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Mr Mothibi Ramusi
Chairperson
Independent Communication Authority of South Africa
350 Witch-Hazel Ave
Eco-Park Estate
Centurion

E-mail: chairperson@icasa.org.za
CC: RapidDeployment@icasa.org.za

Dear Mr Ramusi,

Submission to the Independent Communications Authority of South Africa on the Draft Regulations on Rapid Deployment of Electronic Communications Networks and Facilities, 2026

The Association of Communications and Technology ("ACT") thanks the Independent Communications Authority of South Africa ("the Authority" or "ICASA") for publishing the Draft Regulations on Rapid Deployment of Electronic Communications Networks and Facilities, 2026 ("the Draft Regulations") and for the opportunity to submit comments. This submission is made in terms of section 4 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the ECA") and the notice inviting public comment published in Government Gazette No. 54484 of 10 April 2026. ACT does not seek confidential treatment for any part of this submission.

ACT is an industry association representing telecommunications network operators within the ICT sector, with a mandate to support the development of telecommunications infrastructure and networks, contribute to an enabling policy and regulatory environment, advance education, and promote investment in South Africa's telecommunications ecosystem through informed research.

1. Introduction and Constitutional and Statutory Foundations

- 1.1 ACT acknowledges the intention of the Draft Regulations to address challenges associated with the rapid deployment of electronic communications networks and facilities. The Regulations seek to establish procedures for obtaining permits and approvals, define the rights and obligations of licensees, regulate access to public and private property, provide mechanisms for compensation and dispute resolution, and introduce a Geographic Information System (GIS) framework.
- 1.2 However, ACT remains uncertain whether the Draft Regulations, in their current form, will effectively achieve the stated objective of accelerating broadband infrastructure deployment while ensuring regulatory certainty, administrative efficiency, and balanced stakeholder interests.

1.3 This submission should be read against the background of the draft Ministerial Policy Direction on Rapid Deployment published by Minister Solly Malatsi in Government Gazette of 12 March 2026 ("the 2026 Draft Policy Direction"), which sets out key principles that the Regulations are expected to give effect to, including standardised municipal processes, a centralised GIS database with appropriate access controls, and the discouragement of unnecessary infrastructure duplication.

2. LEGISLATIVE AND POLICY FRAMEWORK

ICASA's Mandatory Statutory Duty

- 2.1 The legal foundation for the Draft Regulations is Chapter 4 of the ECA, specifically sections 21 to 25. Section 21(1) empowers the Minister to issue policy on rapid deployment, following consultation with several other Ministers.
- 2.2 Section 21(2) requires the Authority, following the issuance of policy directions by the Minister, to prescribe regulations that set out the procedures and processes for obtaining the permits, authorisations, and approvals necessary for network deployment, as well as mechanisms for resolving disputes arising from the exercise of rights contemplated under section 22.
- 2.3 Section 22(1) of the ECA confers upon every ECNS licensee the right to enter upon any land, to construct and maintain electronic communications networks or facilities, and to alter or remove such facilities, subject to section 22(2), which requires that such rights be exercised *civilter modo*, that is, with due regard to applicable law and the environmental policy of the Republic.
- 2.4 The Constitutional Court confirmed in *City of Tshwane Metropolitan Municipality v Link Africa (Pty) Ltd and Others ZACC 29 ("Link Africa")* that section 22 does not require prior landowner consent before a licensee exercises its deployment rights, provided the licensee acts *civilter modo* and in compliance with applicable law, including applicable municipal bylaws. The Court confirmed that sections 22 and 24 of the ECA are constitutionally valid and do not constitute arbitrary deprivation of property under section 25 of the Constitution.
- 2.5 The ECA requires ECNS licensees to provide at least 30 working days' written notice of any construction and maintenance activities to any local authority or person owning or responsible for the care and maintenance of any street, road or footpath.
- 2.6 Section 25 of the ECA governs the recovery of costs for alterations or deviations required by public utilities or local authorities.
- 2.7 Section 4 of the ECA sets out the Authority's general mandate to regulate electronic communications in the public interest, with objectives including promoting investment and innovation, ensuring affordable services and facilitating the rapid deployment of infrastructure in support of national broadband objectives.

Policy Background

- 2.8 The Minister issued the National Policy and Policy Direction on Rapid Deployment of Electronic Communications Networks and Facilities on 31 March 2023 (Government

Gazette No. 48346) ("the 2023 Policy"), recognising broadband networks as key socio-economic infrastructure and directing ICASA to develop regulations providing for permits and approvals, procedures for exercising rights of entry, and dispute resolution mechanisms.

2.9 The draft 2026 Ministerial Policy Direction, published in Government Gazette on 12 March 2026, further directs the Authority to develop a framework built on the principle of discouraging unnecessary infrastructure duplication, creating a centralised GIS database with appropriate safeguards, and standardising fragmented municipal by-law processes. ACT notes that, the Draft Regulations make no express reference to this more recent draft 2026 Policy Direction, which calls for clarity on how the two instruments relate. ACT is concerned that the Draft Regulations appear to have been developed primarily with reference to the 2023 Policy Direction, notwithstanding the ongoing process relating to the 2026 Draft Policy Direction currently under public consultation. While ACT appreciates the Authority's obligation to regulate under section 21 of the ECA, it remains unclear why the Authority elected to publish the Draft Regulations prior to the conclusion of the current ministerial policy process. This raises a risk of regulatory misalignment should the final policy direction materially differ from the assumptions reflected in the Draft Regulations. ACT accordingly requests clarity regarding the Authority's rationale for proceeding at this stage.

2.10 SA Connect (2013) and the National Integrated ICT Policy White Paper (2016) recognise that non-uniform processes for permit granting, the lack of legislated deadlines, and the wide discretion afforded landowners have contributed materially to deployment delays and increased costs.

3. Removal of Obsolete Infrastructure (Regulation 5)

3.1 While 60-day decommissioning deadline in regulation 5(5) is noted, however achieving 60 days may be difficult for the following reasons that municipal coordination, third party access, environment approvals, and safety consideration. ACT note that extendable deadline to accommodate practical environment conditions will be necessary for enforceable standard for lifecycle management of infrastructure. This reflects international best practice, including Ghana's tower deployment guidelines noted in the Explanatory Memorandum.

3.2 The safe harbour in regulation 5(6) for infrastructure retained as part of a licensee's registered operational network is a necessary protection against premature removal of infrastructure that may still have network value.

4. GIS Database (Regulation 7)

4.1 The establishment of a mandatory GIS database requirement is a significant and commendable regulatory step. The Authority must be the custodian of the GIS

database. The ITU's Guidelines on Establishing or Strengthening National Broadband Mapping Systems (referenced in Appendix A) confirm that comprehensive broadband mapping is an international standard for supporting coordinated planning and reducing deployment costs.

- 4.2 The inclusion of forward-looking data on planned investments, including designated rollout areas, projected start and completion dates, and technologies to be deployed (regulation 7(2)(c)), responds directly to a persistent market failure — the absence of early-warning information that could allow for civil works co-ordination.
- 4.3 Regulation 7(3)'s prescription of technical GIS data standards (WGS84/EPWG:4326 coordinate reference system; OGC-compliant vector polygon data) aligns with Appendix A and ensures technical interoperability across licensees' submissions.

5. IDENTIFIED GAPS AND CONCERNS

5.1 Absence of Binding Municipal Wayleave Timelines and Deemed Approval.

- 5.1.1 This is the most significant gap in the Draft Regulations and the principal systemic failure that the regulatory framework was intended to resolve. The Draft Regulations do not impose binding turnaround times on municipalities for processing wayleave applications, and do not introduce a deemed-approval mechanism in cases where municipalities fail to respond within a prescribed period.
- 5.1.2 The ICASA Explanatory Memorandum itself identifies "inconsistent and unpredictable municipal wayleave processes" and "long approval timelines across state entities" as the first and third ranked recurring barriers to deployment. The 2023 Policy Direction recognised the same barriers. The 2026 Draft Policy Direction explicitly identifies the absence of consistent municipal processes as the primary problem, with the Minister's explanatory note reading: "Every municipality has a different process and charges different fees and there is significant delay in issuing permits."
- 5.1.3 In practice, municipal wayleave processing periods range from weeks to many months, with some operators reporting that the process of getting a business customer live can take between six to twelve months in certain metro areas. Costs range from R8,000 to hundreds of thousands of rand, with some municipalities charging arbitrary annual "maintenance" fees for which no service is provided. This is a well-documented and commercially devastating systemic failure.
- 5.1.4 As an example, the EU's Gigabit Infrastructure Act (Regulation (EU) 2024/1309), which entered into force on 11 May 2024 and became directly applicable from 12 November 2025, introduces a mandatory 4-month permit period, a tacit approval mechanism where permits are deemed granted if authorities do not respond within the required period, and a mandatory right to compensation for operators harmed by delays. The BCRD, which preceded the GIA, similarly prescribed that permit applications be checked for completeness within 20 days.

- 5.1.5 The failure to address this gap means that the Draft Regulations do not fulfil the primary mandate of section 21(2)(a) of the ECA to "prescribe the procedures and processes applicable to obtaining permits, authorisations and approvals required for deployment" in any meaningful operational sense. Merely requiring licensees to obtain wayleaves without regulating the manner, timing and cost of obtaining them leaves the core bottleneck entirely unaddressed.
- 5.1.6 ACT acknowledges that ICASA's direct authority over municipalities is limited by the constitutional framework governing cooperative governance (Chapter 3 of the Constitution). However, the Authority has a duty under section 4 of the ECA to promote the public interest, and this duty extends to liaising with relevant spheres of government.
- 5.1.7 ACT would like to highlight its proposal recently made in its comments responding to the Draft Rapid Deployment Policy Direction. It proposes that the DCDT should consider a national, binding wayleave framework (perhaps implemented through the standard draft by-law mechanism introduced by Section 21A of the Electronic Communications Amendment Bill 2026). This approach addresses the fragmentation of current non-binding CoGTA instruments by mandating a uniform wayleave process under the Municipal Systems Act. The framework should set out uniform minimum standards, including prescribed application requirements, standardised documentation, and maximum processing timeframes. The framework should be analogous to the judicial standards recently established for NERSA-regulated municipal tariffs.
- 5.1.8 The legal and policy rationale for such an approach is reinforced by section 152 of the Constitution, which requires municipalities to promote social and economic development and to ensure the provision of services in a sustainable manner, objectives that are directly advanced by efficient telecommunications deployment.
- 5.1.9 A binding framework would therefore not undermine municipal autonomy, but rather standardise and rationalise administrative processes to give effect to constitutional and national policy objectives, while reducing uncertainty, delays, and opportunities for inconsistent or rent-seeking behaviour at the local level. In practical terms, the framework would clarify roles and responsibilities, create enforceable service standards, and introduce accountability mechanisms, thereby enabling the DCDT to coordinate without usurping municipal powers, and ensuring that the rapid deployment regime operates effectively in practice, rather than remaining dependent on non-binding guidelines.

5.2 Absence of Fee Caps and Cost-Based Pricing Principles

- 5.2.1 The 2023 Policy Direction identified "excessive, non-cost-based application fees and deposits" as the second key barrier to deployment identified through ICASA's internal research.

- 5.2.2 The Draft Regulations contain no provision capping wayleave application fees or requiring that such fees be cost-reflective. This omission perpetuates a commercially unacceptable status quo in which wayleave fees are used by some municipalities as a revenue-raising mechanism unrelated to the cost of processing applications, which undermines the national interest and rapid deployment objectives.
- 5.2.3 As an example, the EU GIA requires that fees for permit procedures cannot exceed administrative costs, thereby anchoring fees to the regulatory purpose of processing rather than to revenue generation. The Submitter proposes adoption of an equivalent principle in South Africa.
- 5.2.4 The 2023 Policy Direction identified "excessive, non-cost-based application fees and deposits" as the second key barrier to deployment identified through ICASA's internal research.

5.3 Lack of Procedural Clarity on Consultation Timelines

- 5.3.1 Regulation 4(3) and (4) require "reasonable" notice and a "reasonable opportunity" for landowners to respond to consultation. The word "reasonable" introduces an unacceptable degree of ambiguity for a regulatory instrument intended to accelerate deployment. Disputes about what constitutes "reasonable" notice will themselves cause delays.
- 5.3.2 ACT is further concerned that regulation 4 appears, in certain respects, to proceed from the assumption that deployment activities primarily concern municipally owned land and public infrastructure corridors. In practice, however, a substantial portion of electronic communications infrastructure traverses privately owned land, including farms, estates, sectional title developments and privately managed commercial precincts. The Draft Regulations should therefore more clearly recognise the distinct legal and operational considerations applicable to privately owned land and avoid creating uncertainty regarding the respective rights and obligations of ECNS licensees and private landowners under section 22 of the ECA.
- 5.3.3 Regulation 4(7)'s 30-day notice for deployment is specific and appropriate for major deployments. However, for minor works such as aerial fibre drops or short duct extensions, a 30-day notice period may be disproportionate and commercially impractical. The Draft Regulations do not distinguish between different categories of deployment activity, which is a material gap.
- 5.3.4 The EU GIA specifically exempts minor civil works of limited scope from permit requirements, and requires Member States to establish these exemptions in law. South Africa's regulatory framework should adopt a similar proportionality principle.

5.4 GIS Data Security and Confidentiality

- 5.4.1 The Draft Regulations require licensees to submit detailed geo-referenced data on all fibre routes, ducts, poles, manholes, towers, base stations, available capacity and planned investment timelines to the Authority on a bi-annual basis. However, very little insight is provided on how this GIS database will function, be managed, how data will be secured, and who will be the custodian of the database. No provisions govern who may access this data, who it may be shared with, under what conditions it may be shared, with what security safeguards, or for what purposes. “Base stations” needs to be defined to avoid ambiguity. Available capacity in ducts (or duct space) requires further clarification as several factors impact the assessment of spare duct capacity. Legacy network providers may face challenges to provide accurate GIS data.
- 5.4.2 ACT has raised serious concerns that the centralisation of this data creates national security risks and may expose commercially sensitive investment strategies to competitors. The disclosure of planned rollout areas and investment timelines in particular could distort commercial decision-making in a competitive market.
- 5.4.3 As stated, ACT is concerned that the mandatory disclosure of detailed GIS infrastructure information may expose critical communications infrastructure to heightened risks of theft, vandalism and sabotage. This concern is particularly significant in light of the Authority’s own findings in the 2026 State of the ICT Sector Report regarding increased incidents of infrastructure theft and losses affecting the sector. ACT accordingly submits that the Authority should provide clarity regarding the safeguards, classification protocols and access-control measures that will apply to sensitive infrastructure information to ensure that the GIS framework does not inadvertently compromise network security or public communications resilience.
- 5.4.4 The EU GIA permits restriction of infrastructure information where disclosure would be disproportionate or where it relates to critical infrastructure security, and requires information to be provided through secured digitised platforms with access controls. The Draft Regulations contain no equivalent safeguards.
- 5.4.5 The six-month implementation period for the GIS obligations (regulation 10(2)) has been flagged by ACT as insufficient, particularly for smaller operators who will need to develop entirely new data collection and reporting systems.

5.5 Compensation Framework Lacks Procedural Rigour

- 5.5.1 Regulation 6 establishes a framework for compensation that is largely aspirational. It requires negotiation in good faith but provides no time limit within which compensation must be agreed. Failure to reach agreement is redirected to regulation 8 (dispute resolution), but the dispute resolution mechanism itself lacks enforceable timelines and raises jurisdictional issues.

- 5.5.2 Regulation 6(3) contains a drafting error: sub-regulation (a) is repeated twice, both referring to "market value of the affected land", the second sub-regulation (a) should be sub-regulation (b) and appears to address severance and injurious affection. This must be corrected in the final Regulations.
- 5.5.3 Regulation 6 does not address the quantum of compensation for temporary use of land during deployment (as opposed to permanent restriction of use). The distinction between temporary occupation and permanent servitude is a material one that affects the scope of compensation claims.

Dispute Resolution Lacks Enforceable Timelines and Escalation Certainty

- 5.5.4 While the graduated dispute resolution framework in regulation 8 is structurally sound, the mechanism lacks binding timelines at critical stages. Regulation 8(1)(a) provides that if negotiation fails, within 14 days "the Licensee may appoint an independent mediator." The use of "may" rather than "must" renders the mediation pathway optional rather than mandatory, and the 14-day trigger is for the appointment of a mediator, not for the commencement of mediation.
- 5.5.5 There is no prescribed timeline for the completion of mediation, no provision for what happens when mediation commences but is unreasonably prolonged, and no deemed-failure mechanism to allow escalation after a defined period.
- 5.5.6 The mechanism in regulation 8(3), which allows referral to arbitration "by agreement between the parties", means that a recalcitrant party can effectively veto arbitration, forcing court litigation regardless of the costs and delays involved.
- 5.5.7 The ITU's best practice guidelines on dispute resolution in the telecommunications sector identify timeliness, transparency and accessibility as the three cardinal requirements of an effective regulatory dispute resolution mechanism. The current mechanism fails on all three criteria.

No Provision for Single Information Point or One-Stop-Shop

- 5.5.8 The Draft Regulations do not establish or require a single information point or one-stop-shop for permit applications. This is a significant omission. The ITU's Best Practice Guidelines on Infrastructure Sharing specifically recommend the establishment of a one-stop-shop to co-ordinate trenching and ducting works between operators and between telecoms and other utilities. The EU GIA mandates Member States to provide a digitised single information point for permit applications and infrastructure information.
- 5.5.9 The 2023 Policy Direction and the 2026 Draft Policy Direction both identify fragmented approval processes as a central barrier to deployment. Without a structural mechanism to consolidate approvals, whether a single information point, an intergovernmental co-ordinating body or a designated fast-track official at the local authority level, the fragmentation problem cannot be solved through regulations alone.

- 5.5.10 ACT is concerned that, while the Draft Regulations correctly identify fragmented municipal approval processes as a central barrier to deployment, the Regulations do not establish sufficiently practical institutional mechanisms to resolve these challenges in practice. In particular, the Draft Regulations do not provide for a coordinated governance framework involving ICASA, the DCDT, CoGTA, SALGA, municipalities, private property representative bodies and industry stakeholders for purposes of developing uniform operational standards applicable across the Republic.
- 5.5.11 In the absence of such coordination, the current framework risks perpetuating a regulatory environment in which disputes relating to wayleaves, access rights, rezonings, town-planning approvals and landlord objections continue to be resolved primarily through litigation. ACT submits that this outcome would undermine the objective of rapid deployment and is inconsistent with the constitutional principles of cooperative governance.
- 5.5.12 ACT further notes that certain matters implicated by network deployment, including zoning approvals, land-use rights and town-planning schemes, fall within the statutory competence of municipalities and other planning authorities. The Draft Regulations do not sufficiently clarify how the proposed consultation obligations will interact with these existing municipal processes. Poorly coordinated consultation obligations may unintentionally create additional delays, disputes or community disruptions rather than facilitating efficient deployment.

Tower Companies and Passive Infrastructure Providers Not Addressed

- 5.5.13 The Draft Regulations define "Licensee" exclusively as a holder of an ECNS licence. Tower companies and passive infrastructure providers, who own and operate a significant proportion of the mast, tower and duct infrastructure upon which active network deployment depends, are not ECNS licensees but are critical participants in the deployment ecosystem.
- 5.5.14 The exclusion of these entities from the regulatory framework creates a gap in the co-build and infrastructure-sharing provisions and means that the GIS database will not capture the full universe of passive infrastructure. ACT has specifically raised this concern in its preliminary response to the Draft Regulations as well as other submissions wherein a case is made to review the current licensing regime.

Penalties are Disproportionate and of Doubtful Legal Validity

- 5.5.15 Regulation 9 provides for fines of up to R150,000 for contraventions of regulations 3 and 4, and up to R1 million for contraventions of regulations 6 and 7. The absence of a penalty for contraventions of regulation 8 (dispute resolution obligations) appears anomalous.

- 5.5.16 More fundamentally, the penalty of R1 million for GIS non-compliance (regulation 7) raises questions of proportionality in light of the complexity and cost of the GIS obligations, the six-month implementation window, and the fact that smaller licensees may face technical compliance difficulties that are not attributable to wilful non-compliance. ACT believes that this fine is potentially disproportionate and investment-detering.
- 5.5.17 The Authority must ensure that the penalty provisions are grounded in its statutory powers to impose fines under the ICASA Act, 2000 (Act No. 13 of 2000), and that the prescribed amounts are calibrated to the regulatory objective of promoting compliance rather than punishing technical failures. The penalty provisions should also provide for graduated fines based on the nature, duration and impact of the contravention, and should include a right of appeal to the CCC before any fine is enforced.

6. PROPOSALS FOR IMPROVEMENT

Proposed Amendments to Regulation 1 (Definitions)

- 6.1.1 Insert a definition of "Minor Works" to mean works of limited duration and scope that do not require excavation of a public road reserve, do not require environmental impact assessment, and do not affect publicly owned infrastructure. Minor Works should be exempt from the 30-day notice period and should require only a 5 to 7 business day notice to the relevant authority and affected party.
- 6.1.2 Insert a definition of "Deemed Approval" to mean the deemed grant of a wayleave certificate or permit on the expiry of a binding processing deadline without a decision being issued. This definition is a prerequisite for the deemed approval mechanism proposed below.
- 6.1.3 Insert a definition of "Single Information Point" as a digitised platform designated by the Authority or the relevant national department through which applications for wayleave certificates and deployment approvals may be submitted and tracked.
- 6.1.4 ACT further submits that the Draft Regulations should expressly define or provide objective standards for concepts such as "Reinstatement Standards" and "Deemed Approval". The absence of clear explanations of the use of these concepts create legal uncertainty and may undermine the objective of encouraging investment through predictable and efficient deployment processes. Regulatory certainty regarding these concepts is necessary if the Regulations are to facilitate rapid deployment of ECNs in a commercially practical manner.
- 6.1.5 ACT further requests clarity regarding the relationship between the Draft Regulations and the existing ICASA Facilities Leasing Regulations, 2010. In particular, the Authority should clarify whether the proposed framework is intended to supplement, amend or operate alongside the Facilities Leasing

Regulations, and how any areas of overlap or inconsistency between the two frameworks will be addressed in practice.

Proposed Amendments to Regulation 2 (Purpose)

6.1.6 Amend regulation 2(1)(a) to add, as an explicit purpose, the reduction of administrative barriers to deployment, including through the standardisation of permit processes, the introduction of binding processing timelines and the establishment of a Single Information Point.

Proposed Amendment to Regulation 4 (Entry Procedures)

6.1.7 Insert new sub-regulations providing for binding wayleave processing timelines:

- (X) A relevant authority that receives a complete wayleave application from a Licensee must issue its decision (whether to grant, refuse or conditionally grant the wayleave) within thirty (30) working days of receipt of a complete application.
- (X+1) If a relevant authority fails to issue its decision within the period specified in sub-regulation (X), the wayleave shall be deemed to have been granted on the terms of the application, subject to any standard conditions of general application.
- (X+2) A relevant authority that refuses a wayleave application must provide written reasons for refusal within the thirty (30) working day period. Failure to provide reasons shall render the refusal a nullity.

6.1.8 Insert a new sub-regulation providing for fee caps:

- (Y) Fees charged by a relevant authority in connection with a wayleave application must be cost-reflective and may not exceed the reasonable direct administrative costs of processing the application. Non-refundable application deposits may not exceed [X] percent of the projected fee. Recurrent annual fees for the use of public land must be based on a transparent, published methodology and may not be used as a revenue-raising measure unrelated to the legitimate costs of managing the public land.

6.1.9 Insert a sub-regulation on intergovernmental co-ordination:

(Z) The Authority must, in collaboration with the Department of Cooperative Governance and Traditional Affairs and the South African Local Government Association, develop and publish a model by-law and standard operational procedures for wayleave processing, and must take all reasonable steps to facilitate its adoption by municipalities.

6.1.10 Amend regulation 4(3) and (4) to replace references to "reasonable" notice and "reasonable opportunity" with specific timeframes (e.g., a minimum of 21 days' notice prior to access to private land, and a minimum of 14 days' written notice prior to access to public land for scheduled maintenance).

6.1.11 Insert a Minor Works exemption exempting licensees from the 30-day notice requirement in regulation 4(7) for Minor Works (as defined above), subject to notification within 5 to 7 business days.

6.1.12 Introduce a Single Information Point obligation by requiring the Authority, within twelve months of the commencement of these Regulations, to establish or

designate a Single Information Point through which applications for wayleave certificates may be tracked, civil works may be co-ordinated across operators, and GIS data may be accessed by authorised persons.

Proposed Amendments to Regulation 6 (Compensation)

- 6.1.13 Correct the drafting error in regulation 6(3): the second sub-regulation (a) should be renumbered as sub-regulation (b) to address severance and injurious affection as a separate factor.
- 6.1.14 It is proposed that the Authority insert a timeline for compensation determination: parties must conclude a compensation agreement within sixty (60) days of the access agreement, failing which either party may invoke the dispute resolution mechanism in regulation 8. Unresolved compensation disputes must be escalated to mediation within 14 days of that deadline expiring.
- 6.1.15 It is proposed that the regulations be amended to distinguish between temporary occupation and permanent use restriction in the compensation provisions, and provide different frameworks for assessing each.

Proposed Amendments to Regulation 7 (GIS Database)

- 6.1.16 As indicated above, the purposes of the GIS Database must be clearly stated. ACT and its members strongly believe that data access and security provisions must be inserted:
- The Authority must establish and publish a Data Access and Security Policy governing who may access GIS data submitted by licensees, the level of granularity accessible to different categories of users (including government), and the safeguards against unauthorised access, misuse or disclosure of data that is commercially sensitive or that relates to critical infrastructure.
 - The Authority must, before receiving any data under this regulation, publish the Data Access and Security Policy (referred to in bullet one above) and obtain the concurrence of the National Communications and Signals Intelligence Agency as to the adequacy of the security measures.
- 6.1.17 It is proposed that the regulations provide for a tiered data disclosure model: licensee-specific infrastructure data submitted to the Authority should be subject to different access levels, (i) full access for the Authority's planning and co-ordination purposes; (ii) aggregate, anonymised and coarsened access for co-operators seeking to co-build; and (iii) no access for commercial competitors in respect of planned investment data.
- 6.1.18 It is furthermore proposed that the Authority should extend the GIS implementation period from six months to twelve months, with a phased implementation schedule that gives smaller licensees additional time to develop compliant reporting systems.
- 6.1.19 The Authority should furthermore publish consolidated GIS outputs, derived from submitted data, as publicly accessible broadband availability maps at regular intervals, in line with the ITU Guidelines on National Broadband Mapping and the

EU GIA's transparency requirements, subject to the GIS Data Access and Security Policy.

- 6.1.20 As discussed above, the regulations would only be effective once the licensing framework has been updated to ensure that passive infrastructure providers are included in the GIS submission obligations, to ensure that the database captures the full universe of infrastructure relevant to co-build and deployment planning.

Proposed Amendments to Regulation 8 (Dispute Resolution)

- 6.1.21 It is proposed that "may appoint" in regulation 8(1)(a) be replaced with "must appoint" and the regulations should specify that mediation must commence within 30 days of appointment and must be completed within 60 days of commencement unless extended by agreement. Include a deemed-failure provision after which the next step in the escalation sequence is automatically triggered.
- 6.1.22 The mutual agreement requirement for arbitration in regulation 8(3)(a) should be removed: ACT proposes that upon failure of mediation, any party should have the unilateral right to refer the dispute to binding arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), unless the parties agree that court proceedings are more appropriate. This is consistent with international best practice in telecommunications dispute resolution
- 6.1.23 Furthermore, a fast-track track for access disputes should be inserted: where a dispute concerns a licensee's right of access and mediation has not resolved the matter within 10 business days, either party should be entitled to approach the CCC for an interim order pending final resolution.
- 6.1.24 Pending the finalisation of a binding framework, ACT submits that the regulations should already include a duty on municipalities to participate in dispute resolution processes initiated by licensees in respect of wayleave applications.

Proposed Amendments to Regulation 9 (Penalties)

- 6.1.25 It is proposed that the regulations should introduce graduated penalties calibrated to the nature, duration and severity of the contravention, consistent with the principles of regulatory proportionality.
- 6.1.26 The regulations should also provide for a right of appeal to the CCC, with a stay of enforcement pending appeal, before any fine for GIS non-compliance is enforced against a licensee.
- 6.1.27 ACT submits that the R1-million GIS penalty should be reduced to a starting fine with escalating daily fines for continued non-compliance up to R1 million, so that the penalty structure incentivises prompt rectification rather than acting as a deterrent to participation.
- 6.1.28 Pending the binding framework, ACT submits that penalties should already be added for municipal non-compliance with the binding timelines proposed above, including a right for a licensee to seek a damages award from the CCC or a

competent court where a municipality's unlawful delay in processing a wayleave application causes demonstrable loss.

Additional Proposals

- 6.1.29 It may be important to align the Draft Regulations with the 2026 Draft Policy Direction once finalised, in terms of section 3(2) of the ECA, and expressly cross-reference the Policy Direction in the preamble to the final Regulations.
- 6.1.30 ACT cannot emphasise enough, how important it is for the Authority to publish a Regulatory Impact Assessment in terms of the socio-economic impact assessment requirements applicable to regulations of this nature, setting out the costs and benefits of the proposed regulatory interventions and demonstrating that the chosen approach is the least restrictive means of achieving the regulatory objective. This is a basic requirement in terms of PAJA.
- 6.1.31 Tower companies and passive infrastructure providers should formally form part of the regulations in order for it to be effective and ACT submits that the Authority work with the DCDT to amend the legislation accordingly. This is the only way to ensure fair, reasonable and non-discriminatory terms for all market participants, consistent with the ICASA Facilities Leasing Regulations.
- 6.1.32 It is furthermore submitted that an in-building infrastructure provision be included that requires that all new multi-dwelling unit developments and substantially renovated commercial buildings be equipped with passive fibre-ready infrastructure, consistent with the approach adopted by the EU GIA from February 2026 onwards.

7. CONCLUSION

- 7.1 The Draft Regulations represent a significant and welcome step toward fulfilling ICASA's mandatory statutory obligation under section 21(2) of the ECA. The framework is conceptually sound in its approach to landowner consultation, access agreements, lifecycle management, GIS obligations and dispute resolution. These features are commended and should be retained and strengthened in the final Regulations. However Considering that the Regulations does not have force in effect on Municipalities and Metro's and Landowners (those that do not opt in), it is not so significant nor effective.
- 7.2 However, the Draft Regulations fall materially short of the operational objectives of the 2023 Policy and the 2026 Draft Policy Direction. The central gap, which relates to binding turnaround times and deemed-approval mechanisms on municipal wayleave processes, renders the instrument insufficient to address the primary systemic barrier to broadband deployment in South Africa.
- 7.3 ACT strongly urges the Authority to engage collaboratively with the Minister to address this regulatory gap through the development of a binding framework grounded in constitutional principles. In this regard, the Regulations should ideally



provide for coordinated standards and institutional alignment among the DCDT, ICASA, COGTA, municipalities, and relevant private property bodies or authorities to ensure consistent and effective implementation of rapid deployment processes.

7.4 ACT respectfully requests the opportunity to make oral representations before the Authority or the Rapid Deployment Council Committee should the Authority elect to hold public hearings in terms of the notice published in Government Gazette No. 54484.

Yours sincerely,

Ms Nomvuyiso Batyi
Chief Executive Officer
Association of Comms and Technology