Policy on the Rapid Deployment of Electronic Communications Infrastructure

The below represents a summary of Section 3 of Chapter 9 of the [National Integrated ICT Policy White Paper](#).

Contents

Introduction

The <u>context</u> for the Rapid Deployment Policy ("the Policy") is the delays and increased costs in deploying electronic communications infrastructure resulting from un-coordinated interaction between licensees and land authorities/owners.

The <u>purpose</u> of the Policy is to:

- Provide a framework for ECNS licensees and landowners to work together for the public benefit while upholding the right of ECNS licensees to access property to deploy their networks;
- Simplify, streamline, co-ordinate and accelerate infrastructure deployment processes 2to enable the deployment of critical broadband infrastructure.

The <u>principles</u> that underpin the Policy are:

- ICT networks are key infrastructure necessary for socio- economic development and attainment of national developmental, social and economic goals and objectives.
- ECNS licensees have the right to enter upon any property to deploy electronic communications network infrastructure, but must exercise these rights respectfully and with due caution.
- The deployment of electronic communications facilities must be done in an environmentally friendly manner, avoiding duplication of infrastructure wherever possible.
- Rapid approvals to access property to deploy electronic communications facilities.
- Coordination and cooperation between access providers and seekers, to the extent possible on an open access basis.
- Transparency to reduce administrative burden and ensure reasonable pricing.
- Access to communications is a national priority as such all town planners and human settlement developers should include the provision of ICT services in their plans.

The general open access regime introduced by the White Paper is expected to complement this Policy by reducing demand for infrastructure and reducing inefficient duplication of infrastructure.

Scope

The White Paper identifies the need for policy interventions in relation to the deployment of:

- Underground fibre and ducts;
- Premises fibre and ducts, including in business parks and on private land;
- Aerial fibre, deployed on poles;
- High sites, including rooftops for wireless sites; and
- Masts and towers, and land or other property for such towers.

The Policy applies to parties <u>within and outside the ICT sector</u> who are involved in the deployment of electronic communications infrastructure. A Rapid Deployment Steering Committee is to be formed to extend the reach of the Policy to property owners and others.

Challenges

Balancing the rights of licensees to enter property

ECNS licensees have the right to enter upon any property without the consent of the landowner to deploy electronic communications network infrastructure, provided they exercise these rights respectfully and with due caution. The challenge is to apply this right to the approval process that is in place at local, provincial and national levels for gaining access to public and private property.

Duplication of infrastructure with a negative impact on the environment

The failure to consider ICT infrastructure in planning for other infrastructure development, results in an uncoordinated and inefficient approach, additional costs and delays as well as environmental degradation through infrastructure duplication.

Lack of coordination between stakeholders in different sectors

The following factors contribute towards the lack of coordination:

- Unclear institutional framework as between national, provincial and local government, government agencies such as SANRAL, regulators, other landowners and licensees.
- There is no central co-ordination, no consistency in process, no benchmark for pricing, lack of specificity in laws and regulations, failure to implement some regulations, and no clear method for determining exactly what constitutes 'the public interest".
- There is no standard process for obtaining rights of way, wayleaves and servitudes.

Interventions

Application of the principles of reasonableness and due caution

- In exercising their rights ECNS licensees should exercise reasonableness and due caution when they engage with property owners.
- Network licensees are entitled to select appropriate premises based on their network rollout strategies and plans and gain access to such premises for the purposes of constructing, maintaining, altering or removing their electronic communications networks or facilities This selection must be done in a civil and reasonable manner, including giving reasonable notice to the owner of the property where the ECNS licensee intends locating its electronic communications facility.
- Access to the property must be determined in consultation with the owner.
- Compensation in proportion to the disadvantages suffered by the owner should be payable in respect of the exercise of the ECNS licensees' rights.

The following principles must be adhered to, to demonstrate 'reasonableness and due caution':

- Reasonable notification: written notice motivating for access must be provided to the landowner, which must specify the process for objections and provide environmental, health and safety information.
- An owner has limited rights of objection to the proposed property access activity. A landowner may object at least 14 days before the ECNS licensee plans to start work only if the proposed electronic communication facility will cause significant interference with the property. The matter may either be resolved by agreement or through the regulator.
- Licensees must seek prior permission from the landowner, provide all information required by the automated application process and obtain a wayleave certificate from the concerned authority. This wayleave should specify information such as the presence of other infrastructure (e.g. water pipes and electricity cables, gas pipes, etc.) in the area. The wayleave should also indicate the depth of these services below the surface. As such, the approval process cannot be bypassed. Alternative arrangements need to be put in place if the landowner cannot be located.
- ECNS licensees retain ownership over any infrastructure they install, including cables. Property owners have a duty of care to ECNS licensees under common law.

- Licensees should <u>minimise damage</u> caused and follow good engineering practice. They should also take all reasonable steps to ensure that property is restored to a condition similar to that before the activity began.
- Licensees should take all reasonable steps to ensure the activity interferes as little as practicable with the operations of a public utility.
- ECNS licensees must maintain records about the type and location of certain facilities and update the centralized GIS Database.
- ECNS licensees must uphold the principle of sharing and avoid unnecessary duplication by taking all reasonable steps to make use of existing facilities for the activity and making reasonable efforts to cooperate with other ECNS licensees and public utilities undertaking similar activities on the same property to minimise inconvenience and damage.
- ECNS licensees must consider noise limits, the environment, and obstruction of essential services when installing or maintaining facilities.

Principles of non-discrimination and fair competition

- Licensees cannot gain undue advantage due to the behaviour of landowners: ECNS licensees must be treated equally by landowners as regards technical standards and time taken to process applications.

Approval of applications and permits

- Approvals for rapid deployment will take place at municipal level.
- Municipalities shall, when planning municipal infrastructure, make provision for the installation of ICT infrastructure such as fibre ducts.
- The creation of wayleaves for the installation of ICT infrastructure must be done at cost.
- Municipalities are obliged to provide information on municipal infrastructure, including plans for ICT infrastructure, to the appropriate coordinating structure in a digitised format for easy retrieval and processing.

Application Process

- In future, the processes for obtaining approvals and permissions should run, as far as possible, concurrently rather than sequentially.

Common and minimum Information to be provided

- Notification and application procedures for rapid deployment should take no more than a month from date of submission of all relevant documents, to date of final decision by the relevant entities.
- The planning process will be initiated through an application to the relevant authority.
- Relevant authorities must ensure that its employees are familiar with this and other relevant policies. Receipt of application must be acknowledged within a week together with a request for any further information required. The authority must ask reasonably in considering the application and imposing conditions. Any refusal must be in writing to the ECNS licensee and provide evidence and sound reasons as to why such permission was not granted.
- No by-law, regulation or local legal requirement, may prohibit or have the effect of prohibiting the ability of any ECNS licensee to provide any electronic communications services.

Automation of approval and permit systems

The Policy requires the establishment and maintenance of a GIS database which will:

- Record locations and planned locations of electronic communications and municipal services infrastructure. Licensees and service providers will be required submit detailed information on their infrastructure types and locations to local authorities and/or to relevant national agencies.
- Use on-line tracking mechanisms to expedite applications.
- Be coordinated, considering the requirements of the security services.
- Open, to the extent that it does not compromise security or lead to anticompetitive outcomes

Once the database is operational, builders of new infrastructure will not be held liable for damage to existing infrastructure if the information has not been supplied to the centralised GIS.

The Rapid Deployment Regulations are to provide guidance on the structure of the database, its security and the way it can be accessed.

An automated permit and application system supported by an up-to-date infrastructure GIS database for electronic communications and other service infrastructure must be developed following a definitive study on coverage and underserviced areas.

The Department will work with the municipalities, landowners and other stakeholder to develop such GIS database in cooperation with the regulator within 24 months of the implementation of this policy

Reasonable compensation, fees and charges

- Compensation for financial loss or damage: In exercising reasonableness and due caution, ECNS licensees must apply the principle of fair compensation. A claim for compensation is not a ground for objection to the use of the property by a licensee. If compensation cannot be agreed, the regulator will determine disputes on what is a reasonable amount on an expedited basis.
- Compensation for Access: Compensation or fees for access to property should be based only on the actual costs of restoring the property to its original state and the extent to which the infrastructure is intrusive. Fees in respect of infrastructure that does not constitute a cost to the landholder, or deprive the landholder of its own use of the land, should be minimised in line with the administrative cost or zero-rated.
- Fees and rentals charged must be reasonable and must not enrich the landowner or exploit the ECNS licensees.
- Public sector entities may provide in-kind contributions, including but not limited to anchor tenancy, in response to requests for the provision of duct, route changes or provision of additional services, among others. This is particularly encouraged in areas that are considered as priorities in terms of SA Connect and other national policies.

Access to high sites for radio-based systems

- No owners of a radio site may refuse access to a licensee for the installation of broadband equipment unless it is technically not feasible to do so.
- Radio high sites at national, provincial and local government levels will be made available for broadband equipment installation at a cost-based rental and in line with open access principles and infrastructure sharing or facilities leasing regulations.

Access to trenches

- A single trench approach is supported wherever technically feasible. Notification processes – preferably driven by the licensee - need to be set up to enable this.

- The regulator is directed to include single trench provisions applicable to the ICT sector in its Rapid Deployment Regulations. The regulations should provide that licensees must consult with other parties in the interest of the single trench policy, and they should provide guidance on how the regulator envisages that licensees can get access or capacity at a later stage if they are unable to participate at the time of trenching. An obligation should be put in place for licensees to include excess capacity in their deployment and to lease spare capacity to other licensees at reasonable rates or such rates as prescribed under the open access policy regulatory framework, whichever is lower. This should be supported by effective dispute resolution.
- The approval process should incentivise the application of approaches to trenching which lessen the environmental and traffic impacts of open trench work.

Access to infrastructure

- Rights of way of critical infrastructure (e.g. roads, pylons, etc.) and other utilities (water, sewers, etc.) should be made available to communication entities for their networks.

Deploying electronic communications facilities in new developments

- Infrastructure in new developments must support high- speed broadband and voice services, and occupants of new developments should have timely access to high quality and affordable communications services. Broadband service requirements in new developments, whether business or residential, in rural and urban areas should be set to at a minimum be consistent with the speed targets set out in SA Connect.
- The Ministry will liaise with the Minister of Trade and Industry to ensure that the applicable building regulations are updated to include requirements for ICT infrastructure, such as ducting, based on international practice, and to provide for sufficient additional capacity to allow infrastructure competition on the premises.
- The Ministry will work with all spheres of government so that planning laws ensure that the principle of "adequately served" is applied to all developments. The term "adequately served" means that electronic communications networks have already been deployed to and within a set of premises by a licensee ("the primary licensee").. When premises are 'adequately served' the following principles will apply:
  - The primary licensee must provide its network / network element to requesting licensees on an open-access basis. Such network /network elements are deemed essential facilities for purposes of the open access policy.
  - The primary licensee should be able to connect every occupant or user within that premises (whether they are physically connected or not) on a commercial basis.
  - Consumer within that set of premises should be free to choose their service provider, without reference to the primary licensee.
  - The primary licensee must establish a "meet-me" facility at a suitable point within the premises to enable interconnection with requesting licensees.
  - Licensees should be discouraged from installing their own ECN in adequately served areas.
  - All new buildings, and any buildings undergoing renovation, must be equipped with facilities such as ducting for fibre optic cabling.
  - Buyers - in this case developers – should be free to choose a preferred infrastructure provider, while infrastructure suppliers should be free to bid for developments they wish to service. Similarly, consumers must be free to choose among competing ICT service

providers. Given the first network built in an area will often secure an effective monopoly, it is crucial that open access and competitive provision of retail services are supported.

The above measures are intended to speed up the process of infrastructure deployment, and to simultaneously reduce the number of exclusive access arrangements that are concluded between licensees and landlords, which have the effect of limiting the number of services from which a consumer or occupant can choose. The proposed interventions are a natural adjunct to the concepts of open access and infrastructure sharing discussed elsewhere in this Chapter.

Environmental, health, safety, security and social impact

The wayleave and rights of way process is addressed by the Constitutional Court judgment, however the judgment does not address the other permits that are required as part of the ICT infrastructure deployment process. EIA's must be undertaken and where applicable, permissions from parties such as the civil aviation authorities, environmental authorities, and building authorities, among others ("environmental, health, safety and security authorities") sought before an ECNS can enter and use land. Bodies responsible for the management of heritage sites must also be consulted.

The Constitution provides that everyone has the right to an environment that is not harmful to their health or well-being and to have the environment protected. In keeping with this, licensees must comply with the requirements of the National Environmental Management Act and associated regulations when deploying electronic communications facilities. It is noted that infrastructure such as fibre carries significantly less risk to the environment and therefore should have a lesser qualifications criterion than other utilities.

To further these environmental considerations, and in line with the principle of open access, there should be no unnecessary duplication of infrastructure. Existing infrastructure should be utilised as far as is practicable for the deployment of electronic communication facilities, even if such infrastructure is not ICT related. For example, ICT infrastructure can be deployed over electricity cables, and through water pipes and sewerages. The importance of a centralised GIS database to identify the location of existing infrastructure accurately and speedily is reiterated.

Part of the application of the principle of 'reasonableness and due caution' is the consideration of the impact of the proposed deployment on health, safety and security standards. In addition, social considerations, such as the preservation of heritage sites, must also be taken into account.

The processes undertaken by the health, safety and security authorities must be streamlined and made more efficient. They should complement the wayleave and rights of way processes set out in this policy. The Rapid Deployment Steering Committee should, within a time frame to be set by the Minister, develop coordinated and streamlined processes in this regard.

Rapid deployment in emergency situations

No entity may refuse access to any site for the deployment of emergency electronic communications infrastructure, nor charge any fee whatsoever for the deployment of ICT infrastructure in emergency situations.

Institutional framework

Minister

- Oversight over implementation of this policy.
- Liaison with other Ministries responsible for aspects of rapid deployment of ICT infrastructure.

- The establishment of a Rapid Deployment National Co-ordinating Centre and a Rapid Deployment Steering Committee to oversee the activities of the Centre.

Regulator

- Provide support for the implementation of this policy through the regulatory framework, and through rapid deployment regulations, facilities leasing regulations and the licensing framework.
- Provide information to the National Coordinating Centre on the deployment of electronic communications infrastructure received from licensees for inclusion into the GIS database.
- Ensure through licences and regulations that licensees:
    - Share information on existing and planned infrastructure amongst themselves and with the regulator;
    - Seek out alternatives to new deployment of infrastructure, notably through the sharing or leasing of existing facilities;
    - Contribute to research and development on new deployment methods;
    - Comply with environmental requirements;
    - Co-ordinate activities wherever appropriate, avoiding anti-competitive behaviour.
- Advise landholders in writing of their right to recourse through the Authority; and
- Resolve disputes between ECNS licensees and landowners on an expedited basis.

Landowners at municipal, provincial and national levels:

- Charge reasonable fees for access to land and other property under their control;
- Co-ordinate activities wherever appropriate, avoiding anti-competitive behaviour;
- Provide information on infrastructure, including plans for ICT infrastructure, for inclusion in the national GIS database;
- Provide clear rules and guidelines relating to access to their facilities, and comply with any national policy and rules published in that regard; and
- Make provision for the installation of ICT infrastructure such as fibre ducts when developing their infrastructure deployment strategies and plans.

Role of the Rapid Deployment Steering Committee

A national coordination centre, working together with the SIP 15 infrastructure team, will be established to support rapid deployment and interface with local municipalities to. It will oversee:

- Establishment of common automated wayleave application systems based on an understanding of common information requests across various bodies.
- Creation of a GIS database and mapping of all fibre deployments and other electronic communication facility deployments.
- Coordination of infrastructure rollout and participation in other infrastructure coordination fora such as SIP 15.
- Engagement with relevant industry bodies dealing with 'rapid deployment' or any aspect thereof; and
- Provide advice to ECNS licensees on the provision of electronic communications facilities.

SALGA and Municipalities

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