



# **CONTENT REGULATION: INTERIM CODE OF PRACTICE FOR POLITICAL BROADCASTS**

## **ECS 01/2010**

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**UTILITIES REGULATION & COMPETITION AUTHORITY**

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## **1. Introduction**

1. This document is issued in accordance with Part IX (Content Regulation) of the Communications Act, 2009 (“Comms Act”). The Comms Act creates a new regime for content regulation in The Bahamas, based on the adoption of Codes of Practice (“Codes”) covering television and radio programmes (and potentially also online and mobile services).
2. On 6th January, 2010, the Member of Parliament for the Elizabeth Constituency resigned his seat, thereby creating a vacancy in the House of Assembly. Pursuant to section 33 of the Parliamentary Elections Act (Ch. 7 of the Statute Laws of The Bahamas), the Governor-General is required to issue a Writ of Election for a bye-election in the Elizabeth Constituency. The bye-election must be held not less than 21 days nor more than 26 days after the date of issue of the Writ of Election [s.35 (1) (b)].
3. The Comms Act requires URCA to issue Codes of Practice, and to develop complaints-handling procedures, for content. In general, content regulation seeks to ensure that programmes reflect the standards expected by members of the public, through a combination of: prohibitions or restrictions on certain kinds of programming; rules that promote accuracy and fairness in news, current affairs and other factual programming; and information and tools that enable people to make informed choices about what they, and their families, watch and listen to. Codes specifically for elections and other forms of political broadcasting and advertising tend to cover issues such as the duration and scheduling of political broadcasts, and rules that specify how many broadcasts the governing and opposition parties are permitted.
4. The content Rules in the Broadcasting Act included special provisions relating to political broadcasts. The Minister was permitted to make rules “to prescribe the proportion of time which may be devoted to political broadcasts and to assign such time on an equitable basis to all parties and rival candidates” (s. 18(1) (c)). Rules were subsequently set out in subsidiary legislation. The Broadcasting Rules, 1992 included a set of rules governing political and election broadcasts on services provided by ZNS (Part III). The Broadcasting (Licensing) Rules, 1993 extended these rules to any licensed broadcasting station in The Bahamas (s. 20).
5. The Broadcasting Act and its subsidiary legislation – including those Rules relating to political broadcasts – were repealed by s. 120(1) of the Comms Act.
6. The Comms Act gives URCA powers to delegate to industry groups the development of these new Codes of Practice and the monitoring of compliance with the Codes. Prior to the announcement of the bye-election, URCA was in the process of finalising a public consultation document setting out its proposals to exercise these powers of delegation by establishing an industry Working Group to develop new Codes. URCA intends to publish this document shortly. Following completion of the consultation, the Working Group would be expected to take approximately 2-3 months to complete its task. URCA expects to be able to publish the new Codes and complaints-handling procedures in July 2010 or soon thereafter. As such, the final version of the Codes will not be published before the bye-election.
7. In order to ensure that content rules relating to political broadcasts are in force to cover the forthcoming bye-election (and any other elections that may take place before the new Codes are properly adopted), URCA is today publishing an Interim Code that specifically covers political broadcasts, which will come into effect immediately and remain in force until the new content Codes are published. The substantive provisions in this Interim Code are based on the Broadcasting Rules 1992 and the Broadcasting (Licensing) Rules 1993, modified to reflect the new Comms Act environment and the powers of enforcement which are now vested in URCA. The Interim Code therefore specifies a new complaints-handling procedure, responsibility for the implementation of which is shared between broadcasters and URCA.
8. The Interim Code is set out in full in Section 3.

## 2. Approach taken for Interim Code

- 9. The Interim Code set out in this document is intended to cover all forms of political broadcasting.
- 10. The new Codes of Practice to be published later in the year will benefit from a detailed review process – taking into account international best practice – to ensure that they are fit-for-purpose. As deliberations on the new Codes have not yet begun, the Interim Code is explicitly based on the corresponding Rules (the Broadcasting Rules, 1992 and the Broadcasting (Licensing) Rules, 1993) covering elections and other forms of political broadcasts that were formerly in place.
- 11. A number of further amendments to the Rules were made to ensure they are fully compatible with the provisions in the Comms Act. These are set out in Table 1.

**Table 1: Amendments to Code to ensure compatibility with Comms Act**

<b>Amendment to Code</b>	<b>Reason for amendment</b>
Removal of references to the Electoral Broadcasting Council (EBC)	The EBC was never in practice established in The Bahamas
Inclusion of new complaints-handling mechanism as part of the Interim Code	Section 54 of the Comms Act requires URCA to determine complaints-handling procedures alongside any Code of Practice that it issues. No such mechanism was put in place in The Bahamas to monitor and ensure compliance with the former Rules (the EBC was never established in practice and the Television Regulatory Authority was not operational in practice)
Removal of references to the need for the general manager of ZNS (or the chief executive officer of the relevant licensed broadcaster) to give “approval” to political broadcasts	This addresses any concern that “approval” could have been interpreted as enabling broadcasters to seek to censor political broadcasts (s. 56 of the Comms Act stipulates that neither URCA nor any person or body appointed by URCA, may censor programmes before they are transmitted)  To the extent to which “approval” in the former Rules was intended to refer to the responsibility of broadcasters to ensure material that they transmit is compliant with the regulations, this is already a requirement on them through the Comms Act (s. 53(1) requires relevant licensees to observe Codes of Practice that URCA issues)
Removal of elements of the Codes that cover operational details	Levels of operational detail that are best left to the management of the individual broadcasters have been deleted, consistent with the guidelines for regulation in the Comms Act (s. 5), which emphasise that regulation should be efficient and proportionate, and only introduced where necessary

- 12. URCA has specified a two-stage procedure for complaints-handling (set out in Rule 17 of the Interim Code):
  - Broadcasters that are responsible for compliance with the Code will be expected to ensure they have procedures in place to handle complaints in the first instance
  - Any unresolved complaints will be escalated for consideration by URCA, with broadcasters obliged to give effect to any instructions issued by URCA.
- 13. The Interim Code of Practice for political broadcasts is set out below.

### 3. Interim Code of Practice for Political Broadcasts

1.	This Code is issued in accordance with Part IX (Content Regulation) of the Communications Act, 2009. It may be cited as the Interim Code of Practice for Political Broadcasts, 2010.	Citation
2.	This Code comes into effect immediately and will remain in force until new content Codes are published.	
<b>PART I: PRELIMINARY</b>		
3.	<p>(1) In this code –</p> <p>“authorised officer” refers to the general manager or chief executive officer of the licensee, or any person authorised by that person on matters relating to compliance with this Code;</p> <p>“broadcasting” has the same meaning as defined in section 2 of the Communications Act, 2009;</p> <p>"broadcasting station" or "station" means any premises used in connection with broadcasting;</p> <p>"election advertising" means broadcasting time for spot advertisements designed to support and promote the election of members of a political party who are nominated candidates for election, or the election of other individuals who are nominated candidates for election, limited to the purposes and extent specified in this Code;</p> <p>"election broadcast" means a political broadcast whether by television or radio which is to take place or takes place between the issue of a writ of election and polling day;</p> <p>"election period" means in relation to –</p> <ul style="list-style-type: none"> <li>(a) a general election, the period commencing with the date of dissolution of Parliament;</li> <li>(b) a bye-election, the period commencing with the date of the issue of the respective writ,</li> </ul> <p>and ending with the respective close of poll;</p> <p>"the Leader of a political party" means the individual who has been elected or otherwise acclaimed as the Leader (by whatever name called) of a political party;</p> <p>"licensee" has the same meaning as defined in section 2 of the Communications Act, 2009;</p> <p>"political broadcast" means a broadcast whether by television or radio designed to promote or reduce the popularity of a political party or a candidate for an election;</p> <p>"political party" means a political party which –</p> <ul style="list-style-type: none"> <li>(a) has policies on a wide range of national issues;</li> <li>(b) has an elected leader;</li> <li>(c) holds a national conference of members of the party at least once in any period of eighteen months; and</li> <li>(d) nominates candidates for not less than one sixth of the seats of</li> </ul>	Interpretation

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	<p>the House of Assembly at the current general election.</p> <p>"spot announcement" means an announcement on radio or television advertising an event which –</p> <ul style="list-style-type: none"> <li>(a) is made by a member of the staff of the broadcasting station in the voice of that member;</li> <li>(b) is paid for by or on behalf of the person making the broadcast; and</li> <li>(c) does not exceed fifteen seconds in duration;</li> </ul> <p>"URCA" means the Utilities Regulation and Competition Authority established by the Utilities Regulation and Competition Authority Act, 2009.</p> <p>(2) Unless otherwise stated in this Code or any other written law, words and expressions used in this Code shall have the same respective meanings as in the Parliamentary Elections Act, 1992.</p>	
4.	The provisions of Part II of this Code shall apply to any political broadcast or advertisement broadcast by any broadcasting station operated by a licensee.	
<b>PART II: POLITICAL BROADCASTS</b>		
5.	<p>(1) A political broadcast or advertisement shall not include –</p> <ul style="list-style-type: none"> <li>(a) any matter in contravention of the laws of The Bahamas;</li> <li>(b) any abusive comment upon any race, creed or religion;</li> <li>(c) any blasphemous, obscene, indecent or profane matter;</li> <li>(d) any criminally libellous, malicious, scandalous or defamatory matter;</li> <li>(e) any scenes of nudity, eroticism, crime or violence;</li> <li>(f) any scenes and sounds of private grief and human suffering;</li> <li>(g) any harrowing sights and sounds.</li> </ul> <p>(2) During a political broadcast or advertisement, there shall be indicated, visually or aurally as may be appropriate having regard to the mode of the broadcast or advertisement –</p> <ul style="list-style-type: none"> <li>(a) the name of the political party or candidate (as the case may be) responsible for the broadcast or advertisement; and</li> <li>(b) the fact that the broadcast or advertisement has been paid for.</li> </ul>	Political broadcasts and advertisements
6.	<p>(1) In respect of a general election, each political party may, during the election period purchase for use during that period, six fifteen-minute programmes of air time on radio and an equal number of such programmes on television and may appoint a member of the party who is a candidate for election to the House of Assembly to speak on such programme.</p> <p>(2) A political party may appoint a different candidate to speak on each programme referred to in paragraph (1).</p>	Political broadcast in respect of general election

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7.	<p>(1) Subject to paragraph (2), the political party which is the governing party or a coalition of parties forming the Government may, in any year commencing on the 1st day of January, purchase four fifteen-minute programmes of air time on radio and an equal number of such programmes on television for the purpose of inviting support for the programme of the governing party or parties as the case may be.</p> <p>(2) During an election period, no purchase may be made under paragraph (1) and no use may be made of any air time so purchased.</p> <p>(3) Any programme broadcast under this Code shall be made by a Senator or a member of Parliament.</p>	Political broadcasts by governing party
8.	<p>(1) Subject to paragraph (2), a political party in opposition to the Government may, in any year commencing on the 1st day of January, purchase –</p> <p style="padding-left: 40px;">(a) two fifteen-minute programmes of air time on radio and an equal number of such programmes on television, if such party has one-third or more of the seats in the House of Assembly;</p> <p style="padding-left: 40px;">(b) one fifteen-minute programme of air time on radio and one such programme on television, if such party has less than one-third of the seats in the House of Assembly,</p> <p>for the purpose of inviting support for its programme.</p> <p>(2) During an election period, no purchase may be made under paragraph (1) and no use may be made of any air time so purchased</p> <p>(3) Any programme broadcast under this Code shall be made by a Senator or member of Parliament.</p>	Political broadcasts by opposition parties
9.	<p>Each candidate at a bye-election who is not a member of a political party may, between nomination day and polling day, purchase for use during that period, one fifteen-minute programme of election air time on radio and television for the purpose of inviting support for his candidature.</p>	Political broadcasts at a bye-election
10.	<p>No time for political advertising shall be made available to any person except under and in accordance with this Code.</p>	Political advertising
11.	<p>A political party may at any time in any year (other than during an election period) purchase broadcasting time not exceeding thirty-five hours in the aggregate for television and an equal number of hours for radio, for the broadcasting of not more than three conventions of that party.</p>	Convention broadcasting

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<p><b>12.</b></p>	<p>(1) During an election period, a political party or an independent candidate for election who is not a member of a political party may purchase broadcasting time for election advertising prior to polling day subject to the following conditions –</p> <ul style="list-style-type: none"> <li>(a) in the case of a political party, a maximum number of six advertisements per day, for television and an equal number for radio;</li> <li>(b) in the case of an independent candidate, a maximum number of two advertisements per day, for television and an equal number for radio;</li> <li>(c) no single advertisement on radio is to be of more than thirty seconds' duration;</li> <li>(d) no single advertisement on television is to be of more than thirty seconds' duration;</li> <li>(e) an advertisement shall be made in the voice of either a candidate or a member of the staff of the broadcasting station and shall be pre-recorded by the staff of the station.</li> </ul> <p>(2) No political broadcasts or advertisements shall be permitted on Sundays or on any polling day.</p>	<p>Purchase of election advertising time</p>
<p><b>13.</b></p>	<p>(1) A programme broadcast by a candidate at a bye-election shall be made in the voice of the candidate himself.</p> <p>(2) Notwithstanding anything contained in paragraph (1), a candidate may appoint another person to broadcast the programme on his behalf.</p> <p>(3) Save as provided in this Code there shall be no candidates' broadcasts.</p>	<p>Broadcasting of programme by candidate at a bye-election</p>
<p><b>14.</b></p>	<p>(1) Subject to paragraphs (2) and (3) the authorised officers of the licensees shall permit each candidate or political party to advertise the broadcasting of a programme under this Code within the period commencing at the pre-recording of the programme and ending at the broadcasting of such programme.</p>	<p>Advertising of political broadcasts or events</p>
	<p>(2) The Spot announcements pursuant to paragraph (1) shall only be done in the voice of a member of the staff of the broadcasting station.</p> <p>(3) Spot announcements by a candidate or political party pursuant to paragraph (1) shall not exceed –</p> <ul style="list-style-type: none"> <li>(a) in the aggregate on television and each of the radio stations, five on any day; and</li> <li>(b) one, in any hour,</li> </ul> <p>each announcement not being more than fifteen seconds in duration.</p>	
<p><b>15.</b></p>	<p>The political party which commanded the majority of the membership of the House of Assembly immediately prior to the last dissolution of Parliament shall, if it so desires, have the right of the last broadcast during an election period and in that event, the Official Opposition party shall have the right to the first broadcast.</p>	<p>Right to first and last broadcast</p>
<p><b>16.</b></p>	<p>Nothing in this Code shall be construed as precluding a Minister of the Government from broadcasting –</p> <ul style="list-style-type: none"> <li>(a) an explanation of legislation passed or action taken or to be taken or Government policy or policy approved by Parliament; or</li> </ul>	<p>Saving of powers of Ministers to broadcast</p>



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	(b) an appeal on a matter of national importance	
<b>17.</b>	<p>(1) A candidate, political party or member of the public aggrieved by any decision made by the licensee in respect of any matter provided for by this Code may make a complaint in the first instance to the authorised officer of the relevant licensee in respect of the grievance.</p> <p>(2) If the complainant does not receive a response that addresses their grievance within 48 hours, or if the complainant is dissatisfied with the response, the complainant may bring it to the attention of the Chief Executive Officer of URCA. URCA may, after consideration of the complaint, give as soon as practicable to the authorised officer of the relevant licensee such instructions as URCA sees fit.</p> <p>(3) The authorised officer of the relevant licensee shall give effect to any instructions issued by URCA under paragraph (1).</p>	Appeal