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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES**NO. 3236****31 March 2023****ELECTRONIC COMMUNICATIONS ACT, 2005
(ACT NO. 36 OF 2005)****NATIONAL POLICY ON RAPID DEPLOYMENT OF ELECTRONIC
COMMUNICATIONS NETWORKS AND FACILITIES**

The Minister of Communications and Digital Technologies hereby, following Cabinet approval on 29 March 2023, issue the national policy on rapid deployment of electronic communications networks and facilities in the Schedule in terms of section 21 read with section 3(1) of the Electronic Communications Act, 2005 (Act No. 36 of 2005).


MR. MONDLI GUNGUBELE, MP
MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES
DATE:

SCHEDULE**NATIONAL POLICY ON RAPID DEPLOYMENT OF ELECTRONIC COMMUNICATIONS NETWORKS AND FACILITIES****TABLE OF CONTENTS**

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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 provides policy frameworks to transform South Africa into a digital society. It includes policy on the rapid deployment of electronic communications networks and facilities (broadband infrastructure).
- 1.2 The White Paper provides a framework on how electronic communications network service licensees (licensees) must access property. It sets out the principles that govern the rights of all parties involved. It strikes a balance between the rights of licensees and the rights of public and private landowners. This is necessary to ensure investment and extension of broadband infrastructure.

- 1.3 National coverage of broadband infrastructure is necessary for the creation of a digital economy and digital society. All spheres of government must enable the rapid deployment of broadband infrastructure to enable universal digital services. Red tape across government spheres must be reduced to eliminate delays in granting approvals and minimise costs for the deployment of broadband infrastructure.
- 1.4 In the development of this policy, the Minister duly considered the judgment of the Constitutional Court of South Africa in the matter of *City of Tshwane Metropolitan Municipality and Link Africa (Pty) Limited* (Case CCT 184/14). Sections 22 and 24 of the ECA include the right of licensees to enter upon land and build broadband infrastructure. The Court confirmed that the Electronic Communications Act, 2005 (Act No. 36 of 2005) (the ECA) impose what amounts to public servitudes. Licensees must however exercise their rights in a civil and reasonable manner. The Court said this means a licensee must give reasonable notice to the owner of the property where the licensee intends to build infrastructure. The licensee must furthermore consult with the owner about access to the property.

2. POLICY STATEMENT

- a) Broadband networks are key infrastructure necessary for socio-economic development and attainment of national developmental, social and economic goals and objectives;
- b) Licensees have the right to enter upon any property to deploy broadband infrastructure, if they exercise these rights respectfully and with due caution and comply with relevant rules for access;
- c) Rapid approvals are required to access property to deploy broadband infrastructure;
- d) Government entities in all spheres of government must permit licensees to use its servitudes to deploy broadband infrastructure and must share its property and infrastructure for this purpose;
- e) A dispute resolution mechanism is required to resolve disputes about the manner a licensee intends to exercise its rights and disputes about compensation;
- f) Updating of the geographic information system database of the Department of Communications and Digital Technologies (Department) with information about the type and location of broadband infrastructure which is critical for coordinating and implementing rapid deployment. This will ensure that the location of existing infrastructure is identified accurately and speedily, sharing

of infrastructure to minimise duplication, and prevention of damage to existing infrastructure. Access to such information will furthermore reduce planning complexity and assist stakeholders with identifying under-served areas.

3. PURPOSE

The purpose of the policy is -

- a) to provide a process that must be followed by licensees to access property to deploy electronic communications networks and facilities including the rights of property owners and any other person whose rights or legitimate expectations may be materially and adversely affected in this regard; and
- b) to create of a dispute resolution mechanism to resolve disputes that may arise between property owners, other affected persons, and licensees about the manner the licensee intends to exercise its rights, and about the reasonability of compensation.

4. SCOPE

- 4.1 The national importance of broadband requires policy intervention to overcome challenges regarding the deployment of electronic communications networks and facilities (broadband infrastructure) such as fibre-optic cable.
- 4.2 This policy has a national scope and licensees have right of way to enter upon and use public and private land for the deployment of broadband infrastructure.
- 4.3 Wayleaves, use of servitudes and other approvals are required from a variety of institutions in different spheres of government. The Constitution of the Republic of South Africa states that the different spheres of government (national, provincial and local) will “*perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere*” but also provides that the different spheres must co-operate with “*one another in mutual trust and good faith by ... coordinating their actions and legislation with one another; ... adhering to agreed procedures; and avoiding legal proceedings against one another*”.
- 4.4 The policy is subject to local government and other legislation, to the extent applicable, noting the need for co-operation between different spheres of government.
- 4.5 In addition, the Minister of Cooperative Governance and Traditional Affairs has issued a standard draft by-law for deployment of electronic communications facilities as contemplated in section 14 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) that provides for a uniform wayleave process for

broadband infrastructure deployed at municipal level (Government Notice No. 3087, Government Gazette No. 48113 of 24 February 2023).

5. OBJECTIVES

The objectives of this policy are to:

- a) Balance the rights of licensees to enter onto private and public land with the rights of property owners, by ensuring compliance with reasonability and due care;
- b) Facilitate access to rights of way, wayleaves, servitudes and other approvals with emphasis on intergovernmental co-operation;
- c) Enable the rapid deployment of broadband infrastructure in an efficient, cost-effective, environmentally responsible manner;
- d) Facilitate the achievement of the goals and targets set out in the National Broadband Policy, 2013 - SA Connect;
- e) Promote the sharing of broadband infrastructure;
- f) Enable the development of a dispute resolution mechanism.

6. KEY POINTS/ ACTIONS

6.1 Right to deploy broadband infrastructure

6.1.1 Licensees have the right to enter upon and use public and private land nationally for the deployment of broadband infrastructure, subject to paragraphs 4.4 and 6.4.

6.1.2 Licensees are entitled to select and access land nationally to construct, maintain, repair, alter or remove broadband infrastructure, subject to paragraphs 4.4 and 6.4.

6.1.3 Licensees retain ownership of any broadband infrastructure constructed.

6.2 Access to government servitudes

Government entities in all spheres of government that have servitudes for infrastructure such as roads, power lines, water pipelines, sanitation pipelines and railway lines, must permit licensees to use such servitudes to deploy broadband infrastructure. These entities include without limitation public utilities such as Eskom Holdings Limited, South African National Roads Agency SOC Ltd and

provincial departments responsible for roads, Transnet Limited, Department of Water and Sanitation, Water Boards and other water services institutions as contemplated in the Water Services Act, 1997 (Act 108 of 1997).

6.3 Access to government infrastructure

Government entities must share property and infrastructure such as high sites, poles and ducts with licensees for purposes of broadband deployment.

6.4 Conditions for access to land

The following rules apply when a licensee wishes to access land to deploy broadband infrastructure:

- a) A licensee must give 30 calendar days' notice, in writing, of its proposed property access activity to the property owner (that includes government entities). In addition, the licensee must give notice to any other person whose rights or legitimate expectations may be materially and adversely affected. The notice must—
 - i) specify the reasons for engaging in the activity;
 - ii) specify the date of commencement of such activity;
 - iii) outline the dispute resolution process in case of a dispute relevant to its plans;
 - iv) specify where the licensee intends locating the broadband infrastructure;
 - v) provide environmental, water, health and safety information, as may be applicable; and
 - vi) specify the relevant approvals that are required such as wayleave approvals under municipal by-laws.The proposed access to the property must be determined in consultation with the property owner and any other person whose rights or legitimate expectations may be materially and adversely affected. All employees and contractors of the licensee that need access the property must provide a letter of authorisation and identification to the property owner and other affected persons;
- b) A licensee must provide all information required to obtain a permit, authorisation or other approval, if any. In addition, a licensee must obtain a wayleave certificate from the relevant municipality (if applicable). The exercise of rights by a licensee is subject to by-laws that regulate the way a licensee should exercise its powers;
- c) A licensee must exercise due care and diligence to avoid damage. The licensee must comply with good engineering practice, including engineering standards of the relevant municipality or other property owner. In addition, a licensee must restore the property to its former state, ensure the rehabilitation of land including communal land, and the repair of any damage caused;

- d) A licensee must ensure that the design, planning and installation of the broadband infrastructure follow best practice and comply with statutory, regulatory and industry standards, including safety standards;
- e) A licensee must ensure the maintenance of the property where broadband infrastructure is deployed. Before doing maintenance or repair, a licensee must give 14 calendar days' notice, in writing, to the property owner and any other affected person;
- f) A licensee must 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;
- g) A licensee must submit geographical information system information about the type and location of broadband infrastructure deployed to the Independent Communications Authority of South Africa (the Authority). The Authority must use the geographical information system information to update the geographic information system database of the Rapid Deployment National Coordinating Centre of the Department; and
- h) Licensees must share broadband infrastructure where suitable infrastructure exists.

6.5 Compensation and fees

- 6.5.1 No compensation may be charged by property owners to licensees for building broadband infrastructure in cases where the infrastructure is not intrusive. Examples of infrastructure that is not intrusive include 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. Building infrastructure on communal land may, however, still be viewed as intrusive, subject to regulations on the rapid deployment of electronic communications networks and facilities.
- 6.5.2 Reasonable compensation may be charged by property owners to licensees for building broadband infrastructure that is intrusive. An example of infrastructure that is intrusive include masts that are erected on property. Compensation must, however, be reasonable in proportion to the disadvantage suffered. Compensation may not enrich the property owner or exploit the licensee. Where infrastructure is erected on communal land, compensation should be paid monthly, subject to regulations on the rapid deployment of electronic communications networks and facilities
- 6.5.3 A property owner may dispute the reasonability of compensation offered in case of intrusive broadband infrastructure. In addition, any affected person contemplated in paragraph 6.4(a) may dispute the manner the licensee intends to exercise its rights.

The dispute must be declared in accordance with the rapid deployment regulations prescribed by the Authority. The dispute must be declared at least 14 calendar days before the licensee commences with the activity. A licensee may not continue to deploy broadband infrastructure while awaiting the resolution of the dispute. This paragraph must be read with paragraph 6.6.2.

6.5.4 If damage is caused by a licensee entering and inspecting land, or building or maintaining broadband infrastructure, the following applies. A property owner is entitled to the replacement value, if applicable or reasonable compensation agreed to between the property owner and the licensee, for any damage caused. Disputes relating to the replacement value or reasonability of compensation for damage should be referred to a court of competent jurisdiction to resolve such disputes.

6.5.5 This policy does not apply to fees charged by local government and other governmental authorities for permits, authorisations or other approvals. It should, however, be noted that the White Paper provides that any wayleave administration fee or tariff levied by a municipality for a wayleave application contemplated in paragraph 6.4(b) should not exceed the administrative cost of processing the application.

6.6 Dispute Resolution mechanism, appeal and review

6.6.1 The Authority must prescribe regulations on the rapid deployment of electronic communications networks and facilities (broadband infrastructure).

6.6.2 The following two types of disputes relevant to building broadband infrastructure may be decided in accordance with the rapid deployment regulations:

- a) Disputes about the manner a licensee exercise or intends to exercise its rights;
- b) Disputes about compensation.

A dispute may, however, only be decided in accordance with the rapid deployment regulations, if the property owner or other affected person contemplated in paragraph 6.4(a) agrees to it in writing. Therefore, the dispute resolution process is voluntary. In addition, the dispute resolution process does not apply to local government.

6.6.3 A decision made in accordance with the rapid deployment regulations 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.

6.6.4 Any appeal against or review of a decision of the Authority must be referred to a court of competent jurisdiction.

6.7 Geographic information system database

The Department, after consultation with the Authority, should determine the nature and parameters of information provided to the geographic information system database contemplated in paragraph 6.4(g). The Department should further determine who can access the information in the database and the security of it.

6.8 Environmental Impact Assessments

To expedite environmental impact assessment approvals, licensees should consider submitting consolidated network rollout plans and applications to the Department of Forestry, Fisheries and the Environment and Provincial Environmental Affairs Departments (the Competent Authorities). The Competent Authorities must endeavour to expedite environmental impact assessment approvals for broadband infrastructure. This requirement is, however, subject to the National Environmental Management Act, 1998 (Act No. 107 of 1998) and relevant regulations issued in terms of the Act. Environmental impact assessment approvals should take no more than 57 calendar days from date of submission of all relevant documents, to date of final decision by the Competent Authorities. The Competent Authorities must communicate with applicants if any delay is expected, in which event reasons for the delay should be provided.

7. CONFLICTS

To the extent that this policy differs from the White Paper, on the rapid deployment policy, this policy prevails.

8. RESPONSIBILITIES

8.1 Policy monitoring, evaluation and review

8.1.1 Monitoring processes

- a) The monitoring, evaluation, and review of this policy will be undertaken in line with the Department's Integrated Strategic Planning, Monitoring and Reporting Policy (Monitoring Policy) and Departmental Evaluation Plan (Evaluation Plan). The Monitoring Policy and Evaluation Plan provide guidelines for an approach to monitoring and evaluation, which should be used to develop a fully operationalised monitoring and evaluation framework that will be a companion document to this policy. The monitoring and evaluation framework will then serve as an important stage for the implementation of this policy as it will provide all stakeholders with the means for learning from experience, improving deployment of broadband infrastructure, and demonstrating results as part of accountability to key stakeholders.
- b) The overarching approach to monitoring and evaluation for the policy is to:

- i) Collect baseline data on several indicators that will be tracked over time, i.e., Access to servitudes of government entities; Property and infrastructure sharing by government entities; Compliance with rules for access by licensees; Speed and effectiveness of dispute resolution; Provision of network deployment data to the geographic information system database of the Department; and environmental impact assessment approval times of less than 57 days;
 - ii) Use the Monitoring Policy to measure performance using the baseline data for guidance;
 - iii) Identify input, output and outcome indicators that will be monitored by the Department using the abovementioned implementation approach;
 - iv) Monitoring will involve collecting, recording, and reporting data concerning performance against the indicators on an annual basis. This monitoring is intended to contribute positively to the successful implementation of the policy and implementation by role players including the regulatory framework of the Authority.
- c) The results of the monitoring process will be used to reflect on what is happening on the ground compared to the desired outcomes. The results of monitoring will feedback into the implementation process on a regular basis and will continually be utilised to improve the deployment of broadband infrastructure. This process will provide opportunities to learn from the actual and present options for adjustment and improved implementation.

8.1.2 Evaluation of the policy

Every three-years a full evaluation of outcomes and indicators should be conducted using the Evaluation Plan, to assess the effects of the policy and regulations on the rapid deployment of electronic communications networks and facilities (broadband infrastructure). Evaluation activities should provide information that is credible and useful, enabling the incorporation of lessons learned into the future decision-making process. Both qualitative and quantitative approaches to evaluation should be used. Quantitatively, an assessment of progress on the baseline indicators mentioned above should be conducted. Qualitative approaches to assess whether the ethos of the policy is being incorporated into policy documents and processes of government.

8.1.3 Policy review schedule

This policy shall be periodically reviewed and updated to take account of learning gained and address shortcomings identified by the evaluation outcomes. Revision of this policy will be guided by the public interest in the rapid rollout of broadband infrastructure and the achievement of digital economy objectives and coordinated by the Department working with other relevant departments, stakeholders and the Authority.

8.2 Reporting

- 8.2.1 Reporting will be done by the Department in accordance with the Monitoring Policy described in paragraph 8.1.1 above as part of collecting, recording, and reporting data concerning performance against the indicators on an annual basis. Policy implementation and reporting should be a standard agenda item in management meetings.
- 8.2.2 The Authority must report annually to the Minister on the implementation of this policy and may make recommendations to the Minister on policy matters to promote rapid deployment of broadband infrastructure.
- 8.2.3 The Ministers must consult with other Minister's to resolve problems and report to Cabinet on policy improvements required.

9. DEFINITIONS

In this Policy any word or expression to which a meaning has been assigned in the Electronic Communications Act, 2005 (Act No. 36 of 2005) shall have the meaning so assigned, unless the context otherwise indicates.

10. RELATED LEGISLATION AND POLICY

- 10.1 The policy is issued under the Electronic Communications Act, 2005 (Act No. 36 of 2005). Other relevant ICT legislation and documents include -
- a) Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);
 - b) National Integrated ICT Policy White Paper, 2016;
 - c) South Africa's National Broadband Policy, 2013 (SA Connect); and
 - d) Regulations on the rapid deployment of electronic communications networks and facilities (broadband infrastructure).
- 10.2 The deployment of broadband infrastructure cuts across government at the national, provincial and local levels. Some of the relevant legislation include, without limitation -
- a) Critical Infrastructure Protection Act, 2019 (Act No. 8 of 2019);
 - b) Infrastructure Development Act, 2014 (Act No. 23 of 2014) and relevant strategic integrated projects;

- c) Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and Standard draft by-law providing for a uniform wayleave process for electronic communications networks and facilities;
- d) National Environmental Management Act, 1998 (Act No. 107 of 1998) and Environmental Impact Assessment Regulations, 2014, as amended; and
- e) National Water Act, 1998 (Act No. 36 of 1998) and General Authorisation in terms of section 39 of the Act for water uses as defined in section 21(c) or section 21(l) of the Act (Notice 509 of 26 August 2016, *Government Gazette* 40229).

11. APPROVAL DETAILS

- 11.1 Section 21 of the Electronic Communications Act, 2005 (ECA) requires that the Minister of Communications and Digital Technologies makes policy on rapid deployment of electronic communications networks and facilities in consultation with the Authority, the Minister of Cooperative Governance and Traditional Affairs, the Minister of Agriculture, Rural Development and Land Reform, the Minister of Forestry, Fisheries and the Environment and the Minister of Water and Sanitation.
- 11.2 Following consultation with relevant Ministers, the Authority, other stakeholders and the public, the policy was approved by Cabinet.

DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES**NO. 3237****31 March 2023****ELECTRONIC COMMUNICATIONS ACT, 2005
(ACT NO. 36 OF 2005)****POLICY DIRECTION ON RAPID DEPLOYMENT OF ELECTRONIC
COMMUNICATIONS NETWORKS AND FACILITIES**

The Minister of Communications and Digital Technologies hereby, following Cabinet approval on 29 March 2023, issue the policy direction in the Schedule to the Independent Communications Authority of South Africa in terms of section 21 read with section 3(2) of the Electronic Communications Act, 2005 (Act No. 36 of 2005).


MR. MONDLI GUNGUBELE, MP
MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES
DATE:

SCHEDULE

POLICY DIRECTION ON RAPID DEPLOYMENT OF ELECTRONIC COMMUNICATIONS NETWORKS AND FACILITIES

1. BACKGROUND

The Minister issued policy on rapid deployment of electronic communications networks and facilities as required under section 21 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (the ECA). The ECA provides that the Independent Communications Authority of South Africa (the Authority) must, after the Minister issued the policy, prescribe regulations on the rapid deployment of electronic communications networks and facilities to provide for relevant procedures and processes.

2. POLICY DIRECTION

2.1 The Minister directs the Authority, in terms of section 21 read with section 3(2) of the ECA, to prescribe regulations on the rapid deployment of electronic communications networks and facilities (broadband infrastructure). The regulations must include procedures and processes for resolving disputes that may arise between a licensee and a property owner or any affected person whose rights or legitimate expectations may be materially and adversely affected when a licensee enters upon and uses public and private land for the deployment of broadband infrastructure. The regulations must promote the public interest in the rapid rollout of broadband infrastructure.

2.2 The procedures and processes contemplated in paragraph 2.1 may include -

- a) the manner, costs of and time within which a decision must be made;
- b) the implementation and publication of decisions made in terms of the dispute resolution procedure; and
- c) how reasonable compensation may be determined.

2.3 The Authority must, in the development of the rapid deployment regulations, consider any policy on the rapid deployment of electronic communications networks and facilities issued by the Minister.

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