



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 646

2 April
April 2019

No. 42374

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ISSN 1682-5843



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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 534

02 APRIL 2019

**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA****AMENDMENT OF THE NATIONAL AND PROVINCIAL PARTY ELECTIONS
BROADCASTS AND POLITICAL ADVERTISEMENTS REGULATIONS, 2014**

The Independent Communications Authority of South Africa ("the Authority"), hereby publishes the amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014 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(7)(b), 56, 57, 58 and 59 of the Electronic Communications, 2005 (Act No. 36 of 2005), to the extent reflected in the Schedule.

DR KEABETSWE MODIMOENG
ACTING CHAIRPERSON

SCHEDULE

1. Definitions

In these regulations "the Regulations" means the Regulations published under Government Notice No. 101 of 2014 (Government Gazette No. 37350), as amended by Government Notice No. 245 of 2019 (Government Gazette No. 42249).

2. Amendment of regulation 5 of the Regulations

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

"Air-time in respect of PEB(s) shall be allocated by the Authority to the registered political parties contesting the national and provincial elections on the basis of the respective principles set out in Annexure A of these regulations"

3. Short Title and Commencement

These regulations are called the National and Provincial Party Elections Broadcasts and Political Advertisements Second Amendment Regulations, 2019 and shall come into force upon publication in the Government Gazette.

4. 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****Basic Allocation**

Percentage of slots to be allocated to all political parties contesting seats in the National and Provincial Elections. 50%

Number of Seats Currently Held

Percentage of slots to be allocated to political parties according to seats currently held at National and Provincial level. 25%

Number of Seats Fielded

Percentage of slots to be allocated according to the number of candidates fielded by parties at National and Provincial level. 25%

"



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

**Amendment to the National and Provincial Party Elections Broadcasts
and Political Advertisements Regulations, 2014**

Reasons Document

April 2019

1. INTRODUCTION

- 1.1 The Independent Communications Authority of South Africa (“the Authority/ICASA”) is enjoined in terms of section 2(a) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (“ICASA Act”) to regulate broadcasting in the public interest and to ensure fairness and diversity of views broadly representing South African society, as required by section 192 of the Constitution.
- 1.2 On 17 February 2014, the Authority published the National and Provincial Party Elections Broadcasts and Political Advertisements Regulation, 2014 (“the 2014 Regulations”)¹. On 25 February 2019, the Authority published the amendments to the 2014 Regulations (“the First Amendment Regulations”).² The Authority has now decided to publish further amendments to the 2014 Regulations (“the Second Amendment Regulations”).
- 1.3 The purpose of this reasons document is to outline the Authority’s reasons regarding its decision with respect to the Second Amendment Regulations.

2. LEGISLATIVE FRAMEWORK

- 2.1 In reviewing and amending the 2014 Regulations, the Authority was guided by the provisions of the Constitution, ICASA Act, and the Electronic Communications Act, 2005 (Act No.36 of 2005) (“ECA”).

The Constitution

- 2.2 Section 192 of the Constitution requires national legislation to establish an independent authority (i.e. ICASA) to regulate broadcasting in the public interest.

The ICASA Act

¹ Government Notice No. 101 of 2014 (Government Gazette No. 37350).

² Government Notice No. 245 of 2019 (Government Gazette No. 42249).

2.3 Section 2(a) of the ICASA Act enjoins the Authority to regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society, as required by section 192 of the Constitution.

2.4 The Authority is empowered to make regulations on any matter consistent with the objects of the ICASA Act and the underlying statutes or that are incidental or necessary for the performance of the function of the Authority.³

The ECA

2.5 The Authority is empowered in terms of section 4(7)(b) of the ECA not to follow a public notice and comment procedure contemplated in terms of section 4 when making a regulation which the public interest requires should be made without delay.

2.6 Sections 56, 57, 58 and 59 of the ECA govern matters related to party elections broadcasts and political advertisements as well as equitable treatment of political parties by broadcasting service licensee during election period.

3. THE PROCESS

3.1 In relation to the process adopted with respect to the Second Amendment Regulations, the Authority considered section 4(7)(b) of the ECA that empowers the Authority to make any regulations which the public interest requires to be made without delay.

3.2 Section 4 (4) of the ECA requires the Authority to publish, not less than 30 days before the regulation is made, the regulation in the gazette, firstly declaring the Authority's intention to make the regulation and secondly, inviting the interested parties to make written representations on the regulation.

³ Section 4(3) (j) of the ICASA Act.

3.3 The polling day is the 8th May 2019 as promulgated by the President of the Republic in the Government Gazette No. 42250 of 26 February 2019. The Authority is required in terms of the ECA and the Constitution to regulate broadcasting sector in the public interest. It is the Authority's view that the Regulation should be amended to cater for the new upcoming political parties as well as ensuring that parties contesting for provincial seats are afforded equal opportunities with parties contesting for the national seats. The Authority intends to allocate PEB slots on 04 April 2019, therefore there will be twenty-seven (27) calendar days for the election broadcast period from 10 April 2019 until 06 May 2019. Should the Authority follow the normal process, the election broadcasting period will not materialise. Furthermore, not amending the regulations will result in the Authority having to apply the 2014 principles of allocation and this will disadvantage political parties contesting at provincial level.

4. SUBSTITUTION OF ANNEXURE A OF THE 2014 REGULATIONS

4.1 The amendment of Annexure A of the 2014 Regulations pertains to the formula for slots allocation in respect of Party Election Broadcasts ("PEBs") to increase a percentage for basic allocation and separate the slots of the PEBs for national seats and slots for the provincial seats. This was done to create equal grounds for political parties contesting for provincial seats and those contesting for national seats. Further, this will ensure that new political parties and political parties that are only contesting at provincial level are not disadvantaged in terms of PEBs allocation as they will now forth get more slots from the allocation.

4.2 The current formula only allocates 25% of the slots to basic allocation and this have a severe negative impact on the new political parties as they mostly get an allocation of slots for their PEBs under the principles of basic allocation and number of seat fielded. The Authority amended this formula by changing the percentage of basic allocation from 25% to 50% in order to address the current inequality. Also the current formula does not provide for basic allocation to parties contesting at provincial level. This is unfair because some of the political parties contesting for provincial seats are not contesting for national seats, whilst most of the parties contesting for national seats also contest for provincial seats. This ends up

indirectly affording the parties contesting for national seats more slots for PEBs. The effect of the Second Amendment Regulations is to separate the slots for provincial seats from slots for the national seats. Both national and provincial election allocation will each have the equal total number of slots to be allocated.

5. CONCLUSION

5.1 On 01 April 2019, the Council of the Authority resolved to approve the Second Amendment Regulations, which is effective from the date of publication in the Gazette.

5.2 The Authority believes that this second amendment will assist in ensuring fairness when allocating slots to political parties.

