

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES

NO. 800

22 JULY 2020


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

**INVITATION TO PROVIDE WRITTEN COMMENTS ON PROPOSED POLICY AND
POLICY DIRECTION ON RAPID DEPLOYMENT OF ELECTRONIC
COMMUNICATIONS NETWORKS AND FACILITIES**

- 1.1 The Minister of Communications and Digital Technologies intends to issue the policy and policy direction in the Schedule to the Independent Communications Authority of South Africa (the Authority) in terms of section 21 read with section 3(2) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (the ECA). The purpose of the proposed policy is to provide clarity on the deployment of electronic communications networks and facilities. The purpose of the proposed policy direction is to direct the Authority to prescribe regulations on procedures and processes for resolving disputes that may arise between an electronic communications network service licensee and any landowner, in order to satisfy the public interest in the rapid rollout of electronic communications networks and electronic communications facilities.
- 1.2 As soon as possible after public consultation, the Minister will issue a final policy direction to the Authority.
- 1.3 Interested persons are invited to provide written comments on the proposed policy and policy direction, within 30 working days of the date of publication, addressed to –

The Acting Director-General, Department of Communications and Digital Technologies
For attention: Mr. A Wiltz, Chief Director, Telecommunications and IT Policy
First Floor, Block A3, iParioli Office Park, 1166 Park Street, Hatfield, Pretoria
Private Bag X860, Pretoria, 0001
rapid@dtps.gov.za; Cell: 0837140126 (Mr. L Motlatla)

2. Comments received after the closing date may be disregarded.



Ms Stella Ndabeni-Abrahams, MP
Minister of Communications and Digital Technologies

SCHEDULE

INVITATION TO PROVIDE WRITTEN COMMENTS ON PROPOSED POLICY AND POLICY DIRECTION ON RAPID DEPLOYMENT OF ELECTRONIC COMMUNICATIONS NETWORKS AND FACILITIES

1. BACKGROUND

1.1 The National Integrated ICT Policy White Paper was published on 03 October 2016 (the White Paper). Chapter 9 of the White Paper deals with the policy frameworks to address the supply side challenges to transform South Africa into an inclusive people-centred and developmental digital society and includes policy on the rapid deployment of electronic communications networks and facilities.

1.2 The White Paper provides a framework for parties within and outside the ICT sector on the manner in which electronic communications network service licensees can access property. It sets out the principles that govern the rights of all parties involved and seeks to ensure a balance of rights of electronic communications network service licensees to enter onto property to deploy critical broadband infrastructure with the rights of public and private landowners. This is necessary to ensure large-scale investment to allow for extension of ICT infrastructure that supports the economy, society and the objectives of greater inclusivity and sustainability, in accordance with the National Development Plan.

1.3 Demand for connectivity requires ongoing investment in and roll-out of electronic communications networks. Widespread coverage of electronic communications networks is necessary for the creation of a digital economy and digital society. High speed, high quality networks are required for advanced connected devices and services, while ensuring that rural areas do not lag behind. The emergence of 5G networks will enable autonomous vehicles on our roads as well as various other disruptive technologies of the 4th Industrial Revolution. Rights of way will become increasingly important to deploy massive numbers of small cells for 5G and backhaul to connect the cells. Large scale deployment of fibre is necessary for backhaul and the increasing demands of wireless networks. Significant effort must be made by all spheres of government to enable the rapid deployment of electronic communications networks and facilities since these networks are critical enablers for our advancement as a country in the 4th Industrial Revolution. Administrative procedures must be simplified and approval costs minimised.

1.4 Section 21 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (the ECA) provides that the Minister must, in consultation with the Minister of Cooperative Governance and Traditional Affairs, the Minister of Agriculture, Land Reform and Rural Development, the Minister of Human Settlements, Water and Sanitation, the Minister of Environment, Forestry and Fisheries, the Authority and other relevant institutions, develop a policy and policy directions for the rapid deployment and provisioning of electronic communications facilities, following which the Authority must prescribe regulations.

1.5 This policy and policy direction is subject to the recognition of local government legislation to the extent applicable.

2. POLICY

2.1 Electronic communications network service licensees have the right to enter upon and use public and private land for the deployment of electronic communications networks and facilities, subject to subparagraph 2.5.

2.2 Electronic communications network service licensees are entitled to select appropriate land and gain access to such land for the purposes of constructing, maintaining, altering or removing their electronic communications networks or facilities.

2.3 Electronic communications network service licensees retain ownership of any electronic communications networks and facilities constructed.

2.4 Property owners must exercise due care and diligence to avoid damage to electronic communications networks or facilities deployed on its property. If such electronic communications networks or facilities are damaged due to the fault of a property owner, reasonable compensation agreed to between the property owner and the electronic communications network service licensee is payable.

2.5 An electronic communications network service licensee must, for the purposes of subparagraph 2.1—

- (a) give 30 calendar days notice, in writing, of its proposed property access activity to a property owner and, if applicable, occupier of the affected land, which must—
 - (i) specify the reasons for engaging in the activity;
 - (ii) specify the date of commencement of such activity;
 - (iii) outline the objection process to its plans;
 - (iv) specify where the licensee intends locating the network or facility; and
 - (v) provide environmental, water, health and safety information, as may be applicable;

The proposed access to the property must be determined in consultation with the property owner;

- (b) provide all information required by the application process, if any, and obtain a wayleave certificate from the relevant authority, noting that the exercise of rights by the electronic communications network service licensee is subject to by-laws that regulate the manner in which a licensee should exercise its powers;
- (c) exercise due care and diligence to minimise damage, which must include acting according to good engineering practice, and taking all reasonable steps to restore the property to its former state, including the repair of damages caused;

- (d) ensure the design, planning and installation of the electronic communications network or facility, follow best practice and comply with regulatory or industry standards;
- (e) take all reasonable steps to ensure the activity does not compromise or impede a public utility's ability to exercise its powers or perform its functions;
- (f) update the geographic information system database of the Rapid Deployment National Coordinating Centre of the Department of Communications and Digital Technologies, about the type and location of electronic communications networks and facilities deployed; and
- (g) uphold the principle of infrastructure sharing and facilities leasing and seek out alternatives to new deployment of electronic communications networks and facilities, in order to use suitable existing electronic communications networks and facilities.

2.6 No access fee may be charged by property owners to electronic communications network service licensees for deploying electronic communications networks or facilities in cases where the electronic communications networks or facilities are not intrusive, such as buried or overhead cabling, that does not constitute a cost to the property owner, or deprive the property owner of its own use of the land.

2.7 Reasonable access fees may be charged in cases where more intrusive electronic communications networks or facilities, such as masts, are erected on property. In such cases any access fee must be reasonable in proportion to the disadvantage suffered and must not enrich the property owner or exploit the electronic communications network service licensee.

2.8 A property owner may object to the reasonability of the access fee offered in case of intrusive electronic communications networks or facilities or to the manner the electronic communications network service licensee intends to exercise its rights. The objection must be made to the Authority in the prescribed manner at least 14 calendar days before the electronic communications network service licensee commences with the activity. An electronic communications network service licensee may not continue to deploy electronic communications networks and facilities while awaiting the resolution of the dispute by the Authority.

2.9 A property owner is entitled to reasonable compensation agreed to between the property owner and the electronic communications network service licensee, for any damage caused by an electronic communications network service licensee entering and inspecting land, or installing, deploying or maintaining electronic communications networks or facilities.

2.10 It should be noted that this policy does not apply to fees charged by local government and other governmental authorities for permits, authorizations or other

approvals though it should be noted that the White Paper provides that any way-leave application fee or tariff levied by a municipality for a way-leave application contemplated in paragraph 2.5(b) should not exceed the administrative cost of processing the application.

2.11 In the case of an objection about the reasonability of the access fee as contemplated in paragraph 2.8, or in the case of a dispute about the reasonability of compensation for damages as contemplated in paragraphs 2.4 or 2.9 or any other dispute between the property owner and an electronic communications network service licensee, the Authority must, upon request by the parties concerned, resolve the objection or dispute on an expedited basis. In the case of an objection or dispute about the manner the electronic communications network service licensee intends to exercise its rights, the Authority may determine the manner such rights must be exercised and in the case of a dispute about compensation or fees, the reasonability of the compensation or fees, in order to satisfy the public interest in the rapid rollout of electronic communications networks and electronic communications facilities. The Authority may, however, only resolve a dispute under the dispute resolutions regulations to be prescribed, if the property owner agrees in writing to submit to the jurisdiction of the Authority. It should be noted that the dispute resolution process do not apply to local government.

2.12 Disputes may be resolved by the Complaints and Compliance Committee established by the Authority in terms of section 17A of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) since such role is contemplated in section 25(8) of the ECA.

2.13 The Authority may also appoint dispute resolution providers to administer disputes through adjudicators appointed by such providers. The Authority may consider the model prescribed under the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) for the resolution of domain name disputes. Under this model, the .za Domain Name Authority accredits a provider that administers a dispute. The provider is responsible for the appointment of an adjudicator to do the actual dispute resolution.

2.14 A decision by the Complaints and Compliance Committee or an adjudicator concerning any dispute is, in all respects, effective and binding on the parties to the dispute unless an order of a court of competent jurisdiction is granted against the decision.

2.15 The property owner or an electronic communications network service licensee may, where the dispute has a significant impact on the environment, refer any difference or disagreement to the Minister of Environment, Forestry and Fisheries, Member of the Executive Council or a Municipal Council to appoint a facilitator, in accordance with section 17 of the National Environmental Management Act, 1998 (Act No. 107 of 1998). The property owner or electronic communications network service licensee is advised to contact the Department of Environmental Affairs' Environmental Conflict and Dispute Resolution Unit for further particulars about the procedure to follow to resolve environmental disputes arising within the environmental sector.

2.16 Noting that the Water Tribunal hears appeals against certain decisions made by a responsible authority, catchment management agency or water management institution under the National Water Act, 1998 (Act No. 36 of 1998) as contemplated in Chapter 15 of the National Water Act; and noting that a person may lodge an appeal to the Minister of Human Settlements, Water and Sanitation if aggrieved by a decision of the responsible authority on a water use licence application as contemplated in regulation 21 of the Water Use Licence Application and Appeals Regulations, 2017.

3. POLICY DIRECTION

3.1 The Minister directs the Authority, in terms of section 21 read with section 3(2) of the ECA, to prescribe rapid deployment regulations including procedures and processes for resolving disputes that may arise between an electronic communications network service licensee and any property owner, in order to satisfy the public interest in the rapid rollout of electronic communications networks and electronic communications facilities.

3.2 The regulations may include -

- (a) the role which the Authority or the Complaints and Compliance Committee, must fulfil in administering the dispute resolution procedure;
- (b) the appointment, role and function of dispute resolution providers and adjudicators, if the dispute resolution is not performed by the Complaints and Compliance Committee;
- (c) the procedure and rules which must be followed in adjudicating disputes;
- (d) the manner, costs of and time within which a determination must be made;
- (e) the implementation and publication of determinations made in terms of the dispute resolution procedure; and
- (f) how reasonable access fees and reasonable compensation for damages may be determined.