

3.2.16.1 The SABC submits that it supports regulation 4(25) which facilitates that the principal broadcast language of each SABC service is honoured to reach the relevant targeted language group, as it will ensure that the PAs and PEBs reach the target language groups of each service. The SABC states that the usage of the principal broadcast language will also ensure that all official languages are adequately promoted. The SABC points out that further, universal access would be realised for audiences whose only source of news and information is radio services. The SABC states that additionally, the usage of the broadcast language of the station will reinforce the prescripts of the licence conditions. Thus, the broadcast language clause should remain as per the provisions of the previous elections.[28]

[27] Mutsindo Community Media Trust submission on Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 16 November 2023, page 2.
[28] The SABC submission on the National Elections Draft Regulations, 17 November 2023, page 7.

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The Authority's decision

3.2.16.2 The Authority clarifies that Regulation 4(25) prescribes that a PEB submitted to a broadcaster must be in the language(s) of the relevant broadcasting service licence. Therefore, the Authority confirms that a PEB may be in any of the languages reflected on the licence of the broadcaster and is not exclusively subjected to the principal language of such a broadcaster.

3.2.17 **Regulation 4(26)**

3.2.17.1 CAP proposes that regulation 4(26) which provides that Low Power Broadcasting Service Licensee must not broadcast PEBs should be amended. CAP reasons that the political adverts can be a good income stream for low-powered radio stations which are already disadvantaged in finding advertisers. Further, CAP is of the view that allowing the broadcast of PEBs by Low Power Broadcasters will give political parties and independent candidates a way to target specific areas with targeted messaging.[29]

The Authority's decision

3.2.17.2 Section 57(8) of the ECA states that "a commercial or community broadcasting service licensee is not required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provisions of this section applies, with the necessary changes." However, the Authority believes that this section will not apply to Low Power Broadcasting Services. The Authority's position is that Regulation 10B of the Standard Terms and Conditions Regulations states that Low Power Broadcasting Service licensees must source advertising only from within the coverage area. The majority of political advertisements therefore fall outside of this requirement. Further, the regulations require that low power broadcasting service licensees

[29] Consumer Advisory Panel submission on CAP Comments on the "Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014", 17 November 2023, page 05.

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broadcast programmes that are specific to their coverage areas which include malls, sports grounds, show grounds, old age homes, places of worship or any other like service. The Regulations explicitly prohibit Low Power Broadcasting Service Licensees from broadcasting news and current affairs. This sets Low Power broadcasting service licensees apart from other licensees as they do not have an obligation to inform their listeners on events relating to news and current affairs.[30]

3.3 **POLITICAL ADVERTISEMENTS**

3.3.1 **Regulation 6(2): Intention to broadcast PAs**

3.3.1.1 The DA objects to ICASA's proposal that BSLs must also notify ICASA of their intention to broadcast PAs as contained in Regulation 6(2). DA submits that PAs are not allocated slots by ICASA and are commercial agreements between political parties/independent candidates and broadcasters. They are also protected under broadcast and electoral Regulations. There is no role required of ICASA in this regard.[31]

3.3.1.2 Barberton Community Radio advises that it will broadcast only PAs and not the PEBs partly due to the volatile political situation in Barberton and surrounding areas. Barberton Community Radio mentions that it does not think that it will be able to give equitable time to all political parties and independent candidates because of the nature of the political situation in Barberton.[32]

[30] Explanatory Memorandum on the Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2023, published in Government Gazette 49406, of 4 October 2023, page 8.
[31] DA submission on Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014, 17 November 2023, page 5.
[32] Barberton Community Radio submission on Election Submissions for Barberton Community Radio 2023-2024, 17 November 2023, page 1.

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3.3.1.3 Mkhondo FM submits that they will be broadcasting National and Provincial Elections in their current affairs shows and outside broadcast events on special arranged events. Mkhondo FM also indicates that it will be interested in broadcasting PAs.[33]

The Authority's decision

3.3.1.4 The Authority has decided that participating BSLs should notify the Authority if they are going to be broadcasting PAs, PEBs or both. The notification for PAs is not for a slot allocation but is meant to ensure that all BSLs that are to broadcast PAs also comply with the Regulations and will be monitored for compliance.

3.3.1.5 The Authority reiterates that it is not compulsory for community and commercial broadcasters to broadcast PEBs or PAs. Should they choose to broadcast PAs and/or PEBs that is entirely their decision. BSLs will need to inform the Authority of the intention to broadcast PAs within 20 calendar days after the publication of the final Regulations, if they still intend to do so at that stage. Further, the Authority would like to clarify that there is no need to inform the Authority regarding the broadcast of current affairs shows and outside broadcast events on National and Provincial Elections.

3.3.2 **Regulation 6(12)**

3.3.2.1 The DA submits that regulation 6(12) of the Draft Regulations states that "Content broadcast as a PA must be broadcast as a PEB. The DA proposes that content broadcast as a PA may be broadcast as a PEB. This is to allow political parties/independent candidates more leeway in generating PEB's, as

[33] Mkhondo FM submission on the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014, 17 November 2023, page 1.

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PEB's can be costly and time-consuming. If slots are not filled, they are forfeited[34].

3.3.2.2 MCMT also submits that regulation 6(12) is "probably an error that needs to be rectified in the final regulations".[35]

The Authority's decision

3.3.2.3 There is a difference in content for PAs and content for PEBs and thus the error in the published Draft Regulations is being rectified. Content broadcast as a PEB cannot be broadcast as PA and vice versa. Regulation 6(12) should read "Content broadcast as a PA must **not** be broadcast as a PEB".

3.3.3 **Regulation 6 (15)**

3.3.3.1 MCMT is of the view that excluding Low Power Broadcasters to broadcast PAs is undue interference in the commercial activities of licences. Low Power Broadcasters are classified under class licences and part of their mechanism to make money is advertisement. MCMT proposes that the Authority leaves it up to political parties/independent candidates as to whether they would want to utilise those services.[36]

The Authority's decision

3.3.3.2 The Authority's position is that Low Power Broadcasters should not broadcast PAs as per the reasons provided under paragraph 3.2.17.2 above.

[34] DA submission on Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014, 17 November 2023, page 5.
[35] Mutsindo Community Media Trust submission on Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 16 November 2023, page 2.
[36] Ibid, page 2.

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3.4 **REGULATION 7: COMPLAINTS MANAGEMENT**

3.4.1 The SABC supports the Authority's proposed changes as per regulation 7(3) as it will foster an effective complaints management process. The SABC further submits that its proposed amendment will assure that the Complaints and Compliance Committee (CCC) rulings are effective and relevant for the election season.[37]

3.4.2 The SABC further encourages the Authority to explore a way of monitoring compliance by licensees during the election and the election broadcast period. The SABC further submits that in that way, the Authority will eliminate monitoring way after the elections and broadcasters are forced to apologize or correct material which the audience cannot relate to due to the time elapse since the incident.[38]

3.4.3 Rosestad FM submits that the Authority should prescribe the wording for the pre-recorded message informing the public of the complaints procedure related to PAs and PEBs as per Regulation 7(4) of the Draft Amendment Regulations. It reasons that this will be to ensure uniformity in all the pre-recorded messaging across all stations, and also that the correct contact details for complaints are provided, as the complaints will be addressed to the CCC.[39]

3.4.4 The DA supports ICASA's swift dispute ruling period, whereby disputes between political parties, independent candidates and broadcasters or disputes raised by members of the public must be ruled on within 24-48 hours[40].

[37] The SABC submission on the National Elections Draft Regulations, 17 November 2023, page 8
[38] Ibid, page 9
[39] Rosestad FM submission on the Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014, 17 November 2023, page 1.
[40] DA submission on Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014, 17 November 2023, page 5

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The Authority's decision

3.4.5 The Authority has dedicated resources to monitor compliance during the election period and its monitoring framework has not posed a challenge for the Authority during previous elections.

3.4.6 The Authority is of the view that the content of the pre-recorded message should be the responsibility of the broadcaster as the Authority does not get involved in the creation of broadcasting content, whether programming or messages. Similar to top and tail messages, this is the duty of the broadcaster due to their broadcasting expertise and knowledge of their audience. However, given that the Authority is for the first time introducing this obligation, the Authority provides a guideline below. Broadcasters are required to ensure that the wording is adapted to its audience and is recorded in the languages of broadcast of the licensee.

3.4.7 Example of promo:

"*Any person aggrieved by any Political Advertisement or Political Election Broadcast that is broadcast by [insert name of station] may lodge a complaint within 5 days from broadcast with the Independent Communications Authority of South Africa (ICASA). To lodge your complaint, please contact ICASA's Compliance Department via telephone number on* ***012 568 3233*** *or email* ***BroadcastingCompliance@icasa.org.za*** *and* ***Complaintsccc@icasa.org.za***". (The contact details of ICASA should be repeated twice).

3.4.8 Further, any election related disputes and matters will be dealt with in relation to Regulation 6 of the Regulations Governing Aspects of the Procedures of the CCC of ICASA.

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3.5 REGULATION 8: GENERAL

3.5.1 Rosestad FM states that the Authority amended Regulations 8(1)(b) to replace 30 days with 20 calendar days for a broadcaster to notify the Authority of their intention to carry PEBs and/or PAs. It proposes that the Authority should communicate the mechanism that broadcasters should use to inform the Authority on their intention to broadcast PA and/or PEB's.[41]

The Authority's decision

3.5.2 The broadcasting service licensees that intends to broadcast PEBs and/or PA should inform the Authority by writing an email to **BroadcastingCompliance@icasa.org.za**. Broadcasting service licensees intending to broadcast the PEBS and/or PAs should inform the Authority after the publication of the final Regulations in the government gazette.

3.6 COMPLIANCE

3.6.1 Opportunity to self-correct

3.6.1.1 The SABC submits that the Authority should consider a regulatory provision which permits the SABC to correct its mistakes during the election period. According to the SABC, the correction would be done in consultation with the Authority. Further, the SABC states that given that the implementation of elections regulations and coverage of elections are a mammoth task, in some cases technical mistakes could occur. The SABC states that in most cases these are mistakes that could be rectified. The example provided by the SABC where it can self-correct include:

a) When PAs and /or PEBs are played back to back;

b) When PAs and/or PEBs are played without tail disclaimers;

[41] Rosestad FM submission on the Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014, 17 November 2023, page 1.

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c) When PAs and/or PEBs are played outside prescribed periods.[42]

3.6.1.2 SABC points out that it should be given an opportunity to self-correct within a prescribed time period, with an apology, or a right of reply, where necessary. It states that in this manner, the Authority will see that the intention of the SABC has always been to comply with the Regulations. The SABC points out that it therefore submits that in cases where the SABC could have rectified its mistake, the Authority will be accordingly notified before it concludes the monitoring exercise.[43]

The Authority's decision

3.6.1.3 The Authority is of the view that section 4(3)(d) of the ICASA Act read with sections 56, 57, 58 and 59 of the ECA empowers the Authority to monitor and enforce compliance. The Authority is of the view that strict compliance with the regulations is important to ensure the equitable treatment of political parties and independent candidates. The Authority cannot rely on licensees to self-correct as this could result in an inconsistent application of the Regulations and compromise the realisation of this objective. The Authority is therefore not amenable to the proposal of the SABC and confirms that any non-compliance therefore will be dealt with as set out in the applicable Legislation.

3.6.2 **Penalties for non-compliance**

3.6.2.1 The SABC submits that the Authority must apply the principle of proportionate penalties when it deals with the prescribed R1 million fine for non–compliance[44]. The SABC believes that the penalties must not be extremely punitive especially during the elections because, as a public

[42] The SABC submission on the National Elections Draft Regulations, 17 November 2023, page 8.
[43] Ibid, page 8.
[44] Ibid, page 10.

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broadcaster, it has to accommodate an unprecedented high number of political parties and independent candidates. The SABC suggests that the Authority must consider if the offences were intentional or negligent, and the nature and gravity of the offences with an intention to apply leniency.

The Authority's decision

3.6.2.2 The Authority observes the SABC's appeal for lenient application of penalties. The Authority takes into consideration factors such as the gravity of non-compliance as well as factors contained in section 17E of ICASA Act when applying penalties.

3.7 ANNEXURE C: TECHNICAL STANDARDS AND QUALITY

3.7.1 The SABC supports that regulation 6(4) provides that the PA material must clearly indicate the name of the political party or independent candidate, the date, time of broadcast and relevant broadcast service. Further, Annexure C provides that audio and video recordings must indicate the name of political party or independent candidate and nominated representative.

3.7.2 The SABC amends annexure C of the Draft Regulations for High Definitions specifications that it must read as, "**Time Code of Commercial start at 10:00:00:00 but not "Timecode of commercial start is at 00:00:00:00"**[45].

The Authority's decision

3.7.3 The Authority acknowledges the amendment made by the SABC on the annexure C of Draft Regulations with regards to High-Definition specifications. The Authority decided to adopt and effects the changes in the Regulations.

[45] The SABC submission on the National and Provincial Elections Draft Regulations, 17 November 2023, page 11.

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3.8 MISCELLANEOUS

3.8.1 Consolidation

3.8.1.1 The SABC recommends that the Authority consolidate the 2014 National and Provincial Elections Regulations, 2019 National and Provincial Elections Amendment Regulations, and the 2023 National and Provincial Elections Draft Regulations into one document so that they are easy to read[46].

3.8.2 Calendar Days versus Days

3.8.2.1 The SABC notes that regulations 4(4), 6(2) and 8(1)(b) refer to "calendar days", whilst regulations 4(7), 4(8), 4(24) and 7(1) refer to "days". The SABC asserts that these terms are similar and therefore Authority must use one term in the Final Regulations to avoid confusion[47].

3.8.3 Awareness Campaigns

3.8.3.1 The SABC encourages the Authority to conduct campaigns with all the political parties and the independent candidates[48]. The SABC substantiates that this campaign drive will assist to manage the potential complaints that may be directed at it by the contesting political parties and independent candidates.

The Authority's decision

3.8.3.2 The Authority has decided to retain the different dates as reflected in the financial years they were published so as to indicate the amendments that

[46] Ibid, page 10
[47] Ibid, page 10.
[48] Ibid, page 11.

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have been effected. However, the Authority has noted the SABC's suggestion to consolidate the Regulations.

3.8.3.3 The Authority has decided to use both "calendar days" and "days" as such usage is in line with the context of the provision.

3.8.3.4 The Authority conducted provincial workshops on the Draft Regulations which aimed to solicit inputs from political parties, independent candidates, broadcasters, and other interested stakeholders. Furthermore, the Authority is available to provide clarity as and when requested regarding its Regulations.

3.8.4 **A Basic Cost Analysis to produce a 40 second television PEB/PA**

3.8.4.1 The DA submits that PEBs and PAs are treated both as advertisements with the assumption that both concept and script for the advert have been written by the political party or independent candidate and have not been outsourced. In addition, only members of the party/volunteers appear in the advert at no cost. DA further submit that for a simple, television-quality broadcast, the industry average cost for a single 40 second advert amounts to approximately R174 000 (with VAT). The breakdown of the cost components includes:[49]

- One day of shooting of two locations in proximity.
- Location fees.
- Production management.
- Crew hire – director; director of photography; technical crew; hair, make-up and wardrobe; audio engineer; lighting crew; professional assistant.
- Camera kit with lenses for fixed camera work (no aerial or moving shots).

[49] DA supplementary submission on Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014, 5 January 2024, page 03

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- On-set monitors and a teleprompter.
- Lighting equipment.
- Crew transport.
- Catering x 10 people.
- Generator costs.
- Three days of post-production, including grading, a final audio mix, a licensable audio track (without accounting for stock footage).

3.8.5 **A Basic Cost Analysis to produce a 40 second radio advert**

3.8.5.1 The DA submits that with the assumption that the advert is in English, written and voiced by a party member for free, there is no background music in advert, there is no outsourced creative agency and Licencing fees do not apply.[50] The DA states that the industry average cost for a single, radio-quality advert amounts to approximately R20 000 (including VAT). The DA further states that the cost component will include:[51]

- 1 day of production management.
- 1 hour of voice-over recording in a professional sound studio.
- 2 hours of directing.
- 1 hour of editing.
- 1 hour final mixing.

3.8.5.2 Furthermore, the DA submits that for adverts in an additional language, costs grow by an additional R20 000 per language.[52] The DA states that the average costs are for simple adverts without significant production. Further, it raises a concern that not all political parties or independent candidates may be able to afford. The DA further states that to produce PEBs and PAs which differentiate in content effectively doubles the costs for political parties or independent candidates. The DA's concern is that it is difficult to afford for

[50] Ibid, page 04
[51] Ibid, page 04
[52] Ibid, page 04

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smaller, newer parties, as well as independent candidates.[53] DA submits that allowing political parties or independent candidates leeway to use PA material in PEB slots and vice versa may be beneficial, as opposed to direct forfeit.[54]

The Authority's decision

3.8.5.3 The Authority has noted the estimated costs for producing a PA and a PEB, however, the Authority's decision is that content broadcast as PA may not be broadcast as PEB. The legislation, being the ECA provides for a distinction between a PEB and a PA. Furthermore, this distinction is necessary to avoid assertions that certain political parties or independent candidates have been favoured in the allocation of PEB slots.

3.8.6 **Consumer research for 2023/24 on ICASA's role in elections**

3.8.6.1 CAP states that the activity that it has identified for consumer research for 2023/24 is to investigate how ICASA's role in elections can be utilised to assist with the dissemination of political and voting information to persons with disabilities. CAP would like ICASA to ensure that election broadcasts, which includes political advertisements, are accessible to persons with disabilities as persons with disabilities rely on the broadcasting sector during the election period. The persons with disabilities experience difficulties and challenges such as inaccessible voting stations, inaccessible registrations and voting processes, and attending political rallies and community meetings.[55]

3.8.6.2 CAP is of the view that past elections Regulations drafted by ICASA did not adequately address the access requirements of persons with disabilities in South Africa hence it is proposing that ICASA do a pilot research study for the forthcoming National Elections in 2024.[56]

[53] Ibid, page 05
[54] Ibid, page 05
[55] Consumer Advisory Panel submission on Elections Research Proposal, page 1
[56] Ibid, page 5

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3.8.7 **Suggestions on making election broadcasts accessible to persons with disabilities.**

3.8.7.1 CAP states that the Elections Broadcast Regulations cover three areas which are Public Service Broadcasts, Political Adverts, and Political Broadcasts. Therefore, CAP proposes that ICASA should ensure that all three areas of the regulations include persons with disabilities as a specific target group. CAP also proposes that Political Service Information Broadcasts should include voting procedures specifically for persons with disabilities. Alternatively, special public service broadcasts for persons with disabilities should be made in explaining how to access special voting procedures for persons with disabilities. [57]

3.8.7.2 CAP raises a concern that under the current regulations no political adverts are required to be accessible to persons with disabilities. On another hand, the Draft Amendment Regulations also do not include any provisions to make political advertisements and PEBs accessible to persons with disabilities. Therefore, CAP recommends that the technical guidelines for adverts include a requirement for closed-captioning, and if an advert has no spoken language, an audio-described file should be made available.[58]

3.8.7.3 CAP further raises concern that if broadcasts are not made accessible to persons with disabilities, they are at risk of not being able to partake on an equal basis in the political processes of South Africa. As a result, CAP recommended that news broadcasts during the election period should include access services for persons with disabilities, which includes an accredited South African sign language interpreter, live closed captioning for digital television stations, and a requirement to voice-over information like polling results, etc.[59]

[57] Consumer Advisory Panel submission on CAP Comments on the "Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014", 17 November 2023, page 07.
[58] Ibid, page 08.
[59] Ibid, page 08.

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3.8.7.4 Furthermore, CAP is of the view that it is important that all these public service broadcasts be available in all South African Languages, including South African Sign Language.[60]

3.8.7.5 CAP suggests that political parties should have to include sign language in their political adverts and that Elections News Broadcasts should have qualified South African sign language interpreters. CAP proposes that political parties should provide transcripts for their adverts so that subtitles or closed captions can be added. ICASA should also set a quota for the number of accessible adverts for each party.

3.8.7.6 CAP is of the view that newsrooms and political parties should be aware of how to make silent broadcasts (when there is no sound or only music, but there is text or images on the screen) accessible for persons with visual impairments.[61]

3.8.7.7 CAP advises political parties to use short sentences and simple presentations when making their adverts to cater for persons with neuro-divergent conditions.

3.8.7.8 CAP recommends that political parties avoid using flashing images in their adverts, or, if they have to, warn the viewers with photo-sensitive epilepsy and some forms of Parkinson's disease at the beginning of the advert.[62]

The Authority's decision

3.8.7.9 The Authority notes and welcomes CAP's proposals, however, the Authority is of the view that the Regulations on the Code for Persons with Disabilities

[60] Ibid, page 07.
[61] Consumer Advisory Panel submission on Elections Research Proposal, page 5
[62] Ibid, page 5

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caters for what CAP suggested. Regulation 3 (1) (2) (3) and 4 of the Code for Persons with Disabilities Regulations deals with basic standards for broadcasting service licensees. The Regulations already require a broadcasting service licensee to implement the following accessibility service on applicable channels being, audio description, sign language, subtitles and closed captioning.

3.8.7.10 Regulation 4 (1)(2) (3) and 4 of the Code for Persons with disabilities deals with general requirements for communications and information provision to persons with disabilities for television broadcasting service licensees.

3.8.8 **How artificial intelligence (AI) could affect election broadcasts and whether regulation is required?**

3.8.8.1 CAP states that AI has become increasingly prevalent in the broadcasting industry, where it is possible to have a fully automated radio and television AI broadcast station. It explains that the stations utilize online, publicly available information to generate weather, traffic, and news reports. CAP further explains that the voices used on these stations can be fully artificially engineered and are highly considered to be the future of broadcasting. As a result, CAP raises concerns regarding AI in election broadcasts, where it states that a broadcaster can utilize "deep fake" technology which can have a material influence on an election. To support the statement, CAP pointed out that in the United States of America, it was reported that President Biden recently signed an executive order regulating on AI after being outraged when seeing a "deep fake" article made where he featured.[63]

3.8.8.2 CAP further argues that "deep fake" technology can be so realistic that the subject looks and sounds completely genuine, resulting in political parties using it to maliciously align their opponents during political advertisements.

[63] Consumer Advisory Panel submission on CAP Comments on the "Draft Amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014", 17 November 2023, page 06.

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As a result, CAP recommends that during election broadcasts ICASA should consider including a regulation on the use of AI, to require that all adverts made by AI should have a constant byline stating that the adverts were made by AI.[64]

The Authority's decision

3.8.8.3 The Authority is of the view that the current regulatory framework does not empower the Authority to regulate AI. The Authority is of the view that. Regulation 6 (9) of the Elections Regulations[65] provides for malicious use of AI related to deep fake technology. Regulation 6(9) states that "a political party or an independent candidate that submits a PA to a BSL for broadcast must ensure that the PA does not contravene the provisions of ... the Constitution, and does not 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". Furthermore, Furthermore, the Regulations on the Code of Conduct for broadcasters addresses issues that can be the results of the use of AI"[66].

4. CONCLUSION

4.1 This concludes the process of reviewing Regulations on National and Provincial Elections, 2014. The Authority believes that the reviewed Regulations will provide certainty to the broadcasters, the independent candidates and the political parties in terms of radio and television broadcasting regulation on PEBs and PAs.

[64] Ibid, page 06.
[65] ICASA Regulations on Party Election Broadcasts, Political Advertisements, the equitable treatment of Political Parties by Broadcasting Licensees and related matters, published in Government Gazette 37350 of 17 February 2014
[66] Published in Government Gazette 32381 of 06 July 2009

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