

SUMMARY: PROPOSED POLICY AND POLICY DIRECTION ON RAPID DEPLOYMENT OF ELECTRONIC COMMUNICATIONS NETWORKS AND FACILITIES

The Minister of Communications and Digital Technologies has published draft policy and policy directions on the rapid deployment of electronic communications networks and facilities for comment. Submissions are due by 3 September 2020 and can be sent to rapid@dtps.gov.za. The below is an overview provided without comment.

Background

Efficient deployment of electronic communications networks has become a greater priority post COVID-19 and the accelerated move towards digitisation. IoT, automation, 5G and other advances will require network densification and large-scale fibre deployments. The stated purpose of the policy and policy direction is to facilitate the rapid deployment of facilities and networks required to underpin a digital future, taking into account competing rights and interests of property owners.

The Draft Policy

Right to access land: The Draft Policy confirms that an ECNS licensee has the right to select, access and use public and private land to deploy communications networks and facilities - subject to laws that regulate the manner in which a licensee should exercise its powers - but makes this right conditional on the licensee:

- Giving 30 calendar days' written notice to the property owner of its intention to access the land. This notice must include:
 - the reason access is required and the nature and location of the network and/or facility to be employed;
 - the date of commencement;
 - the procedure to lodge objections; and,
 - any applicable environmental, water, health and safety information.
- Consulting with the property owner on the proposed access and activities.
- Complying with any application process and obtaining wayleave certificates from the relevant authorities.
- Exercising due care and diligence to minimise damage, acting according to good engineering practice and taking all reasonable steps to restore the property to its former condition.
- Following best practice and complying with regulatory or industry standards in the design, planning and installation of networks and facilities.
- Taking all reasonable steps to ensure the activity does not interfere with a public utility.
- Updating the geographic information system (GIS) database of the Rapid Deployment National Coordinating Centre (RDNCC) of the DCDT with information about the deployment.
- Upholding the principle of infrastructure sharing and facilities leasing and seek out alternatives to new deployments of networks and facilities by using suitable existing networks and facilities.
- Paying reasonable compensation agreed to between the property owner and the licensee for damage caused by the access or deployment.

Ownership: the licensee retains ownership of any electronic communications networks and facilities constructed.

Property owner obligations: the property owner must exercise due care and diligence to avoid damage to the network or facilities deployed and reasonable compensation agreed between the parties is payable where damage occurs due to the fault of the property owner.

Fees for access to private land: the policy proposes that fees for access to private land should be a function of the intrusiveness of the deployment. No access fee may be charged for non-intrusive deployments, such as a fibre home drop. A fee which is reasonable in proportion to the disadvantage suffered by the property holder and which does not enrich the property owner or exploit the licensee may be charged where the access is intrusive.

Fees for access to public land: the policy does not apply to fees charged by governmental authorities for permits, authorizations or other approvals. Under the ICT Policy White Paper, it is already the position that fees for applications to local government should not exceed the administrative cost of processing the application.

Disputes: Property owners have a right to object that an access fee offered is not reasonable or to the manner in which the licensee intends to exercise its rights. ICASA must be notified of the objection at least 14 calendar days before the commencement of access. *Once a dispute has been duly lodged the licensee cannot proceed with the deployment until the dispute is resolved.*

Any dispute between an owner of private property and a licensee about access must be resolved by ICASA on an expedited basis, where this is requested by the parties and the property owner submits in writing to the jurisdiction of ICASA. In resolving disputes ICASA must consider the need to satisfy the public interest in the rapid rollout of networks and facilities.

ICASA may refer disputes to its Complaints and Compliance Committee or to dispute resolution providers appointed by it for this purpose. Where appropriate the parties can also seek to resolve disputes under provisions of the National Environmental Management Act or the National Water Act.

The Policy Direction

The policy direction provides a framework for ICASA to prescribe regulations which include processes and procedures for resolving disputes between licensees and private property owners. The focus of the policy direction is administrative matters, but the regulations may also include guidance on how reasonable access fees and reasonable compensation for damages may be determined.