MTN Submission

Draft Regulations and Explanatory Memorandum on Rapid Deployment of Electronic Communications Networks and Facilities, 2026 as published in Government Gazette 54484

10 April 2026

25 May 2026

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1. Introduction

Mobile Telephone Networks (Pty) Ltd ("MTN South Africa") welcomes the opportunity to comment on the Draft Regulations and Explanatory Memorandum on Rapid Deployment of Electronic Communications Networks and Facilities, 2026 as published in Government Gazette 54484 on 10 April 2026.

Since the liberalisation of the ICT sector, the deployment of telecommunications infrastructure has expanded at an unprecedented scale, driven by the transition from voice centric networks to data intensive broadband and mobile ecosystems.

In 2025, South Africa saw a substantial increase of 24.1% in the total capacity of international internet bandwidth[1] and future planned submarine cables such as Umoja Cable, which will be the first direct submarine cable between Africa and Australia will continue to add to this capacity.

The integration of fibre networks is becoming vital not just in connecting households but providing connectivity to data centres and providing backhaul services for mobile networks. The country's current fibre footprint is estimated to be exceeding 250,000 kilometres with 30% of all fibre subscriptions on the continent being in South Africa[2].

Mobile connectivity remains the primary means of accessing broadband services, with population coverage now exceeding 99.5% for 4G and reaching 58.0% for 5G. National mobile data traffic continues to record strong year-on-year growth, increasing by 21.5%, underpinned by sustained improvements in mobile broadband performance, as average download speeds rose from 30.36 Mbps in 2022 to 65.7 Mbps in 2026. Notwithstanding these gains, a 189% increase in network resilience costs, driven largely by theft and the need for backup power solutions, continues to place significant pressure on investment capacity.[3]

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[1] ICASA The State of the ICT Sector Report of South Africa
[2] DCA Africa Digital Infrastructure Market Analysis
[3] The State of the ICT Sector Report of South Africa 2026

Within this framework, the South African landscape has undergone structural changes in tower ownership with a transition from MNO-owned infrastructure to the rise of independently owned passive physical tower companies.

Broadband connectivity is a critical enabler of economic growth, job creation and social inclusion, consequently the ability or inability for licensees to deploy infrastructure has a direct impact to the overall competitiveness of our country.

Bridging the digital divide and fostering digital inclusion should be a priority policy issue for any government, however delivering connectivity to underserved areas is merely one aspect of closing the digital divide. According to the GSMA State of Mobile Internet Connectivity 2024, the coverage gap globally i.e. the percentage of global population not covered by mobile broadband is 4%. However, the usage gap, those people living within mobile broadband coverage but not using it is 39%. To address this usage gap aspects like digital literacy, access to suitable devices, affordability needs to be considered.

MTN supports the Authority's efforts to give effect to the National Policy on Rapid Deployment of Electronic Communications Networks and Facilities, 2023 (Government Gazette No. 48346). While the draft regulations aim to clarify processes, procedures, and the rights and responsibilities of licensees, infrastructure deployment, although important, is not the only factor limiting digital inclusion or addressing the digital divide.

MTN's submission includes general comments as well as comments specifically addressing text in the draft.

In addition, MTN wishes to present its submissions at the Public Hearings which are to follow and any further related processes.

2. General Comments

2.1. Withdraw of current draft regulations

Currently there is the co-existence of an unfinalised policy direction (GG 54314) published on 12 March 2026 and these draft ICASA regulations (GG 54484) purporting to operationalise the National Rapid Deployment Policy (NRDP) published in Government Gazette 48346 on 31 March 2023.

The new draft policy direction signals potential refinement and clarification of how the NRDP should be implemented as such, the Authority cannot finalise these regulations until such time as the policy direction is finalised.

In accordance with Chapter 2, section 3 and section 4(1) of the Electronic Communications Act, 2005 (ECA): The Minister develops national policy, including policy directions and the Authority must consider such policy directions when exercising its regulatory powers

Should the final policy direction introduce new principles, removes or amends NRDP interpretations or adjusts licensee obligations, the Authority would be required to republish amended draft regulations and allow for a new commentary period by stakeholders.

Procedurally, and for the sake of regulatory certainty and coherence, it would therefore be appropriate for the Authority to withdraw these current draft regulations pending the publication of the final policy direction.

2.2. Cost of Approvals

While the draft regulations focus largely on the responsibilities and requirements of licensees, including the need to obtain all necessary approvals in Section 4, the draft regulations overlook the cost implications in obtaining these approvals. The costs of deploying electronic communications infrastructure can be as much as 50% higher in rural areas in comparison to urban areas and up to five times the cost when deploying in remote areas[4].

In a developing economy such as South Africa, where infrastructure is not as diverse as in other developed economies, investment in infrastructure should be supported and encouraged and yet this is not reflected in the prohibitive costs and complex processes for obtaining the necessary approvals.

When obtaining these approvals licensees are dependent on the government, local authorities and regulating authorities, to ensure that these can be obtained through a process that is conducive to providing broadband services to all people at an affordable cost thereby empowering them to form part of the digital economy. Excessive charges for securing approvals to deploy broadband infrastructure remain a significant barrier to expanding internet penetration.

Rather than compensating for administrative costs, or demonstrable loss, municipal institutions and governmental agencies practice rent seeking behaviour, charging premiums simply because network deployment cannot proceed without consent. In the ICT sector, this typically manifests through inflated wayleave fees, excessive wayleave fees by government affiliated agencies such as SANRAL, or prolonged negotiations designed to force higher payments.

Rent seeking behaviour increases the cost of capital deployment. It diverts additional investment and slows network rollout timelines. A regulatory framework should seek to constrain rent seeking behaviour by limiting compensation to demonstrable loss and reasonable costs. Unchecked extraction of economic rent is incompatible with the efficient deployment of telecommunications infrastructure.

[4]Mason, A. (2008). The costs of deploying fibre-based next-generation broadband infrastructure.

MTN submits that the Authority in coordination with the Department of Communications and Digital Technologies (DCDT) investigate how the adoption of the national Standard By-Law Regulations can be more widespread. Additionally, that municipal fees for wayleaves be aligned to administrative cost recovery, possibly through the introduction of a national cap and finally a statutory turnaround times for approvals (e.g. 30 calendar days).

3. Specific Comments

On page 2, a grammatical error exists in the title of the draft regulation which reads as follows: "*Draft Regulations and Explanatory Memorandum on Rapid Employment of Electronic Communications Networks and Facilities, 2026.*"

This should be corrected to deployment and not employment.

3.1. Regulation 1 Definitions

MTN has the following input relating to proposed definitions:

"GIS Database" means the Geographical Information System Information as specified by the Authority about the type and location of Electronic Communications Network Service deployed."

Having due regard to Section 7 (2)(ii) and (iii) relating to passive physical infrastructure, the requirements to be provided are expanded beyond type and location and includes details on the owner and/or operator of the infrastructure, and as well as the available capacity.

The definition of the GIS Database should therefore be amended to reflect all requirements.

"Wayleave Certificate" means a formal authorisation issued by a relevant authority (municipal, provincial, or national) permitting a Licensee to deploy, maintain, or alter electronic communications infrastructure on or beneath public or private land, subject to compliance with applicable bylaws and conditions.

It is unclear whether a relevant authority has the legal mandate to issue a wayleave for private land. MTN therefore recommends removing “or private land” from the definition. For private land, consent must instead be obtained from the landowner or lawful occupier and should not be conflated with a wayleave.

3.2. Regulation 2 Purpose of the regulations

MTN understands that the development of these draft regulations by the Authority is as a direct result of the National policy and policy direction on rapid deployment of electronic communications networks and facilities published in Government Gazette 48346 on 31 March 2023.

In Section 2.2 of the policy direction the Authority is directed to the implementation and publication of decisions made in terms of the dispute resolution procedure.
Within the description of the purpose of the draft regulations 2(1)(e) caters for a dispute resolution mechanism for disputes between Licensees and landowners, and other affected parties, including public utilities.

Regulation 8 that deals with Dispute Resolution does provide for such a mechanism but fails to include the process of how the publication of decisions made in terms of the dispute resolution procedure will be executed.

MTN requests that any future version of the draft Regulations on rapid deployment of electronic communications networks and facilities include within the dispute resolution process the method of publication of decisions.

3.3. Regulation 3 Responsibilities of Licensees

MTN's view is that the proposed responsibilities set out in Section 3 are generally aligned with established principles and reflect standard industry practices relating to due care, reinstatement, and coordination with other utilities. MTN does, however, have concerns regarding the submission of GIS data, particularly in relation to confidentiality and security. These concerns are addressed in more detail in the relevant section.

3.4. Regulation 4 The process and procedure for entry onto land or property

"4(2) A Licensee must conduct public consultations with affected communities to ensure transparency and address concerns."

MTN is not opposed to conducting public consultations with affected communities, however such consultation should be recognised as informational and taken in good faith to reach an amicable solution, but it is not a mechanism seeking consent.

In MTN v SMI Trading CC[5] the question before the Supreme Court of Appeal was whether S22 of the ECA impugned S25 of the Constitution i.e. property rights. S22 of the ECA gives the licensees the right to enter upon any land to construct electronic communication network facilities. The SCA held that even though consent of the landowner is not required prior to the licensee exercising its right held in terms of the ECA, it does not constitute an arbitrary deprivation of property. However, licensees must comply with the applicable law when implementing decisions taken in terms of section 22, and applicable law includes requirements for administrative justice.

Licensees must give people affected by the deployment an opportunity to participate in the decisions that affect them as well as the opportunity to influence the outcome of those decisions. This means that the licensee should negotiate and engage with

[5] 2012 (6) SA 638 (SCA).

the affected parties in good faith prior to taking the decisions to deploy infrastructure and take a reasoned decision considering each party's rights.

"4(9) A Licensee must provide fourteen (14) days' written notice for maintenance, repair or alteration of the electronic communications network and facilities."

Mandatory notice periods of 14 days for maintenance, repair or alteration, apply irrespective of site context, urgency, or operational risk, with limited flexibility beyond emergencies. Such rigid notice periods constrain network resilience and service restoration, particularly in high theft, load shedding, or outage scenarios. From an operational perspective, flexibility—not uniformity—is essential to maintaining service continuity.

Such aspects would be included in the access agreement.

"4(11) A Licensee must, before commencement of work and upon request by a local authority, allow for a joint site inspection."

As this is a stand-alone clause it is not clear whether it is directly related to 4 (10) where the land/property belongs to a local authority or government agency. In the absence of clarity, MTN raises the concern that joint site inspections are triggered "upon request" by a local authority, without clarity on the scope of such an inspection or any safeguards for operators against inspection-driven delay.
In its current format, this clause exposes operators to administrative drag and creates opportunities for informal obstruction or conditionality unrelated to safety or technical compliance.

3.5. Regulation 5 Removal of Electronic Communications Networks and Facilities

While the 60-day requirement to remove decommissioned infrastructure may be considered a reasonable period, the rigidity of the timeframe exposes operators to non-compliance despite reasonable efforts, and potential enforcement action where removal timelines are outside their sole control, for example where access to the site has been contested or denied.

MTN suggests that wording be inserted to reflect that a licensee must decommission and remove electronic communications networks or facilities that have been formally decommissioned and removed from its operational network records, within a reasonable period of sixty (60) days, if the period required extends beyond the 60 days period, licensee will be required to demonstrate why and what delays have impacted the removal of the infrastructure.

3.6. Regulation 6 Compensation

International regulatory experience demonstrates that effective rapid-deployment frameworks for electronic communications infrastructure depend on predictable, proportionate land-access and an associated compensation regime. Jurisdictions that have successfully accelerated broadband and mobile network rollout have done so by constraining landowner compensation to demonstrable loss and impact, rather than permitting compensation based on the perceived commercial or strategic value of network deployment.

Where the deployment of electronic communications infrastructure is intrusive, such as masts, it is fair and just that the property owner is entitled to a reasonable fee. The reasonableness must be quantifiable, reflective of the proportionality of the deprivation incurred by the property owner and not as unfair enrichment.
Compensation frameworks in mature markets such as the United Kingdom, European Union, Australia focus on mitigating actual loss, damage, loss of amenity, and reasonable professional costs, while deliberately excluding monopoly rents or opportunity-cost pricing that would allow individual landowners or authorities to delay or frustrate roll-out. This approach reflects a recognition that excessive or unstructured compensation demands operate as a direct barrier to investment, coverage expansion, and universal access objectives.

Across both developed and emerging markets, there is a clear regulatory trend, that public interest in connectivity outweighs the private extraction of strategic rent from network deployment, provided that landowners are properly compensated for any tangible harm suffered.

Against this backdrop, South Africa's proposed rapid-deployment framework is aligned with established international practice. Limiting compensation to demonstrable loss, damage, and reasonable costs reflects the globally accepted balance between constitutional property rights and the national imperative to extend reliable, high-quality electronic communications infrastructure. Additionally, the 2023 National Policy on Rapid Deployment of Electronic Communications Networks and Facilities articulated that no access fee should be payable for the deployment of electronic communications infrastructure such as cables buried underground or overhead as this infrastructure was deemed to be unobtrusive and consequently there was no cost nor deprivation of property to owner.

While MTN supported this position it remains disheartening that the national policy specifically excluded fees charged by local government and other governmental authorities for permits, authorisations or other approvals.

It is MTN's view that the cost of obtaining approvals required for the deployment of electronic communications infrastructure should be treated in a similar manner as utility services and as such should incur similar costs to that charged to public utility providers in the obtainment of approvals.

3.7. Regulation 7 – Rapid Deployment GIS Database

3.7.1. Responsibility of the GIS database

The National Rapid Deployment Policy 2023 requires the DCDT to establish and maintain a geographic information system (GIS) database containing information about the type and location of broadband infrastructure. However the draft Policy direction states that the Authority is directed to identify the most suitable way to achieve the objectives of rapid deployment including developing a framework for new Rapid Deployment Regulations that allows for the creation of a central geographic information system (GIS) database which has the capability of connecting to and interfacing with other similar databases, including the GIS database of the DCDT.

MTN can only conclude based the aforementioned documents that there will be a minimum of two GIS databases created through legislation/regulation that licensees are expected to provide data to, either directly in the case of ICASA or indirectly via ICASA to the DCDT GIS database.

While the objective of these initiatives is understood, this approach may result in unintended duplication, particularly in a policy environment where there is an ongoing emphasis on reducing duplication within the sector.

3.7.2. GIS Data Requirements

The draft regulations seek to obtain data from three distinct categories namely:

- details of location, capacity, ownership and type of passive physical infrastructure.
- Technology deployed at these physical locations and their geographical reach.
- Future deployments and related timeframes.

Independent tower companies (TowerCos) manage approximately 52% of Africa's telecom towers, reflecting a significant shift away from mobile network operator (MNO) ownership, as MNOs increasingly divest their infrastructure to reduce capital expenditure and operational complexity. With the sale of passive tower infrastructure by most MNO in South Africa to independent Towercos, many of which do not fall within the ambit of the Authority's oversight, it is unclear how the Authority intends to ensure accurate collection of data of the passive physical infrastructure.

While the obligation to provide the physical location could potentially be passed on to licenced entities to collect, licensees would not be in a position to provide available capacity of this infrastructure.

Additionally, while it is not uncommon for national regulators to request information on future deployment, this is usually used by the regulatory authority to assist in making decision in allocating public funding that aligns with national broadband plans in order to prevent that any public intervention does not overbuild commercially planned networks. This rationale is not the reason behind the Authority's request for insight into future network rollouts. The Authority in the explanatory document expressly states that this information is required to improve regulatory visibility into upcoming infrastructure developments and assist in tracking progress against national broadband objectives. It is critical that should this information be provided, the Authority recognise that operators often revise plans downward when costs or financing change. Assurance should be provided by the Authority that the use of data received on any future network deployments will be used prevent any government (local, municipal or national) overbuild and used to enable evidence-based national connectivity policy.

3.7.3. Protection and Confidentiality of GIS Data

MTN supports the overarching objectives of the draft Regulations to improve evidence-based planning, coordination, and oversight of electronic communications infrastructure in support of national connectivity and rapid deployment goals and will continue to be cooperating fully with lawful and proportionate information-gathering processes under the ECA.

MTN highlights that any such cooperation must operate within the bounds of the Promotion of Access to Information Act, 2000 (PAIA) governing confidential, commercially sensitive, and security-sensitive information.

PAIA does not provide for unrestricted access to all information submitted by MTN to ICASA (or DCDT). In Chapter 4, PAIA expressly requires refusal of access where disclosure would prejudice protected interests, including:

- commercially confidential information.
- confidential information supplied by a third party.
- information whose disclosure could reasonably be expected to endanger life, safety, or the security of the Republic or critical infrastructure.
- information that would undermine or prejudice regulatory and enforcement functions.

These grounds of refusal are mandatory, not discretionary, and apply irrespective of the regulatory or policy objective underpinning the initial request. Against this statutory framework, MTN submits that certain categories of information contemplated by the draft regulation cannot lawfully be disclosed in raw or site-identifiable GIS form, nor included in any database accessible beyond the Authority itself.

It is MTNs view that precise geospatial coordinates of base stations, capacity (either passive or active), antennas and resilience attributes, including power and energy-related details (as has been requested in the past), as well as any forward-looking deployment plans fall within this limitation.
MTN submits that PAIA fully accommodates a proportionate and internationally established alternative, whereby high-resolution, site-level GIS and network-design information is provided confidentially to the Authority, for clearly defined purposes; and any wider publication or sharing is limited to aggregated, anonymised, and non-identifying outputs.

3.8. Regulation 8 – Dispute Resolution

While the proposed dispute resolution framework is broadly aligned with existing provisions in the ECA, particularly in its recognition of negotiation, mediation, and access to the courts, it does not sufficiently address the structural limitations inherent in section 44 of the ECA.

In particular, the absence of a clear ICASA adjudicative backstop, reliance on voluntary mediation, and the lack of interim access provisions may undermine the objective of expediting infrastructure deployment.

In contrast to the facilities leasing regime under section 43, which provides for ICASA determination in the absence of agreement, the proposed framework risks perpetuating delays by defaulting to judicial processes. To achieve the objectives of rapid deployment, the framework should incorporate a binding regulatory determination mechanism, clearer enforcement provisions, and standardised principles for compensation.

4. Conclusion

MTN appreciates the opportunity to comment on the Draft Regulations and Explanatory Memorandum on Rapid Deployment of Electronic Communications Networks and Facilities, 2026. MTN supports the objective of accelerating infrastructure deployment in the public interest but submits that the current draft requires further refinement to ensure that the framework is lawful, practical, proportionate, and capable of supporting efficient network expansion.

In particular, MTN submits that the Authority should not finalise the regulations before the Minister has issued a final policy direction under section 3 of the Electronic Communications Act, 2005, which the Authority is required to consider in the exercise of its regulatory powers. MTN further submits that the final framework should address the cost and delay associated with approvals, constrain rent-seeking conduct, clarify the operation of access and dispute resolution processes, and avoid duplication or uncertainty in relation to GIS reporting obligations.

MTN also emphasises that any GIS and deployment information provided to the Authority must be treated in a manner consistent with PAIA and with due regard to commercial confidentiality, network security, and critical infrastructure risks. Site-level or otherwise sensitive information should, at most, be submitted on a confidential basis for defined regulatory purposes, with any broader disclosure limited to aggregated and anonymised outputs. MTN remains committed to participating constructively in the consultation process and would welcome the opportunity to elaborate on these submissions during the public hearings and any further related engagements.