

The Independent Communications Authority of South Africa

For attention: Chairperson - Rapid Deployment Council Committee

Per email: rapiddeployment@icasa.org.za

25 May 2026

Dear Chairperson,

DRAFT RAPID DEPLOYMENT REGULATIONS 2026

1. The Digital Council Africa (DCA) has noted the publication of the Draft Rapid Deployment Regulations and accompanying Explanatory Memorandum on 12 April 2026.
2. The DCA appreciates the evident focus on rapid deployment from both the policy maker and the regulator. It is critical to maintain this momentum in order to meet meaningful connectivity objectives, and the submissions below should be understood in this context.

Structure of this submission

3. This submission is structured as follows:
 - 3.1. Information about the DCA, its members, and their interest in the Draft Regulations.
 - 3.2. A submission on the interaction between the Draft Regulations and the Draft Policy direction on matters relevant to Electronic Communications Network Deployment pursuant to the National Policy on Rapid Deployment of Electronic Communications Networks and Facilities 2023.
 - 3.3. A set of general submissions on the Draft Regulations.
 - 3.4. Specific submissions on the text of the Draft Regulations.
 - 3.5. A conclusion.

About the DCA and its members' interest in the Draft Regulations

4. The Digital Council Africa (DCA) is a leading independent, non-profit organisation driving digital infrastructure development in Africa.
5. The DCA has a long track record of working closely and constructively with government, regulators, members, and leaders across the public and private sectors, driving investments and supporting skills development to create a robust and competitive digital economy in South Africa and across Africa.
6. DCA membership spans:

- 6.1. Fibre network operators (FNOs)
 - 6.2. Mobile network operators (MNOs)
 - 6.3. Tower companies
 - 6.4. Data centre providers and cloud service providers
 - 6.5. Submarine cable operators
 - 6.6. Platform providers, and
 - 6.7. Original Equipment Manufacturers (OEMs).
7. As such, members are at the very forefront of deploying broadband infrastructure in South Africa.
 8. DCA members have consistently highlighted the following obstacles to rapid deployment which require government intervention:
 - 8.1. Inconsistent and unpredictable municipal wayleave processes
 - 8.2. Excessive, non-cost based application fees and deposits charged by municipalities and state entities
 - 8.3. Lengthy approval timelines across state entities
 - 8.4. Difficulties accessing state owned servitudes and infrastructure
 - 8.5. Wayleave “hoarding” or speculative applications
 - 8.6. A lack of visibility of existing infrastructure, contributing to duplication and accidental damage.
 - 8.7. Unclear expectations around landowner engagement, and
 - 8.8. absence of a structured dispute resolution pathway for property related conflicts.
 9. It is clear the Draft Regulations seek to address many of these issues – which are expressly listed in the Explanatory Memorandum – which intent is welcomed by the DCA and its members.

Interaction with the Ministerial policy direction process on rapid deployment matters

10. The Authority is aware of the policy direction process initiated by the Minister on 12 March 2026, prior to the publication of the Draft Regulations for comment.
 - 10.1. The DCA is not privy to communications between the Authority and the Ministry/Department, but it appears that a policy direction is being finalised which is intended to provide a further framework for the development of rapid deployment regulations and a regulatory framework for a GIS database.

- 10.2. If the policy direction process proceeds to finalisation, the Authority will be required to consider the content of the final policy direction before finalising its own regulations on rapid deployment and GIS mapping.
- 10.3. It is not clear to the DCA how this will work in practice.
11. On behalf of its members the DCA made extensive submissions on the draft policy direction, and the DCA anticipates that substantial revisions will be made to the draft.
12. The Authority is requested to make a public statement clarifying the interaction between the process to finalise the Draft Regulations and the Ministerial policy direction process.

General submissions on the Draft Regulations

13. The DCA wishes to emphasise that it is cognisant of the constraints faced by the Authority in drafting regulations relating to rapid deployment.
 - 13.1. The scope of rapid deployment regulations is limited by the language of section 21 of the ECA and the 2023 policy direction. The ability of the Authority to prescribe processes and procedures for rapid deployment – particularly with regard to public land – is circumscribed.
 - 13.2. Subsection 21(2)(a) stipulates that rapid deployment regulations must provide procedures and processes for -

(a) obtaining any necessary permit, authorisation, approval or other governmental authority including the criteria necessary to qualify for such permit, authorisation, approval or other governmental authority
 - 13.3. Noting that this language limits the scope of the regulations to interactions with government authorities (and that it therefore beyond the lawful scope of the Draft Regulations to prescribe processes and procedures relating to access to private land), the DCA cannot see what the Authority could usefully contribute to these improving these interactions through its regulations.
 - 13.4. Government authorities have their own processes and procedures for permits, authorisations and approvals relating to access to their land and they also stipulate the qualification criteria for these permits, authorisations and approvals.
 - 13.5. It appears that there is little for ICASA regulations to add: the applicable criteria is that an entity must have an ECNS licence to utilise section 22.
 - 13.6. Where the Draft Regulations purport to add or vary some of the requirements or qualification criteria set by government authorities, by requiring, for example, mandatory consultations, the Authority needs to take care not to exceed its jurisdiction by effectively dictating processes and procedures to other government authorities.

14. Further, in the absence of guidance from the communications regulator, the courts have stepped in to provide comprehensive guidance on the exercise of ECA Chapter 4 rights.
15. It should also be recognised that there are very few instances in which section 22 of the ECA is relied on in practice. Typically, access to private land is negotiated while access to public land is obtained after following a mandatory process (such as when applying for a wayleave).
16. Reliance on section 22 by a licensee generally indicates a failure to obtain consent from a private landowner or material delays in processing an application by a government authority.
17. The reaction of DCA members to the Draft Regulations indicates misalignment between the expectations of industry of the scope of regulatory intervention and the reality of the Authority's position.

The Draft Regulations add obligations without providing solutions to rapid deployment obstacles

18. DCA members consulted unanimously indicated that they do not believe that the Draft Regulations “promote the public interest in the rapid rollout of broadband infrastructure” as is required by the 2023 Ministerial policy direction and the National Rapid Deployment Policy 2023.
19. The table below sets out an assessment of the extent to which the Draft Regulations address the obstacles to rapid deployment identified by DCA members:

Inconsistent and unpredictable municipal wayleave processes	No
Excessive, non-cost-based application fees and deposits	No
Long approval timelines across state entities	No
Difficulties accessing state-owned servitudes and infrastructure	No
Wayleave “hoarding” or speculative applications	Partially
Lack of visibility of existing infrastructure, contributing to duplication and accidental damage	Yes
Unclear expectations around landowner engagement	Yes
Absence of a structured dispute-resolution pathway for property-related conflicts.	Yes

20. As noted above, the DCA appreciates that addressing the first four issues is not in the direct power of the Authority.
21. It is the view of DCA members that the Draft Regulations will deter and delay deployment rather than facilitate it. The consensus understanding of members is that

delays will be occasioned by additional consultation, notification and other obligations imposed on licensees.

Licensees vs non-licensees

22. Chapter 4 of the ECA and therefore the Draft Regulations apply only to holders of electronic communications network services (ECNS) licences.
23. It is not clear to the DCA that the Authority has recognised or considered the competitive and general impact of imposing obligations on licensees in circumstances where non-licensees also deploy electronic communications facilities in South Africa.

“land” vs “property”

24. The Draft Regulations conflate the distinct legal concepts of “land” and “property”.
 - 24.1. Section 22 of the ECA explicitly refers to the right to enter upon land, including any street, road, footpath or land reserved for public purposes, any railway and any waterway.
 - 24.2. The reference to a building or structure in subsection 22(1)(c) is linked to attaching wires, stays or other kinds of support to the building or structure.
 - 24.3. Section 22 does not afford rights to enter a building or structure on land other than may be necessary to attach supports.
25. If “property” is used loosely as a synonym for immovable premises or land, the section 22 rights do extend to it. If “property” is used in its proper South African legal sense — embracing movables, incorporeal property and the full range of patrimonial interests — then the section 22 rights do not extend to “property” at large.

Concept	Status under section 22 of the ECA
Immovable land (private, municipal, public, including streets, roads, footpaths, railways, waterways)	Within the section 22 access and use right, subject to <i>Link Africa</i> constraints and <i>Telkom v Cape Town</i> regulatory compliance.
Buildings and structures on land	Not directly within section 22 itself; ancillary rights (e.g. attachment of supports, treatment of fences and trees) are conferred by sections 23 to 29 in specified terms
Movable property	Outside section 22

26. The Draft Regulations require review to ensure that they do not exceed the scope of the empowering legislation.
27. For example:

27.1. One of the purposes of the Draft Regulations is to:

*“prescribe processes and procedures for entry upon public and private **property** for deploying, maintaining, altering, or removing Electronic Communications Facilities”¹*

27.2. Paragraph 4 is headed:

4. THE PROCESS AND PROCEDURE FOR ENTRY ONTO LAND OR PROPERTY

27.3. There are numerous other references to “land/property” and “land or property” throughout the Draft Regulations.

28. The Authority is requested to review the Draft Regulations to ensure that the term “property” is used appropriately.

Access to public land vs access to private land

29. The Draft Regulations should clearly distinguish between exercise of section 22 rights relating to:

29.1. Access to public land, and

29.2. Access to private land.

30. In practice, there are very different circumstances and considerations facing licensees when accessing public as opposed to private land.

30.1. Access to public land will generally be governed by an existing process, set out in municipal by-laws or in provincial or national legislation.

30.2. Access to private land is a matter of negotiation and is almost always consent based (i.e. it does not rely on section 22 rights).

31. There are numerous instances in the Draft Regulations where:

31.1. It is not clear whether an obligation applies to access to public or private land or both.

31.2. An obligation explicitly or implicitly applies to access to public land, but the obligation varies or adds to existing obligations imposed on responsible government authorities.

Processes and procedures relating to rapid deployment

Ad paragraph 3 – Responsibilities of Licensees

32. With the exception of the new requirement to submit GIS data, this paragraph is a restatement of existing law.

¹ Draft Regulations subparagraph 2(1)(c)

Ad paragraph 4 – The process and procedure for entry onto land or property

33. Sub-paragraph (1) is a restatement of existing law. The Authority should note that the list of approvals required should all be qualified as “where applicable”: the approvals required are a function of the nature of the facilities or network being deployed.
34. The DCA requests the deletion of sub-paragraph (2): consultation requirements are dealt with in sub-paragraphs (3) – (6).
35. Sub-paragraphs (3) – (6) need to be redrafted to clearly distinguish between consultation requirements in respect of access to public as opposed to private land.
 - 35.1. The Draft Regulations should not interfere with processes and procedures – including those relating to consultation – conducted by other government authorities.
 - 35.2. To the extent that the Draft Regulations add further obligations for licensees to observe, over and above those of the relevant government authority, these are unnecessary and will delay deployment.
36. Sub-paragraph (7) should only apply to access to private land (to the extent that the Authority is empowered to regulate such access). The DCA requests the Authority to consider allowing an access activity to commence within the 30 day period where this has been agreed to in the access agreement by the landowner.
37. The DCA requests that the Authority amend sub-paragraph (9) to allow for scheduled (and emergency) maintenance to be regulated by the duly executed access agreement. A licensee should be able to commence within the 14 day period where this has been agreed to in writing by the landowner.
38. Sub-paragraphs (10) and (11) interfere with processes and procedures conducted by other government authorities or utility providers. The DCA submits that these sub-paragraphs should be deleted.
39. Sub-paragraph 16 contemplates a situation where a licensee can be directed to participate in a trench-sharing or co-build arrangement on reasonable terms and subject to technical feasibility and safety considerations. The DCA wishes to emphasise that it remains at all times in the discretion of the licensee as to whether to enter into such arrangements and, if it chooses to, the terms that can be regarded as reasonable.

Ad paragraph 5 – Removal of electronic communications networks and facilities

40. The DCA submits that sub-paragraphs (1) – (4) unduly interfere with commercial relationships alternatively potentially conflict with existing processes conducted by government authorities.
41. Sub-paragraphs (5) – (7) are supported.

Ad paragraph 6 – Compensation

42. The DCA has noted the content of this paragraph, which generally restates the existing position regarding compensation for deprivation of use of land and for damage caused by deployment, alteration or maintenance activities.
43. The requirement to use the services of a “registered and independent valuer” adds cost and delay to deployment processes. The DCA requests that the Authority consider allowing alternative valuation mechanisms subject to the agreement of the parties.
44. The term “injurious affection” in sub-paragraph 6(3)(b)² is not part of South African law and should be used with caution.

Ad paragraph 8 – Dispute resolution

45. The DCA has noted:
 - 45.1. The basic dispute resolution framework proposed by the Draft Regulations.
 - 45.2. The detailed nature of the draft Ministerial policy direction as it relates to dispute resolution.
46. When finalising this provision, the Authority is requested to bear in mind that it is critical to industry and to achieving rapid deployment that clear timelines are provided for dispute resolution, particularly where a matter is brought to the Authority or CCC.

GIS mapping and data submission obligations

47. The DCA broadly supports the drive towards establishing a GIS database of broadband infrastructure in South Africa. This includes the imposition on licensees of a more detailed obligation to submit GIS data.
48. DCA members are, however, concerned about the scope of the information requested, which is far broader than just data relating to physical broadband infrastructure. Members are particularly resistant to revealing commercially and competitively sensitive information relating to future network deployments.
49. The DCA submits that GIS mapping:
 - 49.1. Should be implemented in a phased manner which allows trust to be built in the relevant processes and for questions relating to the security of and access to the database to be resolved.
 - 49.2. Requires a great deal more interaction between the Authority and industry to determine the data which is to be submitted.

² There is an error in the numbering – this is currently reflected as 6(3)(a)

50. Finally, the DCA requests that the Authority consider separating the GIS mapping provisions from the regulations relating to rapid deployment.
- 50.1. The rationale for and utility of a broadband infrastructure database is far broader than just rapid deployment.
- 50.2. The amendment of the regulations imposing standard terms and conditions on ECNS licensees may be a better vehicle for the introduction of GIS data reporting obligations.

Conclusion

51. The DCA extends its appreciation to the Authority for the focus on rapid deployment issues and looks forward to engaging further on meeting the challenge of facilitating rapid deployment in the public interest.

Kind Regards,

A handwritten signature in black ink, appearing to be "Juanita Clark", written over a light blue rectangular background.

Juanita Clark
Chief Executive Officer