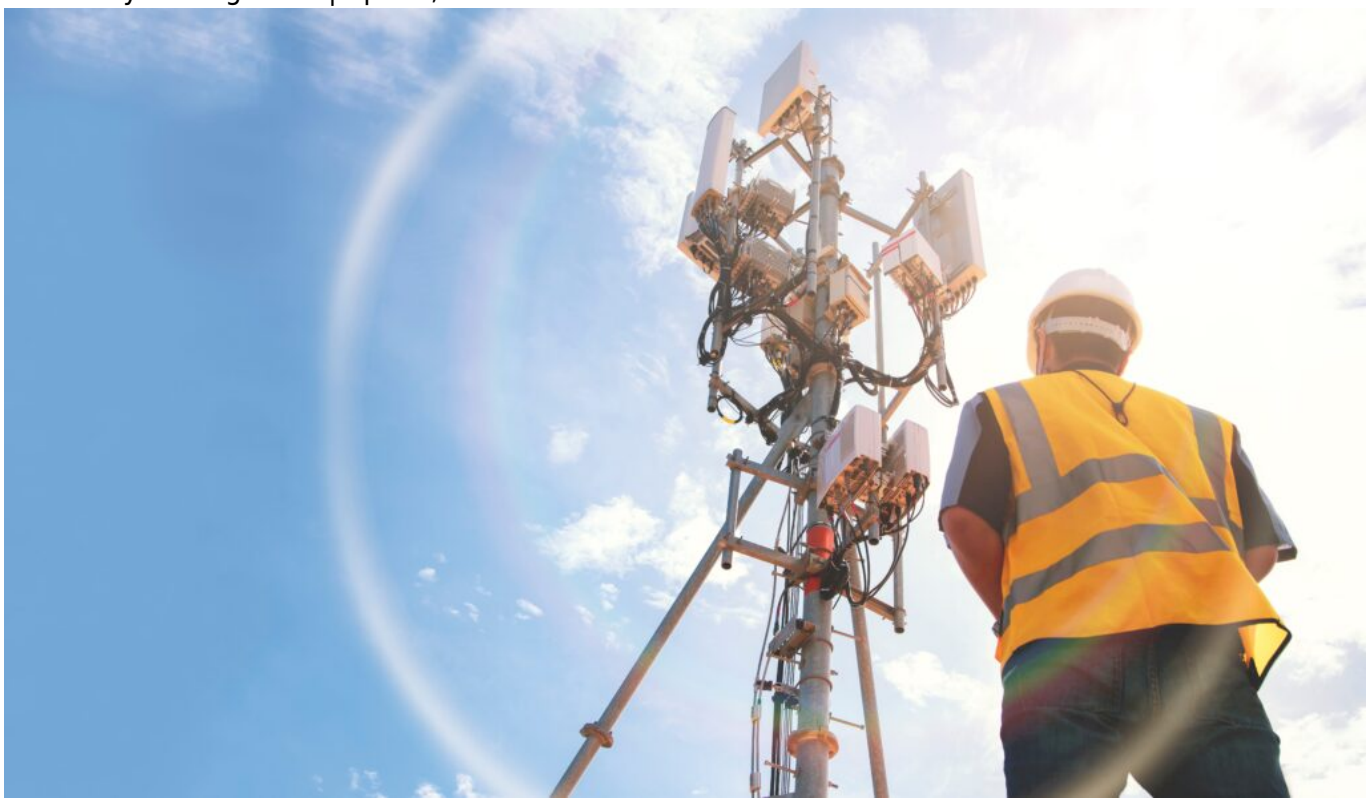
THE DO'S AND DON'TS OF ELECTIONS BROADCASTING

Category: Infrastructure and Telecommunications
written by Bareng Dona | April 5, 2024



On 29 May 2024, South Africans will take to the polls to vote in the national and provincial general elections. As political parties gear up for their campaigns, it is important that these campaigns are done in accordance with the prescripts of the law. The *Electronic Communications Act* 36 of 2005 ("**ECA**") regulates the broadcasting of party election broadcasts and political advertisements.

Section 56 of the ECA generally prohibits broadcasting political party advertisements except in certain circumstances. Party election broadcasts and political advertisements must not be broadcasted on any broadcasting service at any time except during an election period. A public broadcasting service licensee, such as the South African Broadcasting Corporation ("**SABC**") may only permit a party election broadcast during an election period and only if such a broadcast is produced on behalf of the political party in question and at the instance of its authorised representative.

The Independent Communications Authority of South Africa ("**ICASA**") determines the times that are available to political parties to advertise. This includes the duration and scheduling of party election broadcasts. ICASA is required to consult with public broadcasting service licensees and all the political parties prior to making any determinations regarding the election broadcasting.

ICASA may impose conditions on a public broadcasting service license as it considers necessary, having due regard to the fundamental principle that all political parties should be treated equally. Party election broadcasts are also required to meet certain standards such as:

- a party election broadcast may not contain any material which may reasonably be anticipated to expose the broadcasting service licensee to legal liability if such material were to be broadcast. An instance of this is the 2014 Economic Freedom Fighter's ("**EEF's**") contention

against the SABC for refusing to air its advert which incited the physical destruction of e-tolls;[1]
- a party election broadcast must conform to a technical quality acceptable to ICASA for broadcasting on television and radio; and
- no party election broadcast may be broadcasted after 48 hours before the commencement of the polling period.

The Regulations on National and Provincial Party Elections Broadcasts and Political Advertisements were published in 2014 ("**Regulations**"**)** prescribe the framework and guidelines under which party election broadcasts and party advertisements must be conducted by broadcasting services licensees during the national and provincial elections. The Regulations apply during an election period to broadcasting service licensees and to political parties.

The Regulations set out a complaints procedure where an individual or political party is aggrieved by a party election broadcast or a political advertisement. An instance of this is the most recent Democratic Alliance ("**DA**") criminal complaint, lodged against the African National Congress ("**ANC**") for allegedly destroying and replacing the DA's election posters along the John Ross Highway in Richard's Bay.[2] An aggrieved party may therefore lodge a complaint with ICASA within 48 hours after such aggrievement has occurred. Any complaint lodged with ICASA will be addressed by ICASA within 48 hours of receiving a complaint. ICASA will then communicate to the parties the outcomes of such complaint. If a broadcasting service licensee fails to adhere to these Regulations, they may be liable to a fine not exceeding R1 million.

In anticipation of the 2024 elections ICASA published the Draft Amendment to the 2014 Regulation in October 2023 ("**Draft Regulations**"). The purpose of the Draft Regulations is to make provision for the inclusion of independent candidates in the allocation process of party election broadcast slots and the monitoring by ICASA.

As the election day has been announced, further guidance can be expected from ICASA regarding any proposed guidelines for election broadcasts.

Contact us for more good, clear, precise advice.

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[1][1] https://businesstech.co.za/news/government/56007/eff-takes-sabc-ad-complaint-to-icasa/

[2]
https://northcoastradio104.co.za/da-files-criminal-complaint-against-anc-for-alleged-electoral-code-violations/