

MTN South Africa: Submission on Draft Rapid Deployment Regulations 2026

Public Hearings— 13-14 July 2026



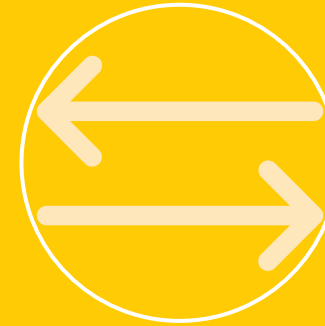
Test 1
Lawful?

Does the framework respect the ECA, ministerial policy direction and administrative justice principles?



Test 2
Practical?

Can licensees operationally comply with these regulations as they are written?



Test 3
Proportionate?

Are obligations calibrated to regulatory objective without imposing unnecessary burden?



MTN supports rapid deployment objectives but submits that the current draft is potentially premature, legally uncertain, and operationally unworkable in key areas

General Concern 1: Withdraw the Draft Pending Final Policy Direction

Finalising these regulations before the Minister's policy direction is settled would be procedurally improper and create regulatory incoherence.



Current State

Two Instruments in Conflict

An unfinalised draft policy direction (GG 54314, 12 March 2026) co-exists with these draft regulations — the two instruments are not yet aligned.



Legal Obligation

ECA Sections 3 and 4(1) — Authority Must Follow Policy Direction

Under ECA ss 3 and 4(1), the Authority must consider ministerial policy directions when exercising regulatory powers. Promulgating regulations before the direction is final is inconsistent with this mandate.



Procedural Risk

Likely Republication Required

If the final policy direction amends NRDP interpretations or adjusts licensee obligations, the Authority would be required to republish amended draft regulations and reopen the commentary period — creating delay and uncertainty.



MTN's Ask

Withdraw the current draft regulations and republish once the final policy direction is gazetted — to ensure regulatory certainty and coherence.

General Concern 2: Cost of Approvals and Rent Seeking

The draft regulations are silent on the prohibitive costs of obtaining approvals – This is a structural barrier that undermines the very objective that the regulations are meant to advance

PROBLEM



Deployment costs are up to 50% higher in rural areas vs. urban areas



Rent-Seeking by Authorities

Municipal and governmental agencies charge inflated wayleave fees beyond administrative cost recovery. Examples: excessive SANRAL fees; prolonged negotiations designed to extract higher payments.



Wider adoption of national Standard By-Law Regulations



Municipal fees capped at administrative cost recovery — national cap required



Statutory turnaround times for approvals (e.g., 30 calendar days)



Approval costs for telecoms infrastructure treated equivalently to **public utility services**

Knock-on Effect

Raises cost of capital



Investment



Rollout

Specific Concerns: Regulations 1 - 3

Definitions, Purpose and Licensee Responsibilities

Reg 1 GIS Database Definition

The definition references only **"type and location"** — but Reg 7(2) additionally requires owner/operator details and available capacity. The definition must be updated to reflect all mandatory requirements under Reg 7(2).

Definition-provision mismatch

Reg 1 Wayleave Certificate Definition

Definition includes "private land" — a relevant authority has no legal mandate to issue a wayleave over private land. MTN recommends removing "or private land": landowner consent is a separate mechanism and cannot be conflated with a statutory wayleave.

No legal mandate for private land

Reg 2 Purpose — Dispute Resolution Publication

Reg 2(1)(e) provides for a dispute resolution mechanism but does not specify how decisions will be published . The policy direction expressly requires a publication method — a future version of the regulations must include this to satisfy the policy direction's requirements.

Publication method absent

Reg 3 Licensee Responsibilities

Broadly aligned with industry practice on due care, reinstatement, and coordination . MTN's concerns in this regulation relate specifically to GIS data confidentiality — addressed separately under Regulation 7 — rather than the operational obligations themselves.

GIS confidentiality concern (see Reg 7)

Specific Concerns: Regulations 4 - 5

Land Entry and Infrastructure Removal

Reg 4(2) Public Consultation

Community consultation is **informational and in good faith** — it is not a consent mechanism

Confirmed by **MTN v SMI Trading CC [2012]** (SCA): ECA s22 grants licensees right of entry without landowner consent, provided administrative justice principles are followed

Reg 4(9) 14-Day Notice Period

Blanket 14-day notice required for maintenance, repair, and alteration — **regardless of urgency**

MTNs Position: Access agreements should govern notice periods for operational scenarios — rigid timelines constrain network resilience

Reg 4(11) Joint Site Inspections

Inspections "upon request" by a local authority are **unbounded** — no scope limitation

No safeguard against inspection-driven delay or informal conditionality unrelated to safety or compliance

Reg 5 Infrastructure Removal

Rigid **60-day removal deadline** exposes licensees to enforcement action where delays are outside their control (e.g., contested site access).

MTNs Proposal: Adopt a "reasonable period" standard with a requirement to demonstrate cause for any extension beyond 60 days

Specific Concern : Regulation 6

Compensation: International Benchmarks & MTN's Position

United Kingdom

Compensation limited to actual loss, damage, loss of amenity, and reasonable professional costs

European Union

Compensation capped at actual loss, damage, loss of amenity, and reasonable professional costs

Australia

Compensation capped at actual loss, damage, loss of amenity, and reasonable professional costs

South Africa 2023 National Policy (GG 48346)

No access fee for unobtrusive infrastructure (underground/overhead cables) — aligned with international practice.

Gap: Explicitly excluded fees charged by local government for permits and authorisations.

MTN supports the national policy position: no access fee for unobtrusive infrastructure

Approval costs for infrastructure deployment should be treated equivalently to utility services

Fees must be limited to cost recovery and not commercial extraction by municipalities or government agencies

Specific Concerns: Regulations 7

GIS Database: Governance and Data Requirements

Dual Database Risk

NRDP 2023 assigns GIS responsibility to DCDT; the draft policy direction assigns it to ICASA — conflicting mandates create parallel reporting obligations

Licensees face reporting to at least two separate databases, directly contradicting the policy objective of reducing sector duplication

No resolution proposed between DCDT and ICASA responsibilities

TowerCo Data Gap

~52% of Africa's telecom towers are managed by independent TowerCos — many outside ICASA's regulatory ambit. ICASA has not explained how accurate passive infrastructure data will be collected from entities it does not regulate

Licensees cannot provide capacity data for infrastructure they no longer own — a structural impossibility in the draft requirements

Data Protection and PAIA

Co-operation and supply must operate within the bounds of PAIA which includes commercially confidential information

Any site-level GIS data submitted confidentially to ICASA are limited to regulatory purposes only.

Any wider publication restricted to aggregated, anonymised, non-identifying outputs.

Specific Concerns: Regulations 8

Dispute Resolution

Draft Dispute Gaps

Mirrors ECA s44 weaknesses: No ICASA adjudicative backstop; voluntary mediation; no interim access — structural limitations replicated, not resolved

Court default: Unlike the facilities leasing regime under ECA s43 — which provides binding ICASA determination — Reg 8 defaults disputes to judicial processes, causing significant delay

MTN's Proposal

Binding regulatory determination

Clearer enforcement provisions

Interim access provision

Conclusion: MTN Asks

The draft regulations require fundamental refinement before they can be lawfully and effectively accelerate infrastructure deployment

- 1 Withdraw and Republish**
 Withdraw the current draft; republish after the Minister issues the final policy direction under ECA s3 to ensure regulatory certainty and coherence.
- 2 Address Approval Costs**
 Cap municipal wayleave fees at cost recovery; introduce national standard by-laws; set statutory 30-day approval turnaround times.
- 3 Correct Definitions and Land Access**
 Correct the GIS Database definition; remove "private land" from Wayleave Certificate; clarify and safeguard joint site inspection scope.
- 4 Resolve GIS Governance**
 Assign clear responsibility for a single GIS database; address the TowerCo data gap; protect commercially and security-sensitive data under PAIA.
- 5 Strengthen Dispute Resolution**
 Replace voluntary mediation with a binding ICASA adjudicative mechanism; add interim access provisions and standardised compensation principles.

MTN remains committed to constructive engagement on the development of effective Rapid Deployment Regulations.

Thank You